

Poland. Rule of law report for 2021. Submitted in public consultations on January 24th, 2022 by civil society organisations.

The contributions included in the present document on the rule of law in Poland, in 2021 are submitted to the European Commission within the framework of the targeted stakeholder consultation the European Commission launched in relation to its 2022 Annual Rule of Law Report. The document follows the structure and applies the headings of the European Commission's stakeholder consultation survey.

Present document is a compilation of the contributions of the following Polish civil society organisations:

Citizens Network Watchdog Poland | siecobywatelska.pl

Helsinki Foundation for Human Rights | hfhr.pl

Institute for Public Affairs | isp.org.pl

National Federation of Polish NGOs | ofop.eu

Stefan Batory Foundation | batory.org.pl

Table of contents

I. Justice System.....	4
A. Independence	4
Appointment and selection of judges, prosecutors and court presidents	4
Irremovability of judges	4
Promotion of judges and prosecutors.....	5
Allocation of cases in courts.....	6
Independence	6
Judicial prosecutorial liability	7
Remuneration/bonuses/rewards for judges and prosecutors.....	7
Independence/autonomy of the prosecution service	8
Significant developments capable of affecting the perception that the general public has of judicial independence.....	9
B. Quality of justice.....	9
Resources of the judiciary	9
Digitalisation	9
Geographical distribution and number of courts/jurisdictions and their specialization ...	10
C. Efficiency of the justice system	10
Length of proceedings.....	10
II. Anti-Corruption Framework	11
A. The institutional framework capacity to fight against corruption	11
Changes as regards relevant authorities in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities	11
Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.....	12
Implementation of measures foreseen in the strategic anti-corruption framework	12
B. Prevention.....	13
Measures to enhance integrity in the public sector and their application	13
General transparency of public decision-making	13
Rules and measures to prevent conflict of interests in the public sector	14
Measures in place to ensure whistleblower protection and encourage reporting of corruption.....	14
Sectors with high-risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors	15
Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic	16
Other relevant measures to prevent corruption in public and private sector	16
C. Repressive measures	17

Criminalisation, including the level of sanctions available by law, of corruption and related offences including foreign bribery	17
Data on investigation and application of sanctions for corruption offences and their transparency, including as regards to the implementation of EU funds	17
Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases.....	17
III. Media Freedom and Pluralism.....	18
A. Media authorities and bodies.....	18
Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies	18
Existence and functions of media councils or other self-regulatory bodies	18
B. Transparency of media ownership and safeguards against government or political interference	19
Measures taken to ensure the fair and transparent allocation of state advertising.....	19
Safeguards against state / political interference	19
C. Framework for journalists' protection.....	20
Rules and practices guaranteeing journalist's independence and safety	20
Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists	20
Access to information and public documents	21
Lawsuits and convictions against journalists and measures taken to safeguard against abusive lawsuits.....	21
IV. Other institutional issues related to checks and balances.....	22
A. The process for preparing and enacting laws.....	22
Framework, policy and use of impact assessments, stakeholders'/public consultations and transparency and quality of the legislative process.....	22
Rules and use of fast-track procedures and emergency procedures.....	23
Regime for constitutional review of laws	24
COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic.....	25
B. Independent authorities.....	25
Independence, resources, capacity and powers of the Ombudsman, equality body and of supreme audit institutions	25
Statistics/reports concerning the follow-up of recommendations by the Ombudsman and supreme audit institution	26
D. The enabling framework for civil society.....	27
Measures regarding the framework for civil society organisations.....	27
E. Initiatives to foster a rule of law culture.....	28
Measures to foster a rule of law culture.....	28

I. Justice System

A. Independence

Appointment and selection of judges, prosecutors and court presidents

In 2021, the rule of law crisis in Poland continued influencing the key aspects of the functioning of the judiciary system, including the process of appointing the judges of common courts and the Supreme Court.

The National Council of Judiciary (hereinafter: the NCJ) continued its works by promoting and appointing judges of common courts. Due to the defective composition of the NCJ there are growing doubts regarding the legality of the decisions made by the Council including the legality of judges appointing process.

Common court judges referred to the problem of defective appointment of judges by the NCJ in several cases. For example, in October 2021, Judge of the Regional Court in Częstochowa, Adam Synakiewicz, overruled the decision of the court of the first instance based on the fact that the ruling was passed by a judge appointed by the NCJ. Judges Maciej Ferek from the Regional Court in Kraków and Agnieszka Niklas-Bibik from the Regional Court in Słupsk made similar decisions and faced disciplinary consequences in response.

In 2021, the European Court of Human Rights and the Court of Justice of the European Union ruled in cases concerning the issue of judicial appointments. In *Reczkowicz v. Poland* the ECtHR focused on among others the role of the NCJ in appointing judges and how its defective composition prejudiced the right to have a case heard by a tribunal established by law. Furthermore, in *Dolińska-Ficek and Ozimek v. Poland* the ECtHR found out that one of two new chambers of the Supreme Court, namely the Extraordinary Appeal and Public Affairs Chamber, does not meet the criteria of an independent court established by law given the process of its composition. In cases *A. B.* and *W. Ż.* the CJEU focused on the problems of appointing judges of the Supreme Court by the new NCJ.

However, none of these judgements have been implemented by the governing majority in Poland. In its judgements following the CJEU's judgement in case *A. B.*, the Supreme Administrative Court declared that the NCJ's resolutions appointing judges were partially null and void. However, the Court also ruled that such did not influence the legality of the President's decisions in appointing the judges presented by the NCJ.

Irremovability of judges

Irremovability of judges remained threatened in 2021. In 2020, the Disciplinary Chamber of the Supreme Court waived judge Tuleya's immunity with regard to an alleged abuse of powers and dissemination of information from the investigation, and suspended him. Based on the CJEU's decisions of July 2021 ordering Poland to suspend the functioning of the Disciplinary Chamber and declaring the incompatibility of the disciplinary regime for judges with EU law, Igor Tuleya filed a motion to the president of his court for reinstatement but was denied. Another judge suspended by the Disciplinary Chamber Paweł Juszczyzyn, won a lawsuit in 2021, in which he sought a declaration that his suspension constituted a violation of his personal rights. In the final decision, the court

reiterated that the Disciplinary Chamber lacked formal grounds to suspend judge Juszczyzyn. However, the president of judge Juszczyzyn's court refused to reinstate him. Furthermore, in October 2021, the CJEU delivered a judgement concerning the case of judge Waldemar Żurek, who had been transferred to another court department by its president. In its ruling, the CJEU declared that a transfer to another court or department made without the judge's consent might violate the principles of irremovability and independence.

With regard to public prosecutors, the practice of delegating them to other organisational units of the prosecution, often located in distant cities, continued to be noticeable also in 2021. Although the law authorises the National Prosecutor to temporarily transfer any prosecutor to another place of service for a period no longer than 12 months without their consent, in some cases such decisions are issued as a form of reprisal for prosecutors' activities, in particular for being members of independent associations, making certain public statements or taking certain procedural actions.

In January 2021, the media reported on 20 new cases of questionable transfers, including the president of the association for public prosecutors "Lex Super Omnia", Katarzyna Kwiatkowska, who was delegated to a city 181 km away from her usual posting, as well as its member Ewa Wrzosek, who had initiated an investigation into the cancelled presidential elections of 2020 (263 km), and Jarosław Onyszczyk, member of Lex Super Omnia's board (311 km). In December 2021, the proceedings before a labour court begun with regard to K. Kwiatkowska's lawsuit demanding compensation for discrimination and unequal treatment. Another member of the association and a vocal critic of the current prosecution's authorities, Mariusz Krasoń, who was first seconded to a unit located almost 300 km away from his place of living for six months in 2019, also filed a lawsuit against his superiors in a labour court. In the judgement of June 2021, the court declared his delegation illegal and unjustified, stating also that decisions of the National Prosecutor were discriminatory.

Promotion of judges and prosecutors

Judges in Poland are promoted by the President of Poland upon the motion of the NCJ. Since the 2017 amendment to the act on the National Council of Judiciary, the independence of the Polish NCJ evokes serious doubts. This has resulted in several landmark judgements of ECHR and CJEU, as well as in the decision of the European Network of Judicial Councils to exclude the Polish NCJ from the network in 2021.

At the beginning of 2021 media revealed that from 2018 the National Council of Judiciary has decided more than a dozen times on the promotion of its members and their relatives to a higher judicial position. The same applies to judges (and their relatives) who have a close connection with the executive branch. To give an example, former deputy Minister of Justice, judge Łukasz Piebiak, who, according to the media, played an active role in the hate campaign against other judges, was promoted from the district court (lowest level in the system of courts) to Supreme Administrative Court. Moreover, Rafał Puchalski, the judicial member of NCJ and the judge of a district court, was promoted to the Disciplinary Chamber of the Supreme Court. NCJ's decision regarding judicial appointments and promotions raises considerable doubts. It is highly questionable whether the council based its decisions on substantive criteria alone.

The NCJ's decision might be challenged in the Supreme Court. The appeal from NCJ's decisions is recognized by the Chamber of Extraordinary Review and Public Affairs. On 8 November 2021, the European Court of Human Rights delivered a judgment in the case Dolińska-Ficek and Ozimek v. Poland. In that case, it found a manifest breach of the domestic law which adversely affected the

fundamental rules of procedure for the appointment of judges to the Chamber of Extraordinary Review and Public Affairs of the Supreme Court. These irregularities in the appointment process compromised the legitimacy of the Chamber of Extraordinary Review and Public Affairs to the extent that it lacked the attributes of a “lawful tribunal”.

The prosecutors of provincial, regional, and national prosecutorial offices are appointed by the Public Prosecutor General upon the motion of the National Prosecutor. The Act on the Prosecution does not delineate any criteria to take into account when considering a prosecutorial promotion. It only indicates the minimal experience required for a prosecutor and other legal professions. The Public Prosecution General does not have to initiate a formal competition if there are more than two candidates for the vacancy.

Before appointing the prosecutor to a prosecutorial position, the Public Prosecutor General is not required to ask the relevant board of the prosecution service to issue an opinion about the candidate. As a result, the procedure for promoting public prosecutors to the higher positions currently does not guarantee that such decisions are based on substantive criteria.

Allocation of cases in courts

In April 2021, the Ministry of Justice lost a case before the Supreme Administrative Court against the ePaństwo Foundation over the transparency of the Random Case Allocation System algorithm. The system is an IT tool that draws judges for specific cases before the common courts.

In September, the Ministry published a 40-page document containing a description of the algorithm. However, according to experts, this is insufficient to examine whether the system actually works in a random way. It is not possible to make such an assessment without review of the complete source code. The information released does not therefore dispel doubts as to whether the system is working properly and is free from human interference.

Independence

In 2021, the European Network of Judiciary Councils decided to expel the Polish National Judiciary Council. A two-year suspension of the Polish NCJ in the network preceded the decision. The ENCJ stated that the Polish NCJ does not safeguard the independence of the judiciary and does not defend the judiciary nor individual judges.

Despite the growing legal concerns regarding the legality of its operations, the NCJ continued to function in 2021. In 2021, the NCJ presented a total of 829 judicial appointment candidates to the president, the highest number since 2017 (compared to 88 candidates in 2018 and 409 in 2020).

In December 2021, the speaker of the Sejm initiated the process of collecting candidates for the 15 judicial member positions of the NCJ, as the term of office of the incumbent 15 judicial members expires in 2022. IUSTITIA, Poland’s largest judicial association, had previously called upon its members to boycott the candidate-selection process (judges can either apply for the member position or back the candidacy of another judge).

Issues involving NCJ’s composition and functioning have been the subject of several decisions of both the European Court of Human Rights and the Court of Justice of the European Union. Polish authorities have failed to implement any of these decisions.

Judicial prosecutorial liability

In July 2021 the Court of Justice of the European Union ruled the disciplinary regime against Polish judges is not compatible with EU. In particular, the Court emphasised that Polish judges are exposed to the risk of disciplinary proceedings for the decisions they make (especially for requests for preliminary rulings to the CJEU). Moreover, in July 2021, the CJEU ordered Poland to suspend the application of the provisions regulating the work of the Disciplinary Chamber of the Supreme Court in disciplinary and immunity proceedings concerning judges. As the decision was not implemented, in October 2021 the CJEU imposed a financial penalty on Poland.

In August 2021, the First President of the Supreme Court ordered that case files concerning disciplinary liability of judges and immunity proceedings against them should be directed to the Supreme Court's registrar and stored there, unless the adjudicating bench had already been appointed to hear the case. These orders will remain in force until 31 January 2022, which means the effective suspension of the Chamber's functioning in the two categories of matters.

Despite the judgements of the CJEU and the First President's orders, since July 2021 the Disciplinary Chamber has heard several disciplinary cases against judges. In November 2021, it suspended judge Maciej Ferek, charged with questioning the status of judges appointed with the participation of the new National Council of the Judiciary. A similar decision was issued with regard to judge Piotr Gąciarek, who also questioned the status of another judge, as well as to judge Maciej Rutkiewicz (for disregarding the Disciplinary Chamber's decision waiving the immunity of a public prosecutor).

In October 2021, the Disciplinary Commissioner for Common Court Judges informed it was initiating disciplinary proceedings against two vocal critics of the changes implemented in the judiciary, judges Olimpia Barańska-Małoszek and Beata Morawiec. With regard to the latter, the charges also concern activities that might trigger criminal liability.

In 2021, public prosecutors active in public debate or those who issued certain procedural decisions were also held liable in disciplinary proceedings (the suspension of hearing disciplinary and immunity cases by the Disciplinary Chamber of the Supreme Court does not apply to prosecutors). The most notable example is the case against Ewa Wrzosek, who initiated an investigation concerning the government's preparations to hold presidential elections during the pandemic in 2020. Despite earlier statements of the National Prosecutor on the intention to launch only disciplinary proceedings against her, she will face criminal charges for alleged abuse of power. Moreover, in December 2021 the media reported, following the information from Canada-based Citizen Lab institute, that deep surveillance software Pegasus had been used at least six times with regard to Judge Wrzosek's mobile phone.

Remuneration/bonuses/rewards for judges and prosecutors

There are no major problems with access to information regarding the functioning of courts. In 2019 the Citizens Network Watchdog Poland asked all common courts for information regarding management and received answers from 92% of them. This is a much better result than in the case of other institutions. However, there were also cases of resistance, e.g. the District Court in Mysłowice claimed that the number of cases per judge is counted only for the internal use and promotion of judges, while the District Court in Lwówek Śląski expected payment of 700 PLN (around EUR 155), and another court in Rybnik expected 500 PLN (around EUR 111) to provide the information. The District Court in Koszalin refused to answer any questions. The Polish civil society organization Association

Watchdog Poland went to the administrative court and received a judgement that not answering the questions constituted a gross violation of the law.

There was no regular monitoring in recent years as regards more sensitive issues, related to possible opportunities to “reward” personnel and judges. However, an interesting example is connected with the District Court in Olsztyn, where Court President Maciej Nawacki, who, according to the media, played an active role in the hate campaign against other judges and who is not allowing a suspended judge Juszczyzyn to return to work. As media revealed in December 2020, he and other judges earned double fees in the National Council for Judiciary. In April 2021, Watchdog Poland wanted to check how money is spent in the court where he is president. The court revealed information on its contracts but without amounts paid. There is extensive jurisprudence according to which information on who is paid for what and how much in public institutions constituted public information. Moreover, a few years earlier (2017), the previous court president prepared a complete response as to contracts signed by the court. Therefore, it seems reasonable to claim that in this single though appalling case, transparency decreased, and the information was deliberately concealed, without explanation.

Independence/autonomy of the prosecution service

The Act on the Prosecution adopted by Sejm at the beginning of 2016 re-merged the positions of the Minister of Justice and the Prosecutor General, leading to a situation in which an acting politician again became the Prosecutor General. The Prosecutor General and National Prosecutor are superior prosecutors to all public prosecutors in Poland.

Under the 2016 Act on the Prosecution, public prosecutors are independent, excepting a specific provision of the act. As a result, public prosecutors must follow their superiors’ dispositions, guidelines, and orders, even if they apply to specific prosecutorial decisions, e.g. not bringing an indictment to court. Such orders generally have to be in writing. They have to be accompanied by a statement of reasons only if requested. However, since the orders are kept in prosecutors’ internal case files, the parties to the proceedings do not have any procedural possibility to acquaint themselves with the content of the orders issued in their case.

Moreover, superior public prosecutors have a right to change or revoke any decision made by subordinates. Such decisions have to be made in writing but do not require a statement of reasons. Last but not least, superior prosecutors are also empowered to take over cases handled by subordinate prosecutors.

To sum up, the public prosecution system in Poland does not guarantee public prosecutors’ internal independence in the decision-making process. Superior prosecutors can influence the content of certain decisions made by prosecutors.

In 2017 the Sejm, upon the motion of the Ministry of Justice – Public Prosecutor General, amended the Code of Criminal Proceedings by adopting measures allowing prosecution service to withdraw an indictment previously submitted to a court. In 2021 the media revealed that such a tool was used in the case of Daniel Obajtek, a prominent politician of the ruling party and the head of the state oil company Orlen. The prosecution’s decision resulted in proceedings concerning Obajtek’s alleged corruption being discontinued.

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

In 2021 the prosecution continued the investigation concerning inspiring smear campaigns against judges. According to media reports, some Ministry of Justice leading officials were allegedly engaged into this process. In 2021, the investigation was transferred from the Lublin prosecution to Świdnica.

In January 2022, the media reported on email correspondence between the members of the Prime Minister's team and his consultants. In this correspondence the Prime Minister's co-workers reportedly requested the head of the Public Television to prepare materials attacking judges of the appellate court in Warsaw in response to their judgements made several days prior.

B. Quality of justice

Resources of the judiciary

The difficult situation of court and prosecutorial administrative staff has long been an issue in Poland and remained so in 2021.

According to trade union representatives, the average 2021 salary of non-judicial court employees (i.e. administrative staff, excluding judges) was approximately PLN 3,300 (EUR 733) after tax. Their low earnings are hardly commensurate with the amount of work performed, especially given the increase in the number of certain types of cases in 2021 (mostly related to COVID-19 lockdowns) and the relatively stable total number of non-judicial employees. The inadequate remuneration results in growing frustration among court administrative staff and high turnover. Moreover, lack of sufficient qualified clerical support decreases judicial efficiency thus lengthening proceedings.

In June 2021, the government announced a freeze on public sector salaries in 2022, including non-judicial court and prosecution personnel, giving rise to protests among these groups. The protest continues at the time of the writing of this report. Protesters demands include a 12% pay increase for court employees, equal pay among various prosecution units, as well as linking the salaries of both groups to the national average wage.

Digitalisation

The COVID-19 pandemic forced Polish authorities to adopt solutions enabling courts to conduct judicial proceedings remotely. The practice of using such measures was assessed in the civil society organisation - Helsinki Foundation for Human Rights report (hereinafter: HFHR) „E-hearings in Polish Courts”.

According to the report, Polish courts lack a uniform approach to conducting hearings remotely. The courts differ in the context of the used software, amount and quality of training provided to the judges and court employees, as well as the public nature of the e-hearings.

The report indicates that in four out of nine surveyed courts, no training was held for judges and employees or was held in an ad hoc form.

Moreover, some courts reported technical problems in the course of remote hearings. In some of the cases, the problems resulted in hearing stays or cancellations.

Finally, the research indicates specific problems with the public nature of the e-hearings. More than ten circuit courts (out of 49) declared that the e-hearings are not public and the public cannot take part in them.

Geographical distribution and number of courts/jurisdictions and their specialization

At the end of 2020, the Minister of Justice announced the idea of flattening (fewering the number of levels) the judicial structure in Poland. The plans of the Minister were combined with art. 180 (5) of the Constitution of Poland, which allows public authorities to relocate or force the retirement of specific judges in the event of court system reorganization or a redrawing of court districts. The Minister has not yet revealed detailed plans of the changes. However, the idea of flattening the court system is an ongoing threat to judicial independence as every single jurist faces the risk that it may invoke the use of Constitutional art. 180 (5) against them.

At the end of 2016, the Sejm passed a law allowing the Minister of Interior Affairs to lower retirement and disability pensions for people deemed to have performed security services for the Polish People's Republic. The law allows for an appeal to such a decision via a complaint solely to the Warsaw Circuit Court, which means a single court reviews this type of case. As such, it undermined the Circuit Court's ability to review the cases in a reasonable time and prejudiced court access for parties residing outside Warsaw.

As of 28 February 2021, the Warsaw Circuit Court received over 25,000 cases concerning pensions lowered pursuant to the act. The court referred 7,000 of these cases to other circuit courts while the remainder have been suspended for the duration of the amendment's constitutional review.

On 9 March 2021 ECHR communicated to the Polish authorities the case of Bieliński and 22 others v. Poland concerning court access by prospective plaintiffs with lowered pensions by the aforementioned act. The applicants argue pursuant to Article 6 § 1 of the Convention that excessive length of proceedings has effectively denied them access to a court.

C. Efficiency of the justice system

Length of proceedings

There is no available data showing the length of the proceedings in 2021.

The average length of proceedings has steadily risen each year since 2015 from 4.2 months to 7 months in 2020.

According to civil society research findings (e.g. HFHR's report) the causes of judicial backlog include the growing number of new cases filed (ca. 15 million cases in 2018), the system of appointing expert witnesses, case management and the overall management of court work. The HFHR report also shows that the available remedies to compensate for the excessive length of proceedings are not fully sufficient. Since 2016 the number of complaints for excessive length of proceedings have been rising,

yet the value of awarded compensation remained relatively low – from 2752 PLN to 3324 PLN. According to HFHR research, the relatively low compensation remains one of the reasons why parties to the proceedings are discouraged from seeking relief.

II. Anti-Corruption Framework

A. The institutional framework capacity to fight against corruption

Changes as regards relevant authorities in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities

In 2021, there were no systemic changes regarding the institutions that deal with the prevention, detection and prosecution of corruption.

There has also been no decision yet in the case initiated by OLAF on suspicion of damaging the interests of EU finances by MEP Ryszard Czarnecki concerning allegedly inflated travel expenses. For more than a year little has happened in the proceedings brought by OLAF in the Zamość district prosecutor's office. The prosecution complains that OLAF has not provided it with all the documents. Mr Czarnecki himself has returned part of the amount that OLAF claims he improperly received from the European Parliament, but this should have no bearing on the ongoing criminal proceedings. In December 2021, two of the MEP's former assistants said in a conversation with RMF FM journalist Krzysztof Zasada that their boss had signed the expense claims. Both, independently of each other, confirmed that they had seen the MEP's completed travel records with his signature.

The Central Anti-Corruption Bureau's 2017 purchase of Pegasus spy technology produced by the Israeli company NSO, turned out to be a resounding scandal. As researchers from Canada's Citizen Lab discovered, this technology was used during the 2019 election period against then Civic Platform chief of staff and now Senator Krzysztof Brejza. There is also strong circumstantial evidence that Pegasus was used against prosecutor Ewa Wrzosek, who investigated irregularities in the organisation of the 2020 presidential election, and lawyer Roman Giertych. As early as 2019, Mr Giertych worked on several high-profile cases involving key politicians from the ruling party, i.e. he was involved in representing an Austrian property developer who claimed that Jarosław Kaczyński (chairman of the Law and Justice party) defrauded him when a deal to build two skyscrapers in Warsaw collapsed. The disclosure of this failed deal caused a major scandal in the country, as Polish law prohibits political parties from profiting from economic activities while the towers in question were to be built on land owned by the Law and Justice party.

The Polish government claims that the special law enforcement services obtained court permissions required by law prior to conducting wiretap. However, Polish law does not include Pegasus among the tools permitted for use to surveil suspects in justified situations. Under current Polish law, it is therefore not possible to obtain court authorisation for wiretapping using Pegasus technology.

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

In 2021, significant problems continued with the independence of institutions involved in the fight against corruption. Since the amendment of the law on prosecutors in 2016, the Prosecutor General, i.e. the head of all prosecutors, is also the Minister of Justice and therefore an active politician. The ban on political party affiliation and the ban on political activities do not apply here. The confluence of these functions as a systemic solution is questionable. Transparent procedures, clear criteria for personnel policy and clear rules for the functioning of the hierarchy in the prosecution service can effectively limit the risk of abuse of power and use of such an organisation of the prosecution service for political purposes. The problem is that precisely such safeguards are lacking.

Another example of political involvement of institutions responsible for the fight against corruption is the case of the purchase of the Pegasus spy tool by the CBA [Central Anticorruption Bureau], described above. All evidence currently indicates that it was used against the opposition and independent prosecutors as opposed to fight corruption.

Implementation of measures foreseen in the strategic anti-corruption framework

At the end of 2020, the Government Anti-Corruption Programme for 2018-2020 came to an end. The report on the implementation of the Programme published in 2021 shows that most of the tasks of a systemic nature were not implemented. No changes have been made to the transparency of lobbying, increased transparency of election campaign financing, or the lawmaking process. Also GRECO, in the compliance report published in 2021 (FIFTH EVALUATION ROUND Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies), indicated that recommendation VI (transparency of relations with lobbyists) had not been implemented. Asset declaration system reform was another Programme assumption. However, it was not implemented, and the law adopted in 2019 extending the obligation to submit asset declarations by persons in close relations with public officials (e.g. children) clearly violated the Constitution. It used the Constitutional Court, upon the President's petition, ruled in November 2021 that the legislation interferes too deeply with the privacy of family members of public officials. The failure to amend the asset declarations also meant that Recommendation IX from the GRECO report mentioned above was not implemented.

The basic indicator of the programme's main goal was the Corruption Perception Index (CPI) value. It was noticed that the CPI should increase by 3% to 65 points by 2020. The increase in the index was estimated on the basis of CPI data for 2016, which amounted to 62. Meanwhile, according to Transparency International, which organises the survey, Poland recorded a drastic decline in 2020 reaching only 56 points. Equally important, despite the obligations resulting from the UN Convention, Poland has not even started work on the government's anti-corruption strategy for the coming years.

B. Prevention

Measures to enhance integrity in the public sector and their application

As mentioned above, a large number of the Government's Anti-Corruption Programme 2018-2020 objectives in the area of enhancing integrity in the public sector have not been implemented. What is more, GRECO recommended (i) developing mechanisms to promote and raise awareness on integrity matters (and the future rules of conduct) among persons exercising top executive functions, including through integrity training at regular intervals; (ii) establishing a dedicated confidential counselling function to provide these persons with advice on integrity, conflicts of interest and corruption prevention (Recommendation III). According to the recent GRECO report, this recommendation was not implemented either. GRECO also assessed that recommendation VIII on broadening the scope of application of the legislation on post-employment restrictions, in order to deal effectively with conflicting activities and to prevent improper moves to the private sector after the termination of functions of persons exercising top executive functions was not implemented. Poland is also failing to implement the recommendations presented by UNCAC in previous years. Poland also recorded a decline in the Index of Public Integrity, losing one place compared to 2019.

General transparency of public decision-making

There are systemic inconsistencies in the transparency of the law-making procedure. Whereas only certain documents prepared in the process of law making remain available to the public, the rest, sometimes including e.g. records of expert meetings, are not publicly available as they are deemed as "internal documents" or non-existent. The Act on Access to Public Information provides neither provisions concerning internal documents nor the exclusion of this type of documentation from transparency. Nevertheless, the public authorities impose such restrictions, taking advantage of some courts' jurisprudence favourable to them in this respect. In October 2021, the European Court of Human Rights communicated the case concerning access to the calendar of Julia Przyłębska, the President of the Constitutional Tribunal (10103/20) - it was refused as concerning "technical/internal document".

With regard to the transparency of political parties, provisions of the so-called Anticorruption Law adopted in 2021 constitute a significant achievement. The law introduced an obligation to maintain registers of contracts (proactively published) in political parties and publish donations made to political parties. Civil society organisations advocating for change in this regard welcomed the new regulations. The law's adoption resulted from a political bargain between the governing majority and some opposition parties and involved a legally dubious decision of the Speaker of Sejm to repeat the voting of the Parliament, initially lost by the governing majority (see more information about the law in the point below).

There are concerns, however, that certain positive aspects of the "anticorruption law" may be attenuated due to the Constitutional Tribunal's expected decision concerning the Access to Public Information Act's constitutionality as the new law refers to this Act in several parts.

Rules and measures to prevent conflict of interests in the public sector

The Sejm has passed new anti-corruption legislation that includes a ban on combining certain functions and increases the penalties for corruption offences committed by public functionaries. It takes the form of amendments to the Penal Code, which increase penalties for corruption offences. The act would deprive those convicted of corruption of public rights and bar them from holding positions in companies with State Treasury capital. Further, individuals convicted of corruption would be barred from employment in state and local government institutions as well as any companies with State Treasury and local government capital. They will also be forbidden from running for parliamentary or local government office or participating in public procurement.

The draft also prohibits employment in a State Treasury company while holding office as a deputy, senator, head of commune, city mayor or president. Despite the fact that the draft version of the proposal assumed the changes would enter into force quickly, parliamentarians decided to postpone their entry until the next term of office. According to media reports (e.g. Gazeta Wyborcza and Radio Zet investigation) the current scale of combining political functions with employment on the boards of state-owned companies and hiring politicians' family members is enormous.

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

There are no measures in place as regards whistleblower protection. The compulsory transposition of the EU Directive on the protection of persons who report breaches of EU law officially started just two months before the implementation deadline, on 14 October 2021, with public consultations of the draft Act on Protection of Persons Reporting Legal Breaches. The consultations generated significant interest with around 50 opinion papers submitted resulting in prolongation of the process.

Civil society organisations (CSOs) pointed out that the draft law implements the Directive's basic assumptions. It includes three forms of reporting, a broad catalogue of the entitled persons, a prohibition on retribution, protection from accusation for defamation or infringement of personal rights. They also lauded inclusion of their earlier proposals to make trade unions and worker representatives a compulsory part of consulting internal procedures and appointing the Ombudsperson to receive reports on breaches.

However, the draft law raises certain concerns. First of all, there was no campaign preparing employers and explaining the idea of whistleblower protection, while the draft law gives them two weeks to implement the law, including consultations.

Second, in the proposed draft, the new law does not cover several forms of whistleblowing and whistleblowers would not be protected or would be uncertain whether they are protected. It also does not meet international standards regarding whistleblower protection, e.g. it does not protect persons informing on corruption or human rights breaches (except for privacy).

Third, the draft law narrows provisions of the Directive by not offering protection against retribution to those whistleblowers who go directly to the media, without internal or external informing.

CSOs also recommend providing unpaid legal aid for whistleblowers and adding a requirement to deal with anonymised informers.

Certain media reports include interviews with whistleblowers assessing the draft law as better protection for employers than for whistleblowers. Some of the critical voices concerned the same points as those raised by civic organizations - exclusion of several areas, e.g., failure to cover the military and law-enforcement forces, secret information, lack of protection if a whistleblower goes directly to the media, but also informs the prosecutor or initiates an administrative procedure; it even includes criminal sanctions for unfounded information, when, oftentimes, an employee can only suspect that something illegal is occurring and would like to see an investigation.

Local self-governments (municipalities), on the other hand, asked the government for instructions regarding transitional period procedures. Municipalities claim that residents have a right to refer to Directive but it is not clear how they can do that.

According to the government, the law-drafting procedures should end in January 2022.

Sectors with high-risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors

There is no doubt that the politicised way in which prosecutors and other state institutions operate generally increases the risk of corruption, which is reflected in the views of citizens.

According to the latest Transparency International study (Global Corruption Barometer), Poles are increasingly concerned about corruption and do not trust the authorities to fight it. Nearly three-quarters (72%) of respondents are convinced that corruption is a big problem in Poland. More than one third (37%) of Poles believe that the level of corruption has increased in the last 12 months before the survey. The most corrupt public institutions were government administration (34% indications), the Prime Minister's office (32%) and parliament (31%). It is consistent with the research carried out in the second half of the year by the Polish institute of public research CBOS. At the same time, exactly two-thirds of Polish respondents said that the government does not deal well with corruption. Indeed, political corruption is widespread. Examples include ministerial positions offered to MPs previously associated with a ruling-coalition party, Jarosław Gowin's Porozumienie, as an inducement to switch parties. Another example is a Law and Justice MP who first left the party parliamentary club only to rejoin it later and receive lucrative positions in the state-owned Bank Gospodarki Krajowej.

There is also a high risk of corruption in public spending below the national thresholds for the application of the Public Procurement Law. These account for more than 30% of expenditures for goods and services, but are devoid of any transparency regulations. According to the 2020 Global Corruption Barometer, 51 percent of adult Poles estimate that companies often or very often resort to backdoor dealing or bribery to secure public contracts. The matter may change thanks to the above-mentioned Act amending the Criminal Code, which, by the way, introduces the Central Register of Contracts of all expenditures incurred by public finance sector entities. However, state-owned companies will be excluded from this obligation, and it is their property and funds that are often used to support media or other initiatives favourable to the government.

There are also significant corruption risks present in the health sector due to creating legal basis for urgent and non-competitive procedures for goods and services delivery connected with fighting the COVID-19 pandemic.

Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic

Pursuant to Article 6a of the Act of 2 March 2020 on Special Solutions Related to the Prevention, Counteracting and Combating COVID-19, Other Infectious Diseases and Emergencies Caused by them, the provisions of the Act of 11 September 2019 - Public Procurement Law do not apply to contracts for services or supplies necessary to prevent COVID-19, if there is a high probability of rapid and uncontrolled spread of the disease or if such is required for the protection of public health.

However, certain transparency mechanisms have been introduced in the provision, which may have a positive impact on the fight against corruption. They are as follows:

The contracting authority shall, within 7 days from the date of awarding the contract, publish information on the award of this contract in the Public Procurement Bulletin, in which it provides:

- 1) name (company) and registered office address of the contracting authority;
- 2) the date and place of the conclusion of the contract or information about the conclusion of the contract by electronic means;
- 3) description of the subject of the contract, detailing the number of items or other goods, as well as the scope of services;
- 4) the price or the maximum price, if the price is not known at the time of placing the announcement;
- 5) indication of the factual circumstances justifying the award of the contract without the application of the provisions of the Act of 11 September 2019 - Public Procurement Law.

Nonetheless, as indicated above, the Public Procurement Law does not apply to these contracts, and the Act on Combating Covid-19 introduces no sanctions, failure to publish this information does not entail any liability by the parties responsible for making the purchases.

Other relevant measures to prevent corruption in public and private sector

The only, though significant, achievement as regards corruption prevention is the aforementioned Anticorruption Law (MP's bill amending the Act - Penal Code and certain other acts enacted on 14 September 2021), which introduces solutions in-line with civil society expectations. However, it has not met all the expectations and was a result of the "political bargain" described in part on law making.

The first solution is the Central Register of Contracts above 500 PLN. The Minister of Finance should have readied the Register (mechanism) by 1 July 2022. All public finance sector entities should use it to register their contracts (those available on FOI request) within 14 days of conclusion. Failure to fulfil this obligation or lack of due diligence are subject to fine or up to two years of imprisonment.

The problem is that the law was not debated and, as a result of rapid legislative proceedings, the obligation to run such registers is compulsory for all obliged entities since 1 January 2022, while the register itself and clear requirements are going to be created by 1 June 2022. However, there seem to be no preparations in the Ministry of Finance. Therefore, the actual start date of the contract central register is endangered. Additionally, while certain entities, such as public and municipal companies, are not required to report their contracts, individuals in power who wish to conceal activities often resort to using just such companies.

C. Repressive measures

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

Amendments to the Criminal Code of September 2021 introduced a new criminal measure, consisting of a ban on holding a position or exercising a profession or employment in state and local government bodies and institutions, as well as in commercial companies in which the State Treasury or a local government entity holds, directly or indirectly through other entities, at least 10% of shares or stocks.

The law forces courts to impose the new sanctions on public functionaries convicted of corruption. It further leaves open the possibility of optional adjudication to apply the sanctions to other individuals for the same offences. The prohibition applies for a period from one to 15 years, or for life in the case of a repeat conviction.

The OECD Working Group on Bribery has repeatedly urged Poland to carry out key recommendations and implement legislative reforms to combat foreign bribery, consistent with its obligations under the OECD Anti-Bribery Convention. Another call to action from the OECD followed a Mission meeting in November 2020. In June 2021, the OECD reported that Poland had submitted an Action Plan on the issue, consisting, among other things, of organisational changes in the Police and the Prosecutor's Office, but had not submitted legislative proposals. The OECD will check in 2022 whether at least the changes proposed in the Action Plan have actually been undertaken, but maintained its previous position that Poland had not fully implemented Convention provisions.

Data on investigation and application of sanctions for corruption offences and their transparency, including as regards to the implementation of EU funds

Data for 2021 on investigation and application of sanctions for corruption offences are not yet available. However, there have been negative developments with regard to the right of access to public information on the activities of the prosecution, which has been very significantly curtailed by the reform of the Criminal Procedure Code, which entered into force on 22 June 2021. An amendment to Article 156 of the Code means that only the prosecutor decides whether files of discontinued cases will be made available to the media or social organisations, and that decision cannot be appealed. In the past, a refusal could be appealed to the administrative court. In other words, if there is a suspicion that a case has been discontinued for political reasons, it is now up to the public prosecutor to decide whether the grounds for the decision can be reviewed.

Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases

As stated above, the main problem with undertaking corruption prosecutions is the lack of prosecutorial independence. This is the root cause of problems in pursuing the accountability of public office holders. The Prosecutor's Office discontinued in June 2021 the investigation into the purchase of respirators from an arms dealer in 2020 by the Ministry of Health, despite the fact that these had

no guarantees that goods will be delivered after receipt of payment. Indeed, the respirators have never been provided.

Media reports in 2021 described the 2017 withdrawal by Prosecutor's Office of an indictment against Daniel Obajtek, the president of the state-owned petrol company. Mr Obajtek already had numerous government connections at the time. From March 2017, he managed Energa, another state-owned power company, and earlier, from November 2015, he headed the Agency for Restructuring and Modernization of Agriculture. In 2013, investigators alleged Obajtek, who was then the mayor of a Polish town, of collaborating with an organized criminal group, accepting a bribe and engaging in fraud. By April 2016, that is, just over a month after Zbigniew Ziobro took over the prosecutor's office, the Obajtek case was taken from Ostrów prosecutor's office and transferred to investigators in Piotrków Trybunalski. On 5 September 2016, that office filed a court motion to withdraw the indictment.

III. Media Freedom and Pluralism

A. Media authorities and bodies

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

In August 2021, Parliament adopted changes to the Act on the National Broadcasting Council. These amended the procedure of appointing Council members, granting the President of Poland more powers in the process. The law, however, did not come into force as in December 2021 the President of Poland vetoed the act.

Existence and functions of media councils or other self-regulatory bodies

According to civil society reports (e.g. the analysis of Stefan Batory Foundation), the National Broadcasting Council (NBC) in its current composition does not meet the criteria of a fully independent body. The NBC is appointed by the governing majority with some members who have close political ties to the governing party. The aforementioned reports find that the close political ties influence NBC decisions. In recent years, the NBC has taken no steps in the face of information that e.g. public media quite often presented biased and discriminatory media content, especially during election campaigns. The NBC's bias was also evident in 2021 in the course of its license-extension procedures for channel TVN24, part of the Discovery television network. Council meeting minutes show members made statements evidencing their bias against the TV station and deliberately postponed the licence-renewal decision to await the results of parliamentary procedures amending the Broadcasting Act (i.e. Lex TVN).

B. Transparency of media ownership and safeguards against government or political interference

Measures taken to ensure the fair and transparent allocation of state advertising

In 2021, there have been neither legal nor policy developments aiming at fair and equal regulation of state's allocated funds for advertising in media outlets.

In 2021, the Kantar Media research centre published a report summarising state company paid media expenditures in 2015-2020. According to the report, state companies spent over PLN 5 billion (about 111 million EUR) on such efforts, choosing mostly favourable private media outlets rather than those critical of the government (such as Gazeta Wyborcza or the TVN television station).

Furthermore, in 2021, the government announced a legislative proposal introducing a tax on media advertising revenue, including print, radio and television as well as internet media companies. Had it been implemented, the tax would have been the most burdensome for independent media outlets such as Agora (the publisher of Gazeta Wyborcza), the privately-owned TVN or a Ringier Axel Springer Polska (a publisher of several of print titles and news website Onet.pl). Eventually, the government discontinued work on this proposal after massive protests from the media and civil society.

Safeguards against state / political interference

TVN24, a TVN-owned 24-hour news channel, awaited a decision of the National Broadcasting Council on the renewal of its 10-year broadcasting licence. The licence was about to expire on 26 September 2021 and, even though the station had applied for the renewal in February 2020, the regulator did not issue any decision for 18 months. This was unprecedented and particularly excessive for the licensing renewal process for which the Broadcasting Act envisages a simplified application review. According to NBC's chairman, the Council was analysing whether the TVN group's ownership structure complied with non-EEA ownership restrictions laid out the Broadcasting Act; the TVN group's direct shareholder is a European Economic Area company while the controlling shareholder of that EEA company is a US company. However, other NBC members indicated the reasons for delaying the TVN24 licence renewal also stemmed from the channel's programming, which they perceived as violating journalistic diligence. As reported, on the day when the final two renewal votes took place, a governing majority MP representing the sponsors of the amendment to the Broadcasting Act visited the NBC's headquarters and met with one of its members (however, he denied exerting political pressure on the NBC). Eventually, the Council renewed TVN24's licence on 26 September 2021.

In parallel, from July to December 2021, Parliament worked on a bill amending the Broadcasting Act. The legislation would effectively ban non-European companies from owning Polish broadcast media – the law was directed at the US-owned TVN group in Poland. Here, the legislative process law raised significant concerns. One example showing lack of legislative process transparency is the secrecy of the State Treasury Solicitors' Office opinion provided during consideration of the parliamentary bill on amendments to the Broadcasting Act, often referred to as Lex TVN.

The opinion was not published on the website of the Sejm and, in its response to request for access to information, the office refused to provide access to the opinion on the grounds of "secrecy".

Reference was made to Article 38(1) of the Act on the State Treasury Solicitors. However, it is difficult to argue from this provision that the content of opinions submitted in the course of the legislative process can be kept secret.

C. Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

In October 2021, the media reported on the police entering the house and seizing a laptop and a mobile phone that belonged to journalist Piotr Bakselerowicz without a court-sanctioned search warrant. After Mr Bakselerowicz invoked journalistic privilege to protect his sources and refused to comply with the request voluntarily, the police seized his electronic devices (laptop, phone and router) by force. The reason given for searching the premises and seizing the devices was a criminal harassment investigation, in which the victim was a governing majority MP who allegedly received e-mail threats from the journalist's IP.

On 2 September 2021, the government declared a state of emergency in the area adjacent to the Polish-Belarusian border. The restrictions put in place practically excluded the area in question from any media scrutiny. Journalists were not listed as a group exempted from the prohibition of entry and no press accreditation system that would allow limited access to the zone was introduced. Journalistic work was also directly hindered (if not prevented) by the prohibition of recording and the restriction to the right to obtain public information. On 3 September 2021, two media workers were informed by the police that they would face criminal charges for reporting from the emergency zone (for staying in a prohibited area and for allegedly filming border infrastructure). Another journalist was fined on 27 September 2021 while following a Border Guard bus transporting migrants towards the border, presumably in order to push the group back to the territory of Belarus.

In November 2021, three photojournalists, Maciej Nabrdalik, Maciej Moskwa and Martin Divíšek, were brutally apprehended in the course of their work near the emergency zone. They were dragged out of the cars, handcuffed and kept for an hour without their jackets, while Border Guard officers searched their cars, reviewed photographs stored on their cameras and read text messages from their phones. Two of the men filed a formal complaint concerning their detention.

Moreover, during a cyclical event organised by the governing majority's officials in Warsaw in October 2021 to commemorate victims of the tragic 2010 plane crash in Smolensk, representatives of OKO.press (an independent online journalistic media outlet) were prohibited from entering the premises by the State Security Service officers. Another independent journalist, Krzysztof Boczek, revealed that he had been pushed away and intentionally hit by police officers several times after the event.

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

There have been media reports since 2016 on the growing number of incidents of physical and verbal violence against journalists covering public protests and other issues. Despite the growing trend, state authorities have not developed any specific measures aiming at combating this trend. The attacks on

journalists are subjects of criminal investigations and, depending on the case, may be subject to prosecutorial discretion.

In 2021, the prosecution pressed an indictment against a perpetrator who beat up a TV cameraman working for the Polish Public Television, the proceeding was, however, discontinued by the court. The prosecution also pressed an indictment against a protester who attacked Gazeta Wyborcza journalists in Wrocław during in October 2020. On the other hand, in 2021 there was no progress in cases of a journalist beaten up during the far-right Independence March in November 2020. According to media reports, the prosecution plans to interview several hundred witnesses as a part of the investigation.

Access to information and public documents

The migrant situation on the Polish-Belarusian border and the attendant state of emergency posed the biggest access to information issue. The state of emergency regulation restricted applicability of the Act on Access to Public Information, access for journalists and activists for three months (September-November 2021) and then an Act on the State Border amendment allowed a temporary ban on staying in a specific external Schengen state border zone-adjacent area. This temporary ban can be imposed by the Minister of Internal Affairs and Administration from day to day.

First President of the Supreme Court Małgorzata Manowska's application to the Constitutional Tribunal to declare unconstitutional a number of Act on Access to Public Information provisions also dominated 2021. The scheduled hearing to consider this application has already been cancelled twice. The formation of the court for this case has changed three times; unexpectedly, the third time the entire formation is to try the case. This will probably open the way to the European Court of Human Rights, as it will be an improperly appointed formation (in the Constitutional Court there are so-called "double judges", i.e., judges appointed to seats already occupied).

Early in 2021 two amendments introduced important exceptions to access to information. One has been already mentioned and concerned access to prosecutorial documents regarding discontinued preparatory proceedings. The access is not guaranteed and depends on individual prosecutorial decisions. Another is referred to as "diplomatic secrecy" (introduced to the Act on Diplomatic Service enacted on 21 January 2021) and allows secrecy without procedure for any document related to international relations. The definition of "diplomatic secrecy" is everything with which the diplomatic service employee is entrusted in the course of employment and which should not be revealed to protect foreign service, the image of the country and its foreign policy. For revealing such information, an employee can be held liable by the employer or prosecutor. It is highly probable that employees will preventively decide on secrecy, especially that they do not have to follow any procedures in such event. On the other hand, real secrets may be insufficiently protected due to the temptation to use the easy regime of "diplomatic secrecy".

Lawsuits and convictions against journalists and measures taken to safeguard against abusive lawsuits

In 2021, the media reported on several examples of proceedings launched against journalists and civil society activists in relation to their work.

The head of the Polish state petrol company, Daniel Obajtek, sued Gazeta Wyborcza, as a response to the number of articles concerning his private property and career path. According to Gazeta Wyborcza's journalists, this was the sixty-third lawsuit filed against it by an individual with close ties

to the ruling Law and Justice party. By way of comparison, according to the Onet.pl online news site data, media outlets published by Ringier Axel Springer were sued in 79 civil cases with 17 criminal cases launched by the persons or institutions with close ties to the ruling Law and Justice party since 2015.

A number of proceedings against civil society activists was also pending in 2021. For example, a district court acquitted three civil society activists, Elżbieta Podleśna, Anna Prus and Joanna Gzdyra-Iskander, of religious blasphemy charges for posting pictures of Mary, mother of Jesus, in a rainbow halo. In 2021, the district court also acquitted activists running the “Atlas of hate” website, on which they publish information about local communities that adopted the “anti-LGBT resolutions”. One of the local communities sued the activists, but the court dismissed the lawsuit. Still, there are six similar proceedings pending against them. Also, in 2021, the regional court in Mielc acquitted an activists Bart Staszewski who presented a sign “LGBT-free zone” at the entry road to Mielc as a part of his photo project concerning the process of adopting the “anti LGBT” resolutions by the local governments.

Proceedings involving forms of SLAPP have also been launched against prosecutors, among others. In 2021, the National Prosecution Office sued prosecutor Katarzyna Kwiatkowska in response to her media statements concerning the situation in the prosecution office. The financial damages sought in the suit are estimated at PLN 2 million (the costs of publishing a public apology in the media and payment for a social cause).

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations and transparency and quality of the legislative process

A phenomenon intensifying since 2018 is the large number of legislative bills disclosed to the public when parliamentary work has already begun. Up to that point, the Government Legislative Process platform features no documents indicating any legislative work. Many of these projects were also not included on the List of Legislative and Programme Works of the Council of Ministers. In the second year of the second Law and Justice government (16 November 2020 - 15 November 2021), we found 21 such cases.

The other problem is so-called by-passing, i.e. ruling coalition MPs submitting bills to the Sejm that have been prepared in ministries or supported by ministries. It allows the government to abandon the time-consuming and labour-intensive process of inter-ministerial consultations, social and public consultations and full consultation. Equally importantly, it does not require preparation of a comprehensive impact assessment, or presentation of data proving the need to introduce the proposed solutions.

In the second year of the current term of the government and the Parliament, 20 laws (11% of the total) were enacted through bills submitted by Law and Justice deputies. At least half of these were inspired or prepared in ministries.

Pursuant to Article 8(1) of the so-called Lobbying Act, a public hearing may be held after a bill is introduced to Parliament. This tool does not replace a well-conducted consultation and opinion process, but in the case of controversial projects and projects other than governmental ones, which, as a rule, are not subject to these processes, it may prove useful for civil society.

The current Sejm has not organised any public hearings since the beginning of its activities. On at least several occasions, mainly opposition MPs have submitted motions to organise hearings, but the majority rejected their requests.

In its Compliance Report, published in March 2021, GRECO states that Poland has fully complied with one recommendation, five have been partially implemented and the remaining 15 have not been implemented. Among these 15 non-implemented recommendations is one that relates directly to the drafting process and concerns ensuring adequate time for consultations and impact assessments in practice.

In contravention of official rules and procedures, the Polish government omitted civil society from the preparation and consultation on the National Recovery and Resilience Plan in Poland. In response, an unofficial coalition of NGOs mobilised to initiate their own series of public hearings. Within a few weeks, the coalition organised the largest ever public hearings in Poland, resulting in a series of 11 public hearings over 11 days, bringing together over 460 speakers (from civil society, local government, trade unions, businesses etc.), viewed by over 20,000 people via livestreams. Unfortunately, to this day civil society organisations are still waiting for any government response concerning the submitted comments.

Rules and use of fast-track procedures and emergency procedures

In November 2020-November 2021 (the second year of the 9th Sejm term), MPs enacted 40 bills that the government had prepared using the urgent procedure. This represented 27.6% of all (145) government bills. In addition, 21 government bills were either not consulted at all or were consulted for less than the shortest permissible time - 14 days.

Of the nine so-called "covid-related" bills, only one bill, amending laws supporting the development of housing, was prepared by the government without the use of the above-described procedure. In this case the consultation was also shortened to seven days, which the government justified as follows, *The shortened period for taking a position is due to the fact that the project in question falls within the package of solutions to counteract the negative social and economic effects of COVID-19.*

On the sejm.gov.pl platform, in the first year of the current term, only one bill (the government bill amending the Act on Special Solutions for the Implementation of the Budget Act for 2019) was labelled *Project under urgent procedure* and six drafts were so marked in the second year of the current term. These were government bills on Amending the Act on the Entry Into, Residence in and Exit from the Territory of the Republic of Poland of Nationals of the European Union Member States and their Family Members, Amending the Act on Foreign Service, Amending the Act on the Method of Determining the Lowest Basic Remuneration of Some Employees Employed in Medical Entities, Amending the Act on the Amendment of the Act On Identity Cards, on the Construction of the State Border Security and Compensation for Entities Providing Services or Conducting Economic Activity in Connection with the Introduction of a State of Emergency in the Area of a Part of Podlaskie Voivodeship and a Part of Lubelskie Voivodeship in 2021.

It is interesting that all the *covid* that were proceeded in an extremely expedited manner were not qualified in this way, although in this case such would be warranted. It is difficult to find logical grounds on which Sejm authorities decided to use the expedited procedure of Articles 37 and 44 and not Article 51 of its Rules of Proceedings (the appropriate expedited procedure).

As mentioned above, however, judging by the fact that there are many more bills on which the Sejm worked for a shorter period than the required 14 days, the urgent procedure is used in practice much more often. This is usually done in the following way: if the first reading is held in committees, the Member of the Sejm in charge of the session informs the House that the Speaker has referred the bill to committee and, pursuant to Article 37(4) of the Rules of the Sejm, has set the deadline for presentation of the report on the work of the committee as - and here the date is shorter than 7 days after the bill has been submitted to the Sejm. This is followed by a vote on approval of this procedure.

Regime for constitutional review of laws

In 2021, the Constitutional Court registered 105 cases of which 24 were motions to review the constitutionality of certain legal provisions (including legal questions posed by Polish courts) and 81 were individual complaints.

This constitutes a decrease in comparison to 2020, when the Court registered 187 cases.

There was a clear decrease in the number of cases marked "SK", i.e. individual complaints filed by citizens (142 in 2020). There was also a decrease in the number of cases marked with the symbol "K", i.e. applications filed by state bodies (26 in 2020).

In 2021, the Constitutional Court issued 192 decisions, of which 125 were related to preliminary review (the decision of a single judge to give or not to give further course to a case), 65 were proper recognition (ending with a ruling), and two concerned signalling to state bodies the need for legislative changes.

Members of opposition parties made no ("K") applications to the Court while the Prosecutor General submitted four, the First President of the Supreme Court two, a group of Law and Justice MPs and the Prime Minister each submitted one complaint.

The motions of the Prime Minister and the General Prosecutor concerned, inter alia:

- Periodic financial penalty or lump sum imposed by the CJEU; provisional measures relating to the form of the system and functioning of the constitutional bodies of the Republic of Poland (K 8/21)
- Review by national or international courts, pursuant to Article 6(1), first sentence, of the ECHR, of whether acts concerning organisation of the judiciary comply with the Constitution and ECHR, the competence of courts and the act on the National Council of the Judiciary (K 7/21)
- The first sentence of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as the term *court* includes the Constitutional Tribunal (K 6/21)
- Assessment of the compatibility with the Constitution of the Republic of Poland of selected provisions of the Treaty on European Union (K 3/21)

As it can be seen, the Constitutional Court was supposed to "help" the government to have a basis for ignoring the activities of the EU institutions and the European Court of Human Rights. In cases K 3/21 and K 6/21 the Court ruled in accordance with the government's intention. The other two, of those mentioned above, are set for the first two months of 2022.

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

Due to the outbreak of the Covid-19 pandemic, the government has decided not to declare any of the states of emergency envisaged by the Constitution.

The legal basis for declaring an epidemic in Poland is the Act of 5 December 2008 on Preventing and Combating Infections and Infectious Diseases in Humans. Article 46 paragraph 2 of the Act states that *a state of epidemic threat or a state of epidemics shall be declared and cancelled, by way of a regulation, by the minister in charge of health in cooperation with the minister in charge of public administration, upon the motion of the Chief Sanitary Inspector*. The Minister of Health issued such a regulation on 20 March 2020; it states that *an epidemic state is declared in the area of the Republic of Poland in connection with SARS-CoV-2 infections from 20 March 2020 until further notice*. Various versions of this regulation are still in force today.

In connection with the failure to declare a state of emergency while restricting the rights and freedoms of persons and economic entities, many opinions have arisen that these restrictions are unconstitutional. Courts expressed similar opinions, e.g., the Supreme Court in its judgment of March 2021 indicated that *it should be stated that the restriction of the freedom of movement (Article 52(1) of the Constitution of the Republic of Poland) must be based on a provision of statutory rank and at the same time, for the effectiveness of such a restriction, it is necessary to fulfil the other two (above-indicated) conditions*. In relation to this issue, however, the key fact is that the Act on Preventing and Combating Infections and Infectious Diseases in Humans does not contain any provision providing for restricting free movement on the territory of the Republic of Poland (ref. II KK 74/21). In another Supreme Court judgment, it found that *the Regulation of the Council of Ministers of 20 March 2020 on establishing certain restrictions, orders and prohibitions in connection with the outbreak of an epidemic, constituting the basis for decoding the norm requiring a citizen to undergo quarantine after crossing the border of the Republic of Poland, was issued in breach of the principles indicated above - it violated Article 52(1) in conjunction with Article 31(1) and (3) of the Constitution of the Republic of Poland* (ref. no. II KK 255/21).

Despite the fact that there were dozens of judgements similar to the above, the government still did not introduce the state of emergency in connection with the pandemic. While the opposition has protested, the restrictions are passed by the government, leaving the opposition with no way to influence the regulations. The parliamentary majority has not acted in this regard either.

B. Independent authorities

Independence, resources, capacity and powers of the Ombudsman, equality body and of supreme audit institutions

The Ombudsman (Commissioner for Human Rights) also plays a role of the equality body, whose independence is guaranteed by the Constitution. The Sejm (lower Chamber of the Parliament), with approval of the Senate (upper Chamber), appoints the Ombudsman. The last elections (2020/2021) proved this mechanism contributed to good protection of the Ombudsman's independence.

On 9 September 2020, the Ombudsman Adam Bodnar's term of office came to an end. Until nearly the end of 2020, the parliamentary majority did not present their candidate. Then they proposed

candidates who were e.g. a Member of Parliament. The slight majority opposition in the Senate rejected these candidates. Meanwhile, Law and Justice MPs submitted a motion to the Constitutional Tribunal to stop Adam Bodnar from serving as Ombudsman (his term ended, but according to constitutional tradition the Ombudsman continues service until a successor is elected). The Tribunal decided that Adam Bodnar has to leave his office in three months. Civil society organisations, the media and political pressure made it impossible to continue proposing unacceptable candidates and with almost 11-months delay (at the end of July 2021), Parliament elected an independent Ombudsman, university professor Marcin Wiącek.

Regardless of that, the Parliamentary majority found ways to harass the independent body. Adam Bodnar's budget was cut several times, in 2021 by 15% in comparison with the draft proposal. In 2017 the influx of cases was 53,000, and in 2021 around 75,000 annually. During this time, the limit of the Ombudsman's budget remained unchanged, despite the 50% increase in the number of cases and granting the Ombudsman the power to bring extraordinary complaints under the Act on the Supreme Court.

In 2021, the Ombudsman had a remuneration budget of EUR 165,500 lower than the amount required to pay its employees under contract. The average remuneration of the Ombudsman's employees was around EUR 890 net (the average for Poland was at that level in 2020). Over 80% of Ombudsman's employees earned less than EUR 1110 net. There should be no such acute problems in 2022, however also in this case the budget was cut by 1.3% while the Ombudsman was burdened with additional tasks connected with whistleblowing (if the bill becomes law).

The mechanism for electing the President of the Supreme Audit Office (supreme audit institution) is similar to that of the Ombudsman. It is also possible to hinder that body's operations by budget cuts in a similar way. The mechanism that guarantees even higher independence than in the case of the Ombudsman is that the Supreme Audit Office President can be elected only for one term.

Both the Ombudsman and the President of the Supreme Audit Office are protected by immunity.

Statistics/reports concerning the follow-up of recommendations by the Ombudsman and supreme audit institution

As regards the reactions of public institutions to the Ombudsman's interventions, according to the Ombudsman's report for 2020, in 31% of cases the reactions were satisfactory. However, also in this case one can observe specific reactions of some institutions. For example, in 2020, the Constitutional Tribunal did not accept any motion submitted by the Ombudsman, rejecting two and dismissing two. Twenty-three were in progress. A review of statistics shows such a situation was unprecedented over the last decade. Further analysis by civil society organisations proves that some institutions, e. g. the Minister of Justice, Zbigniew Ziobro, ignores general requests by the Ombudsman and simply does not reply.

As regards the report of the President of the Supreme Audit Office, 52,2% of the post-control conclusions were implemented in 2020, 30,4% were in progress, 17,4% were not implemented. These number are more positive than those for 2019. As regards *de lege ferenda* applications - between 2018-2020 - 11,4% were accepted.

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations

According to research (Klon/Jawor, March 2021), the situation of 65% NGOs worsened during the pandemic. Sixty-three percent of respondents reported increased stress in connection with work in such organisation. Thirty percent of NGOs suspended operations.

The financial situation of NGOs deteriorated due to COVID-19 and the decreased funding of local governments, which constitute the main sources of their financing. The national government's so-called "Polish Deal" may have additional deleterious effects. It is a tax-law reform that results in significant decreases in local government revenues. Funding from central sources is also decreasing, as it is increasingly flowing to new organizations established by individuals close to the authorities, often in violation of public spending rules.

In 2021, the government launched consultations on the Act on the Reporting of Civic Organisations. Although the declared aim of the draft law is to simplify the reporting, in fact it adds more obligations and increases administrative control. Till almost the end of January 2022, the act has been frozen at the consultation stage. On January 20 the new draft was presented, not a subject to public consultation, with a deadline of 7 days for some institutions whose participation is compulsory.

Furthermore, there were no significant developments related to improving the functioning of the Public Benefit Activity Council (a consultative and advisory body of the Minister heading a Public Benefit Committee). Due to the weak mandate and the way the body is selected, NGOs have been lobbying for a new Civic Dialogue Council - democratically elected, with the power of legislative initiative and the ability to obtain binding interpretations from various state bodies.

The humanitarian crisis at the Polish-Belarussian border physically and mentally drainage the organisations and activists operating there. The Border Group Report presents a more complete picture of this situation. The personal rights of people acting at the border were violated several times, e.g. a dozen police officers armed with automatic weapons searched a Crisis Intervention Post run by the Club of Catholic Intelligentsia near the Polish-Belarussian border.

Still, freedom of assembly is the most important fundamental right limited by emergency measures adopted to counter the pandemic. This was particularly evident in the first months of the year, when protests on reproductive rights continued and were suppressed by the police in violation of existing procedures.

In 2021 the Parliament also worked on legal changes affecting CSOs. The amendment to Education Law (so-called "Lex Czarnek"), enacted by the Sejm on 13 January 2022 will limit CSO presence at schools, as they will need permission from the school superintendent (a post controlled by the government).

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture

In general, it is difficult to identify public authorities' actions aimed at fostering rule of law culture. Polish government representatives do not usually take part in public debates, conferences, and actions focusing on the rule of law issue. In fact, in 2021 they conducted several actions undermining the rule of law principle. To give an example, the government initiated proceedings before the Constitutional Tribunal indicating that specific provisions of the European Convention of Human Rights violate the Polish Constitution. The judgment in that case helped the government to limit the consequences of ECHR's judgment in the case of Xero Flor vs. Poland.

Importantly, opposition MPs in the Sejm and Senate established two parliamentary assemblies aimed at protecting and fostering rule of law culture: the Sejm's Assembly on Justice System Reform and the parliamentary Assembly on the Protection of the Rule of Law. Both assemblies have created an opportunity for the MPs, external experts, CSO representatives, and other stakeholders to discuss specific actions aimed at restoring the rule of law principle. Assembly discussions included the model for appointment of judges, threats to judicial independence, and media freedom in Poland.