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## **Going to Extremes? Two Polish Governments Deal with the Media**

### **Introduction**

As one tries to reconstruct media policy orientations followed in the past two decades by power establishments in Central and Eastern European countries, terms like “idealistic,” “mimetic,” “atavistic” and “materialist” come to mind (Jakubowicz, 2007). The most common formula after 1989 has been a mixture of “mimetic” (imitation and transplantation of legal and institutional solutions from the paradigmatic “Western” model) and “atavistic” (an attempted return to preserve political control of the media reminiscent of Communist times). The exact proportions of both contradictory elements in each country are determined by the degree of democratic consolidation on the ground. The “idealistic” orientation (introduction of direct, participatory communicative democracy), once dreamed up by the dissidents, was swept aside immediately after 1989 as – precisely – idealistic and impractical (to say nothing of being antithetical to both the “mimetic” and “atavistic” orientations). The “materialist” orientation (privatization of the media as a way of releasing them from State control) never gained much traction, as that would go both against the “atavistic” inclinations of many power elites, and against the plan to turn state broadcasting into public service broadcasting, thus retaining public-sector organizations on the media scene.

The previous Polish government was formed after the 2005 general election by a coalition of the Law and Justice Party with the Self-Defence and League of Polish Families. The presidential election held two weeks later ended with the victory of the Law and Justice candidate for President, Mr. Lech Kaczyński. That government tried – before the coalition collapsed and an early general election was held in October 2007, leading to its loss of power – to test the limits of the “atavistic” approach within the existing legal system, but with a view to changing it, if possible. If Krzemiński (2007) is right and the government did have “authoritarian” leanings, then in time it might have resorted to more determined practices to get its way. By contrast, the new Polish government returned to power in the election of 2007,

and formed by a coalition of the Civic Platform (a liberal party) and the Polish Peasant Party, seems to be trying to blaze a new trail by reviving the “materialist” orientation.

Not much can yet be said about the way the new government intends to pursue this goal in practice, though its approach to public service broadcasting and to the general issue of broadcasting policy is quite telling. We will deal with this briefly towards the end of this paper. It will concentrate mainly on the media policy of the previous government and its atavistic instincts.

## **PART I: 2005-2007**

### **Populism and Democracy**

One view of what happened in Poland after the parliamentary and presidential elections of 2005 has been formulated by Adam Michnik (2007):

The governing coalition employs a peculiar mix of the conservative rhetoric of George W. Bush and the political practice of Vladimir Putin. Attacks on the independent news media, curtailment of civil society, centralization of power and exaggeration of external and internal dangers make the political styles of today’s leaders of Poland and Russia very similar ... I am writing about Poland, but what I say applies as well to many countries of post-Yalta Europe. Everywhere, the phenomenon of populism has appeared.

Ivan Krastev (2006) agrees that “populism is on the rise all over Europe” – not just post-Yalta Europe. In his view, the “no” votes in France and the Netherlands that killed the European constitution in 2005 were fuelled by “a populist Zeitgeist.” Moreover, he says, a populist agenda is prevailing at the centre of many countries' national politics, and establishment parties are trying their best to recapture the outright populists' themes and messages. “Right-wing populism” has been on the rise in Europe and elsewhere since the 1980s and has become established in all Western democracies, often winning double-digit percentages of the vote in elections. It is now acknowledged that right-wing populist parties have established a sound basis and must be expected to continue to exist in the future (Decker,

2005). Examples of countries where populist parties have made a particularly strong showing, or could even assume power, include Austria, the Netherlands, Norway, Portugal, Denmark, Switzerland, France, and Italy.

Krastev makes it clear, however, that “the capital of the new populism” is in central Europe: a populist style is ascendant in most post-communist countries. He also deconstructs the “magic formula” of the populists' success as consisting of ten elements:

- authentic anger
- unrestrained hatred of the elites
- policy vagueness
- economic egalitarianism
- cultural conservatism
- compassionate radicalism
- measured euroscepticism and anti-capitalism
- declared nationalism
- undeclared xenophobia
- anti-corruption rhetoric.

The “anger” factor has, as we will see, played a particularly important role in post-1989 political development of Poland.

Krastev describes populism as a worldview that considers society ultimately separated into two antagonistic groups, the “pure people” and the “corrupt elite” – with anti-corruption politics as the ultimate embodiment of this worldview. This was certainly true of the situation in Poland in 2005-2007.

The Law and Justice Party describes itself as right-of-centre and conservative. At one time, it announced that its goal was to go the way of the German CDU and grow into a party covering the entire spectrum of right-of-centre political orientations. However, Aleksander Smolar (2007) may be right in pointing out that it represents one of two pathologies threatening democracy today. One is liberal-technocratic, the other is democratic-populist, and he clearly places Law and Justice in this second category:

The democratic-populist pathology finds expression in a continual rebellion against the restrictions imposed on democracy by ... the law and institutions which are not

directly rooted in the will of the people ... This is a rebellion waged by the leaders of the Law and Justice Party ... by supporters of illiberal, populist democracy against liberal democracy and elites whose status results neither from elections nor from nomination to that position by that party. Hence the constant attacks on the Constitutional Tribunal, on the independence of courts, the central bank, on journalists and academics. Hence the “winner takes all” personnel policy when it came to filling all government and other positions.

In addition to any historical, societal, ideological and axiological reasons for the emergence of populism in a particular society (and the phenomenon is regarded as “multi-factorial,” not easy to link to any particular factor or cause), populism is seen as a symptom and not a cause of what is called a “plebiscitary transformation” of the political process (Decker, 2005: 12).

According to the most basic definition, liberal democracy – the paradigmatic form of democracy in Europe – is a representative democracy in which the ability of the elected representatives to exercise decision-making power is subject to the rule of law, and usually moderated by a constitution that emphasizes the protection of the rights and freedoms of individuals, and which places constraints on the leaders and on the extent to which the will of the majority can be exercised against the rights of minorities.

The rights and freedoms protected by the constitutions of liberal democracies are varied, but they usually include most of the following: rights to due process, privacy, property and equality before the law, and freedoms of speech, assembly and religion. In liberal democracies these rights (also known as “liberal rights”) may sometimes be constitutionally guaranteed, or are otherwise created by statutory law or case law, which may in turn empower various civil institutions to administer or enforce these rights.

Liberal democracies also tend to be characterized by tolerance and pluralism; widely differing social and political views, even those viewed as extreme or fringe, are permitted to co-exist and compete for political power on a democratic basis. Liberal democracies periodically hold elections where groups with differing political views have the opportunity to achieve political power.

Liberal democracies today usually have universal suffrage, granting all adult citizens the right to vote regardless of race, gender or property ownership. The elections should be free and fair. The political process should be competitive. Political pluralism is usually defined as the presence of multiple and distinct political parties.

The liberal democratic constitution defines the democratic character of the state. The purpose of a constitution is often seen as a limit on the authority of the government. Liberal democracy emphasises the separation of powers, an independent judiciary, and a system of checks and balances between branches of government. Governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure. Many democracies use federalism - (also known as vertical separation of powers) - in order to prevent abuse and increase public input by dividing governing powers between municipal, provincial and national governments.

Post-Communist countries have yet to develop full-fledged liberal democracies and are grappling with the results of an unfinished process of consolidation of democracy. That may, all by itself, favour the rise of populist movements. In any case, as noted by Carothers (2002: 6) “Many countries that policy makers and aid practitioners persist in calling ‘transitional’ are not in transition to democracy.” Instead of “transitioning” to democracy, many countries so described, says Carothers, have entered “a political gray zone,” encompassing two main broad syndromes: “feckless pluralism,” where democracy remains shallow and troubled (Carothers lists Moldova, Bosnia, Albania, and Ukraine as belonging to this category, with Romania and Bulgaria teetering on its edge), and “dominant-power politics,” where one political grouping dominates the system in such a way that there is little prospect of alternation of power in the foreseeable future, and the line between the state and the ruling political forces is blurred, with the state's main assets in the direct service of the ruling party (Armenia, Azerbaijan, Georgia, Kyrgyzstan, and Kazakhstan).

This is all the more so that post-Communist countries suffer in double measure from the manifestations of a crisis of liberal democracy, which in relation primarily to Western Europe are defined by the Parliamentary Assembly of the Council of Europe as follows:

The Assembly notes, with great concern, the increasing feeling of political discontent and disaffection among citizens, which is well illustrated by a declining turnout at elections and a growing disappointment or indifference towards politics, especially among the young generation. As a result, people are losing confidence in democracy and the gap between political institutions and citizens is increasing.

This phenomenon is interrelated with the dysfunctioning of some political institutions in many countries: political parties have partly lost their capacity to be a link between citizens and state; representativeness of parliaments is all too often questionable; basic principles of democracy such as separation of powers, political freedoms, transparency

and accountability are widely perceived, and sometimes rightly so, as being insufficiently implemented or not implemented at all (PACE, 2007).

In these circumstances, it not surprising that the rising contest between populist and constitutional versions of democracy – which pits against each other two normative principles of democracy: sovereignty of the people and the constitutional basis of the state as understood in the system of liberal democracy – may favour the populist approach. This is why Zakaria (1997) has stated that “Today the two strands of liberal democracy, interwoven in the Western political fabric, are coming apart in the rest of the world. Democracy is flourishing; constitutional liberalism is not.”

Also Larry Diamond (2008) has warned that the new democracies that emerged after 1974 must show that they can solve social problems and promote freedom, justice, equality and living standards. If not, people will sooner or later lose faith in democracy and turn to undemocratic options: “If many of the new unstable democracies fail to survive, then we will be faced with a new challenge – not how to promote democracy, but how to stop the process that Samuel Huntington calls the third wave of anti-democratization.”

### **From Systemic Transformation to Cultural Revolution**

Seeking to explain the nature of the political process in Poland, Michnik says that “populism can assume the shape of nostalgic post-Communism or anti-Communism with a Bolshevik face; it can also combine both of these tendencies. Its common core is the fear of change and escape from freedom.” As for why this is all happening, he says: “The losers of the transition away from Communism are taking revenge on its victors. It is possible that the deafness of those who led the transition to the dramas of the losers prepared the way for the electoral success of populists.”

If one asked oneself whether there was “authentic anger” behind the current bout of populism in Poland and if so, where it came from, then certainly Michnik has identified a very important – though not the only – wellspring of that anger.

Below, we will seek to analyse some general aspects of the process of transformation in Poland in search of clues helping to explain the reasons for this outcome.

Tracing Poland’s course from a “systemic transformation” at the beginning of the road to a “cultural revolution” today, Smolar (2006) notes that at the time of the Round Table

Conference in 1989, the Solidarity movement was split into “moderates” and “radicals.” The former were willing to drive progress towards political change by negotiating with the Communist Party, while the latter opposed that strategy. For them, no real progress could be made until the legacy of the Communist system had been totally exorcised through lustration and de-communization. By the same token, the moderates’ strategy of accommodation with the pro-reform wing of the Communist Party, acceptance of a political compromise during the Round Table Conference, and of the continued existence of former Communists as a political force, meant the country was not really free and democratic, and the whole project was morally and politically discredited.

The Round Table negotiations took place in February-April 1989, when the Communist bloc appeared destined for a long life yet. By 1990-1991, when the bloc had already collapsed, the radicals argued that the compromise reached at the Round Table (which i.a. precluded de-Communization) could now be safely rejected. However, the moderates insisted that it had to be honoured. What it meant in practice, among other things, was a “velvet” transition for former Communists, many of whom were able to trade former political power for new economic power.

The radicals were marginalized and enjoyed little or no popular support for over a dozen years. The following reasons are given for this:

- reinstatement of full individual and national rights;
- the Communist system was completely discredited and disgraced;
- the new elites enjoyed high prestige and esteem;
- fascination with the West and dependence on it;
- policy, especially economic policy, was depoliticised;
- the atomization, demobilization and alienation of society (Smolar, 2006).

The last two issues merit more attention. Reforms, especially economic reforms, were a case of top-down social engineering by a narrow modernizing elite, assisted by foreign advisers. There was no political process of social debate and dialogue, confrontation of the interests of different social groups, or of political forces. Fear of popular resistance to a stringent shock therapy led the “Solidarity”-led government to depoliticise the policy-making process.

All that was in dramatic contrast to the original ideas of the dissidents. In general terms, Michnik (2001) believes that the dissidents hoped for “fourfold emancipation:”

- National (an end to national or ethnic discrimination);
- Religious (religious freedom as an important element of the democratic system);
- Civic (freedom and democracy, an end to censorship),
- And of labour.

According to Kis (2000: 19) the democratic opposition of East-Central Europe sought to create an alternative not only to Soviet totalitarianism, but also to capitalist democracy, based on such ideas as “self-management,” “moral renewal,” “civil society” and “living in justice.” Ogrodzinski (1991: 74) confirms that for many Poles, the “struggle of civil society within the Communist state had meant the search for a ‘Third Way’, combining the positive features of socialism and capitalism.” In that sense, Solidarity's political identity, when in the opposition, was largely social-democratic in orientation. Now, however, a different approach was manifest.

Atomization, demobilization and alienation of society were both a legacy of the Communist system, and a result of the “decapitation” of civil society after 1989, when the leaders of Solidarity moved *en masse* to the corridors of power.

According to some views (see Ost, 2006), some of the intellectuals who had led the dissident movement and were key advisers to “Solidarity” in 1980-1981, turned away from the workers and from the idea of participatory democracy, as a foundation of civil society. They had lost faith in the possibility of finding an alternative to capitalism and by 1990 had nothing to offer to the workers other than a vision of capitalism. In many cases, the same dissident and opposition leaders who had insisted that Communist regimes accept, or reconcile themselves to, the development of civil society, “now - after they had gained power - abandoned that language in favour of the classic concerns for the state and the market” (Smolar, 1993: 40).

The architect of economic reform in Poland, Leszek Balcerowicz has developed concepts of *r* (readiness to accept radical measures) and „extraordinary politics.” A period of “extraordinary politics” follows immediately after epochal political change, in this case the collapse of Communism. At such a time „both leaders and ordinary citizens feel a stronger-



than-normal tendency to think and act in terms of the common good. All of this is reflected in an exceptionally high level of  $r$  (Balcerowicz, 1995: 161).

Using slightly different terms, “extraordinary politics” is a time when government can rely on a high level of social capital favourable to its actions (such as shock therapy), even if its supporters believe that this may be detrimental to their own personal interests. It is the rapid drop of the level of social capital required for the execution of sustained, long-term reform strategies that has plagued post-Communist governments, depriving them of legitimacy and support.

Obviously, post-1989 governments had a stake in extending this period of “extraordinary politics,” i.e. keeping society and political forces inactive so as to minimize their response to the unavoidable consequences of market reforms: falling living standards (to begin with), growing social disparities and rising unemployment. What they did not want was a return to „normal politics” - the more mundane politics of contending parties and interest groups. This leads to the politicization of all the issues: mechanisms of democracy appear much less attractive, disillusionment sets in and the level of  $r$  drops sharply. The fear was that an active political process might stop economic reform and allow either former Communists or populist forces to gain power.

Primacy was thus given to economic reform over political reform. Those who led the process of economic reform in Poland believed (see Kolarska-Bobińska, 2007) that the introduction of market forces and the development of economic institutions would by themselves naturally favour the development of democracy later. Little attention was given to promoting the growth and role of civil society. Political passivity favoured the introduction of market economy. By downplaying democratic processes, both elites and society in general were prevented from acquiring understanding and familiarity with democracy. As a result, civil society was weak and disorganized. The high human and social cost of the economic shock therapy, and the resulting rising anger, did not translate into effective resistance to the political and economic course charted by a succession of post-1989 governments.

It could be said that those governments concentrated on how to prevent that anger from being expressed, and from exploding. They thought that the human and social cost of the process of transformation was inevitable, but would be reduced over time as a trickle-down effect of economic growth and rising prosperity helped reduce unemployment (which at its height stood at around 20%) and offered opportunities to those who had lost out on the whole process. Their mantra – as Czapiński and Panek (2004: 288) was: “first the economy, we’ll take care of the rest later, or - in its most cynical expression - the rest will take care of itself

(those who cannot cope will die out).” It was, they say, an “expression of blindness in relation to the strengthening mechanisms of social divisions.”

The mid-to-late-1990s, and the beginning of the new century, saw the weakening and ultimate collapse of the post-1989 consensus (which was based on the exclusion of those who had lost out on the process of transformation – mainly workers and much of the rural population, and on the marginalization of political forces opposed to the consensus).

A number of factors contributed to this:

- A weak right-of-centre government in 1997-2001 which launched a second wave of reform in many areas directly affecting the lives of citizens (territorial government, education, health service and the judicial system – see Kolarska-Bobińska, 2000), and partly mismanaged the process, reducing people’s sense of personal security and undermining confidence in the ability of the political class to lead the country;
- A corrupt and scandal-ridden left-of-centre government in 2001-2005 which greatly intensified the resentment of many people against former Communists;
- All that had produced a disconnect between individuals and the state, expressed in political disengagement and the rise of “a self-oriented society ... if the divorce of citizens from their state is just passively observed, this could lead to an even more dangerous consequence, namely that the chance of a sustainable development is missed. This means, that apart from the paralysis in infrastructure (e.g. the road system), the economic lethargy, growing corruption and the inefficiency of public institutions such as the police, courts, and departments of central and local government, it is possible that there will be a structuralization (hardening) of the caste-like divisions in Polish society” (Czapiński, Panek, 2004: 288);
- Growing social stratification has brought with it frustration, anti-social behaviour and the silent rebellion of the disadvantaged and excluded: “As our analysis indicates, Polish society is clearly stratified, and in many cases this is unjustified – the cumulative result of state neglect, blindness and the opportunism of those in power” (Czapiński, Panek, 2004: 288).

All that seriously undermined the general support for, and trust in, democracy (Kolarska-Bobińska, 2006). It also paved the way for the 2005 electoral victory of the Law and Justice Party which found a way to channel and use the rising anger of a large part of the

population. Having failed to retain the support of the workers on economic grounds, and having sought to validate the neoliberal shock therapy, the liberals in power in Poland ultimately pushed them towards the very populism they had always been afraid of. As noted by David Ost (2005), Polish liberals had completely misread the experience of the West: instead of winning the workers over with even minimal social guarantees (which is how liberal and moderate social-democratic parties had bolstered democracy in Western countries), they turned their back on the alliance with the working class and pushed them into the arms of the radicalising right.

### **The “Fourth Republic”**

After regaining independence in 1918, Poland called itself the “Second Republic.” After 1989, the name the “Third Republic” was used to describe the country, as a sign of continuity with the pre-World War II situation, intimating that the period of Communist rule was a gap and interruption in the normal progression of the country’s history. Before the 2005 elections, right-of-centre parties (Law and Justice and Civic Platform) called for the creation of a “Fourth Republic,” symbolizing a rupture with the weaknesses of the post-1989 situation. Law and Justice also campaigned on a platform of “moral renewal” or “moral revolution,” as an answer to the corruption and accommodation with the remnants of the Communist regime which underpinned the “Third Republic.”

The parliamentary election of 2005 did not produce a clear winner, though Law and Justice gained the largest number of seats. After abortive coalition talks with the liberal-conservative Civic Platform, it first formed a parliamentary, and then a government coalition with the two populist parties, Self-Defence and the League of Polish Families.

A detailed analysis of the policies pursued by this government and ruling coalition would extend beyond the scope of this paper. Let us, however, cite two views: one by a potential supporter and another by a group of critics of the government.

Professor Jadwida Staniszkis (2007) represents the first category, but still saw a gap between radical steps of the government to sever continuity between “Communism and the Third Republic” and the lack of a future-oriented policy to achieve qualitative change in the country. On the one hand, there were plans to enhance the process of lustration and to deprive former security agents of any privileges related to old-age pensions and so on. That and other measures were meant to produce a clear symbolic rift between post-Communism and the

Fourth Republic and put an end to what was so painful in the post-Communist period, namely that the people who had been privileged or had oppressed others under the Communist system, simply changed the basis for their status or retained their privileges. However, she says, that rift amounted to revenge, exclusion and stigmatization of “the enemy” and anyone who opposes the government’s policy, including the old elites, but did not go beyond that to create a qualitatively new situation, by eliminating political clientelism, partitocrazia and clear, competence-based rules for governing the country. This was not happening, she says, posing the risk that the rift with the past may be founded on a myth that the problems with developing capitalism in Poland, the social costs of the process, feeling of apathy, lack of participation and the emigration of your people were all due to a lack of settling of accounts with the mistakes of the Third Republic.

Meanwhile, what was needed, in her view, was a new opening, a radical change in the functioning of the state. That did not happen, she says. Quite the contrary: the more attention was given to achieving that rift with the past, the more willingness there was at the same time to continue bad practice of government, and to developing a coalition with inappropriate partners in order to have a majority to push through legislation serving that goal. This, says professor Staniszkis, was the wrong approach to take, as it exploited black instincts in people, and by the same token created a barrier for the project of the Fourth Republic. It created a simplified vision of the process and of the history of transformation, and blocks a debate on the foundations of democracy. A real break with the past could be achieved by a sweeping reform of the State and contribution to building a strong Europe. This, however, was not what the whole thing was about.

The group of critics is a discussion forum “Doświadczenie i Przyszłość” (Experience and Future), deliberately using the name and formula of a similar discussion forum operating under the Communist system and issuing reports on the situation in the country and ways of moving towards reform and democracy.

In 2007, the forum issued a report on the state of democracy in Poland (Konwersatorium Doświadczenie i Przyszłość, 2007) which contains the following general assessment of the situation:

After the elections of 2005 we can observe attempts to dismantle the mechanisms of the division of powers in the name of creating a “strong State,” which in practice amounts to imposing the superiority of the government and the parliamentary majority. This is particularly dangerous in the light of historical experience which

shows how difficult it is afterwards to restore the mechanisms of a balance between various branches. A democratic state ruled by law is threatened not only by the rejection of the constitution, deferral of elections and imposition of dictatorship. It can also be threatened by the unconstrained power of the legally elected majority which disregards or violates the rights of the individual or of the minority, as well as by attempts by the parliamentary majority or the government it supports to take control over independent institutions. We are witness to such attempts in Poland today.

All this should be considered in terms of the process of consolidation of democracy in Poland and in other post-Communist countries. As a general comment on this, it has been stated that “no doubt, prospects for successful consolidation can be found in the countries which were admitted to the EU in 2004, and those that are to join in 2007, i.e. Romania and Bulgaria. As for the others, we can rather speak of the beginnings of democratic transformation (Ukraine, Croatia, Serbia and Montenegro), or of attempts to consolidate some hybrid forms (Russia, Albania), or of an authoritarian system (Belarus)” (Cichosz, 2006: 66; see also Antoszewski, Herbut, 2004).

Cichosz goes on to say that most post-Communist countries have developed hybrid forms of democracy:

1. Formal democracy – no counter-elites to oppose those in power, low level of political competition (Russia, Ukraine before 2004, Serbia before 2000);
2. Elite democracy – competing oligarchies with low political participation of the citizens (Romania before 1996; Albania, Bulgaria);
3. Partitocrazia – monopolization of public life by political parties which exclude other social actors from decision-making processes; rule by political oligarchs often connected to economic pressure groups. This amounts to political party capture of the state, corruption and low legitimacy of the system (just about everywhere in post-Communist countries);
4. Tyrannical majority – forces returned to power disregard the political views and interests of other political or social forces; display no willingness to compromise and accept no restraints on their power. This type of hybrid democracy is promoted by “leaders convinced of their ‘historic and moral mission’, consisting in imposing a direction of the country’s development on the rest of society” (Cichosz, 2006: 64).

Examples include Hungary in 1990-1994, Slovakia under Meciar, Croatia under Tudjman.

To this list of systems based on a “tyrannical majority” we may add Slovenia after 2004 and Poland in the years 2005-2007. Since the beginning of 2006, Poland has certainly been the scene of the “etatization of democracy,” official delegitimization of civil society and all opposing political and intellectual elites as democratic actors and far-reaching concentration of power, including that over the public media. This amounts to de-consolidation of democracy, rather than anything else. According to some commentators, Poland may be turning from a prospective liberal democracy into an illiberal one. Certainly, the term “tyrannical majority” well describes the situation.

As for general national democratic governance, Freedom House points out that since the 2005 elections, the tide appears to have turned in against it (even though the elections confirmed the stability of the country’s parliamentary democracy). “The new government let it be known that it cares more about centralization and strengthening the state than self-government and civil society. The civil service corps was dissolved, giving way to the “state cadres reserve” formed from obedient functionaries. The privatization of industry, which provides thousands of politically attractive positions in 1,600 treasury-owned enterprises, was slowed down. The hunt for Communist-era agents from a stolen list of 160,000 names was [intended to be] replaced with new lustration of over 400,000 employees from the public sector, including media” (Krajewski: 2007: 308-309).

**Table 2. Freedom House Ratings and Averaged Scores**

	1999	2001	2002	2003	2004	2005	2006	2007
Electoral Process	1.25	1.25	1.25	1.50	1.50	1.75	1.75	<b>2.00</b>
Civil Society	1.25	1.25	1.25	1.25	1.25	1.25	1.25	<b>1.50</b>
Independent Media	1.50	1.50	1.50	1.75	1.75	1.50	1.75	<b>2.25</b>
Governance*	1.75	1.75	2.00	2.00	2.00	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>
National Democratic Governance	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	2.50	2.75	<b>3.25</b>

Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	2.00	2.00	<b>2.25</b>
Judicial Framework and Independence	1.50	1.50	1.50	1.50	1.50	2.00	2.25	<b>2.25</b>
Corruption	2.25	2.25	2.25	2.50	2.50	3.00	3.25	<b>3.00</b>
Democracy Score	<b>1.58</b>	<b>1.58</b>	<b>1.63</b>	<b>1.75</b>	<b>1.75</b>	<b>2.00</b>	<b>2.14</b>	<b>2.36</b>

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author of this report. The opinion expressed in this report are those of the author. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

### **The “Fourth Republic” and the Media**

Below, we will concentrate on what all this has meant in terms of the government’s policies vis-à-vis the media. This needs to be considered in five aspects:

1. Legislation concerning the National Broadcasting Council, the broadcasting regulatory authority, and the broadcast media;
2. Policy vis-à-vis the public media
3. Attempts to extend the lustration process to journalists ;
4. Ideas concerning amendments to the press law and other initiatives.
5. Pressure on private media.

### **National Broadcasting Council**

One of the first legislative initiatives of the new government in 2005 concerned the National Broadcasting Council.

It had been created on the basis of the 1992 Broadcasting Act with a membership of 9, appointed by the Diet (4 members), the Senate (2 members) and the President of the country (3 members). NBC members had staggered terms of office, meaning that one-third of the members were exchanged every two years. Staggered terms of office for NBC members meant that before 2006 there was no automatic “political parallelism” (Hallin, Mancini, 2004) between Parliament and the NBC. There were periods of “cohabitation” between governments of one political persuasion and a majority of NBC members representing different elements of the political spectrum.

In the period between the creation of the NBC in 1993 and the general election of September 2005, left-wing parties or candidates won two parliamentary elections (1993 and 2001) and two presidential elections (1995 and 2000). Center-right parties were returned to power only once during that period, in 1997. Those lop-sided election results prevented the realization of the concept of a politically pluralistic and balanced composition of the NBC, and the governing bodies of PSB organizations. The evolution of the composition of the NBC – resulting from the election results described above – led over time to the domination of one political orientation, as shown in table 1.

Table 1. Political affiliations of NBC members

Year	Right	Centre	Left
1993	4	4	1
2005 (December)	1	3	5

Accordingly, after the elections of 2005, won by the centre-right, the left had a majority in the NBC, capable of adopting any decision. Another period of “cohabitation” was about to begin. Moreover, the terms of office of supervisory councils and boards of management of PSB organizations were scheduled to end in the first half of 2006. That meant that the left-dominated NBC would have the power to appoint the governing bodies of PSB organizations.

That, in particular, was perceived by the new power elite as a prospect it could not countenance. That is why it adopted amendments to the Broadcasting Act in December 2005. As far as the NBC itself was concerned, the amendments provided for the following:



1. The term of office of serving NBC members was terminated;
2. The number of NBC members was reduced to 5 (2 appointed by the Diet, 1 by the Senate, 2 by the President);
3. Staggered terms of office for NBC members were eliminated;
4. The NBC Chairperson was to be appointed by the President (previously the Chairperson was elected from among the members);
5. The NBC was given the competence to „initiate and undertake actions in the field of protecting journalistic ethics.”

Those amendments were taken by one of the opposition parties to the Constitutional Tribunal. Its ruling criticized the termination of the serving members' terms of office, but did not invalidate this provision. It did rule that the appointment of the NBC Chairperson by the President was unconstitutional. The same applied to the competence to „initiate and undertake actions in the field of protecting journalistic ethics.”

As a result, new members of the NBC were appointed (3 designated by the Law and Justice Party or the President; 1 each designated by the coalition parties – Self-Defence and the League of Polish Families). The Chairperson, originally appointed by the President, lost that position after the ruling of the Constitutional Tribunal, but was re-elected to it by NBC members after the Broadcasting Act was amended once again, to implement the Tribunal's ruling (it also eliminated the NBC's competence in the sphere of journalistic ethics).

The consequence of this was that the governing coalition took direct political control of the National Broadcasting Council and full political parallelism was ensured.

That led to the capture of public service media by the ruling coalition (see below), as well as to a very favourable attitude to TV Puls, a religious television station that Rupert Murdoch's News Corporation had bought into. The NBC allowed the station to change its format from a religious to a generalist one, and then allocated to it new frequencies to extend its reach. Reportedly, the plan was to develop it into a counterweight to other commercial TV stations that were either indifferent or openly critical of the government.

**Public Service Media**

Speaking in 2007, Prime Minister Jarosław Kaczyński said that the country's private electronic media "emerged out of unwelcome elements with their roots in the previous system. The worst part of the Communist system in Poland created the electronic media of the Third Republic." In his view, it is not the role of the public service media to try to outstrip private media in their criticism of the government (Wirtualne Media, 2007).

In Poland, the Broadcasting Act adequately safeguards the formal external independence of public service broadcasters.

There are 19 PSB organizations in Poland: 2 at the national level (public television - TVP, and public radio – PR), and 17 regional public radio stations at the regional level. Each has a Supervisory Board, a Board of Management and a Programme Council (a non-executive advisory body, consisting of 10 people representing parliamentary parties and 5 others – all formally appointed by the NBC). There are also Programme Councils attached to the 16 regional television stations that form part of TVP.

Despite their formal status as state companies, public service broadcasters are not really controlled by the either parliament or government. Under the Broadcasting Act, "State authorities may take decisions concerning the functioning of public radio and television broadcasting organisations only in circumstances specified in the existing legislation." This removes the danger of any arbitrary action. The general meeting of shareholders (i.e. the Minister of the State Treasury) is legally prohibited from affecting the contents of programming. The Minister may not unilaterally change the statute of any PSB organization, but must obtain the consent of the National Broadcasting Council for that. Also, the State Treasury is not entitled to any dividend from PSB organizations. Licence fee revenue is deposited with the National Broadcasting Council which is legally bound to transfer this money immediately to PSB organizations.

Different terms of office for the National Broadcasting Council (6 years), supervisory councils (3 years) and boards of management (4 years) were designed to dissociate those terms from that of Parliament. Staggered terms for NBC members (before they were abolished in 2005) were also designed to prevent "political parallelism," i.e. reproduction within the NBC and the governing bodies of PSB organizations of the political composition of the Parliament of the day.

In addition, supervisory council members may not be dismissed. Appointment and possible dismissal of the whole board of management, or of one or more of its members,

requires a qualified majority of two-thirds, with at least three-fourths of supervisory council members present and voting. The supervisory council may, however, suspend a BA member by simple majority. Still, refusal by the general meeting of shareholders (the Minister of State Treasury) to accept of the annual report and accounts of each PSB company, need not legally be followed by the dismissal of the board of management.

In short, the Broadcasting Act and verdicts of the Constitutional Tribunal (rulings that NBC members and members of supervisory councils may not be dismissed, and that the chairperson of the NBC should be elected by the members themselves, rather than appointed by the President) contain an extensive array of safeguards of the external independence of PSB organizations.

Once the governing bodies of PSB organizations have been appointed, political influence is either a matter of internal decision-making, or – in case of external influences – usually of an informal nature.

There is usually no direct, formal or institutional impact of political bodies or the authorities on any PSB activities, except of course for the appointment of Supervisory Councils and by extension of Boards of Management. Supervisory Boards are appointed by the National Broadcasting Council, with the exception of 1 person who is appointed by the Minister of the Treasury. It is these Boards which then appoint the Boards of Management of PSB organizations.

This may explain the determination of the government to gain control of the NBC, as that gave it the ability to determine the process of appointing the Supervisory Boards (and by extension the Boards of Management), as well as of the Programme Councils.

And that is how what happened. The new NBC proceeded to appoint Supervisory Boards according to a straight party ticket, with a pre-determined distribution of seats between candidates designated by the three governing parties. The same principle applied to the distribution of seats on Boards of Management.

Incidentally, the same principle applied to the Polish Press Agency, a state-owned company.

The break-down of the coalition in September 2006 (when Self-Defence left it) initiated a process whereby Self-Defence-designated members of both bodies were dismissed in some cases. This posed a problem when the coalition was reassembled a few weeks later, with Self-Defence back in.

A special case was the appointment of Bronisław Wildstein as President of TVP, by what appeared to be a personal decision of Jarosław Kaczyński, then still only chairman of the

Law and Justice Party. He was later dismissed for being too independent, and was replaced by Mr. Andrzej Urbański, former head of the chancellery of the President.

In 2006, a foundation conducted monitoring of selected news programmes of TVP and concluded that in the main evening news Law and Justice appears twice as often as the leading opposition party, the Civic Platform, and three times as often as any other political parties. The sound-bites of its representatives last twice as long as those of the opposition, and the fact that those representatives will appear is announced beforehand much more often (Fundacja im. Batorego, 2006).

There is in any case no doubt that public service media were heavily biased in favour of the government of the day.

## **Lustration**

The Lustration (vetting) Law was first adopted in 1997 – very late, compared to other post-Communist countries. That fed the feeling of the “velvet transition” for the former Communists. Under the 1997 law, persons aspiring to public functions (MPs, high-ranking government officials, and attorneys) had to declare if they had worked for Communist-era secret police or intelligence. Those who had, but denied this fact, were punished with a 10-year ban on public service after trials in the lustration court initiated by the public interest prosecutor. These procedures often took years.

After 2005, the new governing coalition decided to amend the lustration law in order to put into effect its policy of a clean break with the past. After several false starts, a new law on lustration was adopted by Parliament in March 2007. It now covered a much longer list of “public figures” – not only public officials, but also those “performing a public function,” such as local government officers, employees, judges, lawyers, tax advisors, certified accountants, court enforcement officers, diplomats, municipal officials, university teachers, heads of public and private educational institutions, heads of state controlled companies, and members of the management and supervisory boards of companies listed on the stock exchange, as well as, for the first time, journalists in both public and private media. In all, the law listed 53 categories of people covered by the vetting procedure. The Lustration Act is also binding on foreign nationals who perform a public function. It was believed that between 300,000 to 700,000 individuals might be affected by the obligation to submit a Lustration statement.

All Lustration statements were to be sent to the Institute of National Remembrance (IPN), which houses records of this period, for verification. The Institute was, in any case, to publish a list of individuals “regarded by the secret police as a source of information.”

The Lustration Act carried harsh penalties for failing to comply with its provisions. Anyone failing to submit a Lustration statement or missing the deadline was to automatically cease to perform his or her public function. In terms of the media, this meant that journalists, editors, publishers and broadcasters in breach of the law might be unable to practice their profession, in some cases, for a period of up to ten years.

The International Press Institute published this comment on these provisions:

By including journalists in this process, the government has created a powerful tool that allows it to determine who may practice as a journalist. The media’s independence rests on the right of publishers and broadcasters to make their own decisions regarding employment issues. The Lustration Act usurps this right by making the government a de facto employer whose decisions may impact upon content, because the exclusion of journalists will deny the public access to certain views and opinions (IPI, 2007)

The law was also criticized by the Council of Europe Commissioner for Human Rights (Hammarberg, 2007). Even more importantly, it was challenged before the Polish Constitutional Tribunal by one of the opposition parties, the Democratic Left Alliance, as well as by the Polish Commissioner for Civil Rights Protection.

The Commissioner argued in part that the law failed to define precisely who is a “journalist” and was therefore impossible to implement in this aspect, and that in any case a ban on performing the job of a journalist in the event of failing to submit a lustration statement, or of having it rejected as untruthfully stating that the given person had not been a secret police collaborator, violated constitutional guarantees of freedom of expression. The Democratic Left Alliance made very much the same argument.

Even before the deadline for filing the lustration statements had passed, many media organizations, including specifically the public service media, barred either employees or free-lance journalists if they failed to comply with the law, from appearing on the air.

The Constitutional Tribunal struck down many parts of the law, including the vetting of journalists.

## **Press Law and Other Initiatives**

The Polish Press Law, governing the operation of the media in general, was adopted in 1984. After 1989 it was amended to remove any elements of the Communist media system, but has not been changed in any other way.

By the same token, it is seriously outdated and fails to respond to many new technological and market realities. Whereas journalist unions have called for modernization of the Press Law, publishers are wary and prefer the old law, as it leaves many aspects of their activities unregulated. There have been some attempts since 1989 to propose a new Press Law, but they have never come to fruition.

The governing coalition is planning to amend the Press Law or amend it extensively. So far, no formal proposals have been tabled, though in the beginning of 2007 an informal parliamentary committee, comprising representatives of different parties, was created to consider possible options in this regard.

In this context, it is only possible to speak about some ideas advanced by particular political parties.

In December 2006, the League of Polish Families proposed the establishment of “press courts” which would adjudicate cases of slander or defamation within 7 days, with a deadline for considering appeals of another 7 days. Damages awarded by such a court could amount to between 50 and a 1000 times the minimal wage.

Self-Defence has called for closing down newspapers or periodicals which “publish lies.”

In June 2007, Self-Defence announced it would submit amendments to the Press Law, calling for accelerated court procedures (lasting a maximum of 14 days) in cases when the media are accused of publishing “lies,” as well as for provisions that rectifications and corrections should be published on the same page as the original story. Also the responsibility and liability of editors would be expanded, in addition to those of the reporters or journalists themselves.

Law and Justice was in favour of accelerating civil court procedures in cases of slander and defamation. It also called for strengthening legal protection of minors against violence and pornography in the media, e.g. by pushing controversial topics to late-night broadcasts or mandating that newspapers be wrapped in plastic bags and placed on the top shelves of kiosks and supermarkets.

The Democratic Left Alliance has mentioned the possibility of establishing the office of a Freedom of Expression Ombudsman, as well as the need to eliminate penal law provisions, providing for prison terms in cases of libelling the President of the country. It has said it would oppose any ideas concerning reducing access to the journalistic profession or accelerated court procedures in cases of slander or defamation.

The Civic Platform has said it would push for more detailed regulation of the manner of publishing corrections or rectifications.

On the whole, then, publicly announced ideas concerning amendments to the Press Law would not mean any new fundamental curbs on freedom of expression, though some could have a clear chilling effect on journalists and the media.

In early 2006, the authorities announced the proposed formation of a National Media Monitoring Institute. One of the aims of the National Media Monitoring Institute seemed to be that it would root out journalists who had cooperated with Communist secret services. It was never established, however/

### **Pressure on Private Media**

In legal and institutional terms, the 2005-2007 government largely left the private media alone, though it clearly gave preferential treatment (e.g. in access to news events, and to government officials) to the extreme Catholic media conglomerate (incorporating Radio Maryja, Telewizja Trwam and “Nasz Dziennik,” a daily newspaper) led by Father Tadeusz Rydzyk in Torun.

A preview of policies that might have been pursued, had the government’s term of office not been cut short, is offered by the statement of Prime Minister (and Law and Justice party leader) Jarosław Kaczyński at the beginning of 2006, that there were “no free media” in Poland because all were part of “the arrangement.” By that he meant a supposed secret understanding among politicians, business-people, former secret police, and organized crime who he believes ran the country during the “Third Republic.” He also called on journalists to fight for freedom against media owners, to “re-Polonize the media,” and to set up a special parliamentary commission to investigate “violations of media freedom and the society’s right to reliable information on the years 1990-2006,” i.e. on the time of the “Third Republic (Krajewski, 2007: 321).

In the Freedom House ratings, the rating for independent media worsened from 1.75 in 2006 to 2.25 in 2007, due to the government's “forced change in leadership of public television and radio based on political criteria and the mounting purge of journalists who started their careers in the Communist era” (Krajewski, 2007: 310).

## **PART II: 2007 -**

Given everything we have said about the popular “anger” towards liberals as the foundation for the dramatic turn towards populism during the 2005 election, the fact that in 2007 the election was won by the liberal Civic Platform could count as a small miracle. We cannot go here into the reasons for the electoral defeat of the Law and Justice Party (even though it got 2 million more votes than in the previous election, which may yet be a portent of things to come). Suffice it to say that Civic Platform tried hard to downplay its liberal image and announced that it would be “liberal” in economic policy, but would be guided by “solidarity” in social policy.

As far as media policy is concerned, the new government made almost exactly the same move as the previous government, by submitting amendments to Broadcasting and Telecommunications Acts. The idea, again, is to dismiss members of the National Broadcasting Council and appoint new ones. This is dirty politics, but such a move could be understandable as an act of revenge for what the previous government had done by packing it exclusively with its own supporters (this time this will not happen, as 2 of 7 members are to be appointed by the President who originates from the Law and Justice Party). However, that is not the whole story.

The amendments also call for all of the NBC's powers to be transferred to the Office of Electronic Communications (the telecommunications regulator). The NBC would be left with one specific task: organizing tenders for candidates for members of supervisory and management boards of public service broadcasting organizations. In order to “depoliticize” the process, candidates would need to be recommended by at least two institutions of higher learning, or two associations of journalists or artists (or one of each). However, the actual appointment to the governing bodies of PSB organizations would be in the hands of the Minister of the Treasury. How that amounts to “depoliticization” is something Civic Platform has failed to explain. However, at this writing, there are reports it is having second thoughts about this idea and may drop the provision of appointment by a cabinet minister.



The NBC would in theory have the job of monitoring the programme performance of broadcasters, but as it will have only minimal staff, it is hard to see how it will be able to do that. It will not, however, have the power to impose any sanctions on broadcasters who fail to observe legal requirements, or the terms of their licenses, but will have to propose that such action be taken by the President of the Office of Electronic Communications.

In short, the NBC is to be completely emasculated and all effective power will be in the hands of the telecommunications regulator. In short, supervision over commercial broadcasters may be reduced.

Future plans, at least as unofficially announced by the Prime Minister, call for eliminating the licence fee and funding public service broadcasters from budgetary allocations – probably making these broadcasters more vulnerable to political pressure from the government.

It is hard to assess what the new coalition will actually do, but for the time being this appears to be a strange mixture of deregulation and liberalization for commercial broadcasters, with perhaps greater political control over public service media. One thing seems certain: Civic Platform views media policy as part of economic policy, so there is likely to be much more liberalism than solidarity here. Given that in the past Civic Platform has been sympathetic to calls for the privatization of public service broadcasting, the “materialist” media policy orientation may yet perhaps be given a chance – in a complete turnaround from what was happening in 2005-2007.

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