

# HR HELSINKI FOUNDATION for HUMAN RIGHTS

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## **The public media reform in Poland – “the big media law amendment” proposal**

On 21 April 2016 the new media law package proposal was submitted to the Polish Parliament. The package consists of three draft laws: 1) National Media Act, 2) Audiovisual dues Act and 3) Law introducing National Media Law Act and Audiovisual dues Act. The package aims to finalize the Polish public media reform which was started by adopting the so called “small media law amendment” introducing ad hoc changes to media law that entered into force as of January 2016. The Helsinki Foundation of Human Rights criticized the “small media law amendment” as we believed it resulted in making the public media entirely dependent of the ruling government. Unfortunately the proposed new media law package also raises our concerns.

First of all, even though the package was developed within the Ministry of Culture and National Heritage, just like the previous “small media law amendment”, it was submitted to the Parliament as an MP’s bill which results in, *inter alia*, omitting the requirement for public consultations. Prior to publishing the proposal, it has not been subject to any transparent and open public consultations. Moreover, according to media reports, the proposed package may be proceeded already during the upcoming Parliamentary session next week, which would not leave any room for its thorough analysis by the civil society sector and effective public debate over the proposed regulations<sup>1</sup>.

With regard to the content of the package, the following concerns, among others, may be identified:

- The proposal confers very broad competence on the new institution which it establishes – the National Media Council (*Rada Mediów Narodowych*) - with regard to all public media, without providing at the same sufficient guarantees which could minimalize the risk of political dependency of this body. In particular this refers to the way the members of the Council are to be elected as well as to the rules for appointing the Chairman of the Council (all six members are to be elected directly by political organs: the two chambers of the Parliament - Sejm, Senate - and the President; only one of the members is to be elected from candidates presented by the political opposition; the Chairmen is to be appointed by the Speaker of the Sejm). Such mechanism does not meet the standard that supervisory bodies in public media should

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<sup>1</sup> Civil society organizations organized within the „Pact for Public Media” coalition are calling to have a public hearing at the Parliament on the amended laws.

be in principle composed of members reflecting different political backgrounds and pluralistic views. The National Media Council will supervise all national media institutions (which will be transformed from commercial law companies into state institutions). The Council also receives competence to manage the National Media Fund (*Fundusz Mediów Narodowych*), the main source of financing of the media institutions.

- The proposed regulations significantly limits the role of the constitutional organ – the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*) - by transferring some of its competences to the National Media Council. That is why the new law proposal brings allegations as to its non-conformity with Article 213 of the Polish Constitution which clearly provides that it is the National Broadcasting Council which safeguards the freedom of expression, the right to information as well as and the public interest regarding radio broadcasting and television.
- There are also several provisions in the draft laws package which make public media vulnerable to the unjustified interference in their editorial independence. For example, the proposed regulations impose an obligation of public media to broadcast any views of the President, Prime Minister, Speaker of the Polish Sejm and Speaker of the Polish Senate in a specific airtime solely upon a request of the person holding any of these functions. Moreover the National Media Council is to have certain competence facilitating its impact on the content of the programs broadcasted in public media (for example the proposed regulations provide the Council with a prerogative to review and accept the plan concerning fulfilling “public mission” by all public media<sup>2</sup>).
- The draft law package changes the system of licensing fees (audiovisual dues), which will be collected from the members of the society based on registered energy meters, independently of the number of devices. The draft law does not foresee any exemptions, e.g. where an energy user is not willing to be a public media recipient. However the draft law foresees a waiver for a number of different groups (e.g. above 75 years, significant disability).
- At the same time, there draft law introduce a number of provisional regulations that are to be used in the transitional period (before the new law will be fully effective). Some of these provisions raise certain doubts. For example the new draft law foresees an automatic revocation of all managerial contracts in the national media institutions on 30 September 2016, without any individual evaluation of their performance (unless the new contract is concluded with that person before that date). Also the National Media Council will design a “simplified” financial plan for the National Media Fund for 2016 which will need to be approved by the Speaker of the Polish Sejm.

Overall, the public media draft laws are in many aspects vague, non-transparent and leave room for political influence. They contradict therefore the relevant European standards

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<sup>2</sup> Each director of national media, would need to produce a two-years plan on the fulfilment of he mission, which would need to be approved by the National Media Council.

concerning independent and pluralistic public media established both within the EU and CoE legal frameworks.

**Disclaimer on legislative proceedings:** the reform package will be now proceeded before the lower and upper chambers of the Polish Parliament. Both chambers may introduce amendments to all draft laws in the course of the legislative process. The final version of the law will then be transferred to the President for his signature and only after it is signed by the President it will enter into force.