

LIBE Democracy, Fundamental Rights and Monitoring Group (DFRMG) January 2024

Answers to the questions to the Polish government

Q: 1. The new Polish government has taken up various applaudable initiatives to strengthen the Rule of Law and restore the respect for fundamental European values in Poland. One important concern over the past decade related to the separation of the offices of the Minister of Justice and the Prosecutor General, for which the Government presented a draft law recently. Considering that its adoption requires the signature by President Andrzej Duda, what steps does the Government plan to undertake to pass the law? (S&D)

7. As many of the announced and proposed measures to restore the Rule of Law risk to be vetoed by the Polish President, what options does the Government consider to still make advances towards restoring the Rule of Law in the meantime? (Renew)

9. We see that the new government's efforts to restore the Rule of Law in Poland are being obstructed in numerous ways, such as attacks and unwillingness to sign new laws by President Duda; obstructing rulings from the Constitutional Tribunal, opposition within the government institutions (like the Ministry of Justice, Prosecution Service, etc.). What does the government plan to do to adopt and endorse rule of law related reforms if the President vetoes these laws? (Greens/EFA)

A: When it comes to **the restoration of the rule of law and potential vetoes from President Andrzej Duda**, any action taken by the Government should and shall be taken in accordance with and within the limits of the law. An Action Plan on the restoration of the rule of law has been prepared. The Inter-Ministerial Team for the Restoration of the Rule of Law and Constitutional Order has been established, while the establishment of a Codification Committee for the System of Courts and the Public Prosecution is planned. Legislative activities leading to the amendment of the existing regulations on the broadly understood justice system - the judiciary and the prosecutor's office - are being carried out. These works are widely consulted with the social organisations.

The Ministry of Justice does not exclude legislative action at the level of executive acts, provided that this is necessary for the implementation of norms of a statutory nature. In particular, this may be necessary to regulate matters of an organisational, technical or procedural nature.

Non-legislative activities are being held like revising Polish positions in pending proceedings by the CJEU and ECHR, where the current approach to the rule of law, the relationship between national law and EU law, as well as positions, recommendations and reservations expressed by EU institutions are considered.

There are also efforts in progress to create an appropriate institutional system for the execution of ECtHR judgments to ensure a prompt and transparent procedure and to clarify the obligations of public authorities in this regard.

Q: 2. What measures does the Government envisage to address the serious concerns regarding the capture of the Constitutional Tribunal? (S&D)

14. How does the government intend to reform the Constitutional Tribunal, so that it again meets the rule of law standards? (Greens/EFA)

A: Regarding **the reform of the Constitutional Tribunal**, Poland will endeavour to implement regulations aimed at restoring the Constitutional Tribunal to its systemic role, in particular through its real independence from the legislative and executive powers (i.e. from the political factor). Therefore, it is envisaged to prepare a bill amending the Constitutional Tribunal Act, and possible amendments to the Constitution of the Republic of Poland are also being considered.

At the same time, it should be pointed out that the Government is in constant dialogue with NGOs, active in the area of democratic standards, who have prepared a citizens' draft on the Constitutional Tribunal Act. This draft is the basis of the Government's work in this aspect.

Q: 3. How does the Polish government plan to address the lack of independence of the ordinary courts, in particular the Supreme Court? In particular, how does the Government intend to fulfil the milestones set up in Poland's RRF-Plan on judicial independence? (S&D)

A: A new concept for the Supreme Court is under public discussion. It will include a change in its structure, involving the elimination from the legal order of regulations relating to the organisation of the Court that raise substantial legal issues.

With regard to common courts, a preliminary bill has been prepared to amend the Act - Law on the System of Common Courts, which provides, *inter alia*, for the abolition of regulations prohibiting the questioning of the legitimacy of courts and tribunals, constitutional state bodies and control and law enforcement authorities, as well as the prohibition of determining or assessing by a court or other authority the legality of a judge's nomination or the authority arising from that nomination to perform judicial functions, as well as the abolition of the regulation providing for disciplinary liability for „refusal to perform justice”, „an act or omission likely to prevent or significantly impede the functioning of a judicial authority” and „an act that undermines the existence of a judge's employment, the validity of a judge's nomination or the legitimacy of a constitutional organ of the Republic of Poland”.

In addition, the Polish Government has worked to amend the regulations governing the National Council of Judiciary (NCJ) so that its form meets the standards of the Polish Constitution and is in line with the principles of EU law. The bill amending the NCJ Act was adopted by the Council of Ministers and sent to Parliament.

Q: 4. How does the Government plan to re-establish women's rights, in particular the access to life-saving, safe abortions? (S&D)

15. How does the government plan to ensure access to sexual and reproductive health and rights, including the right to access to abortion? (Greens/EFA)

16. In the meantime, how does the government plan to ensure persons helping to access abortion care, including activists and health professionals, are not prosecuted? (Greens/EFA)

A: Currently, the Polish Parliament is working on competing bills on **abortion**, i.e. a bill decriminalizing aiding and abetting abortion and a bill on liberalizing anti-abortion laws. In addition, analyses are underway in the Ministry of Justice on the general determination of the legal effects of the Constitutional Court's rulings made by a composition that includes judges sworn in by the President of Poland in December 2015 despite the filling of vacancies by the Eighth Term Sejm.

Q: 5. How does the Government plan to re-establish the protection of LGBTIQ-rights, in particular the right to adopt and the principle of non-discrimination? (S&D)

A: Work is underway at the Ministry of Justice to amend the criminal law, which has so far provided for a narrow list of groups protected from hate crimes and hate speech, and in particular has not provided for qualified liability for acts committed on the basis of sex or sexual orientation (genocide, murder or grievous bodily harm on account of the victim's national, ethnic, racial, political, religious or irreligious affiliation, Art. 118 of the Penal Code), violence or unlawful threat based on legally protected characteristics (Article 119 of the Penal Code), defamation (Article 212 of the Penal Code), insult (Article 216 of the Penal Code), propagation of fascism and totalitarianism (Article 256 of the Penal Code), and insulting a group or person (Article 257 of the Penal Code).

As early as 2023, Article 53 of the Penal Code was amended to make it mandatory for judges to take into account the offender's hateful motivation, including harsher punishment for acts committed because of the victim's sexual orientation.

Q: 6. As this new government is inheriting a captured judiciary filled with many neo-NCJ judges, it is challenging to bring the system back in line with the European standards on judicial independence and to comply with all CJEU judgements on the matter. How are the governments' plans to restore the independence advancing, especially the potential assessment, vetting and re-appointment of judges, as well as the termination of unwarranted disciplinary proceedings? (Renew)

A: Regarding **the restoration of the independence of judges**, the Polish Government is working to restore elementary order in the judiciary and to establish a permanent normative basis for its functioning.

Transitional regulations in the Act amending the Act on the System of Common Courts, drafted in the Ministry of Justice, provide that disciplinary proceedings concerning specific types of disciplinary torts, that are specified in the provisions to be repealed, must be discontinued.

One of the goals of the proposed legislation is to introduce regulations that will guarantee the objectivity of disciplinary authorities, the efficient carrying out of proceedings and the possibility of assessing the rulings made in these proceedings in an independent manner. The proposed legislation is currently under public consultation.

In addition, public discussions are being held with judicial associations and NGOs on the idea of carrying out a review (or new contest) for judicial nominations made after 2018.

The proposed regulations amending the Act on the NCJ stipulate that so-called neo-judges will not be allowed to stand for election to the newly formed Council in the first election, with the exception of judges who have returned to the office of a judge and a previously held position, if they took up the previously held position in a manner other than as a result of an application for the nomination of a judge presented to the President of the Republic of Poland by the NCJ formed on the basis of the current regulations. This will allow for the election to the Council of persons whose legal status will not be questioned from the point of view of the legal basis of their constitutional legitimacy, thus freeing the constitutional authority from the charge of participation of persons with improper legitimacy. Pursuant to the proposed bill, the activities of the persons currently serving on the NCJ and elected to

them by the Parliament will cease upon completion of the procedure for the election of Council members in the manner provided for in the bill.

Q: 8. According to reports, pushbacks at the external border are still ongoing. What measures does this government foresee to ensure the respect for EU and international law and grant asylum seekers access to an asylum procedure? (Renew)

18. How does the government intend to ensure that treatment of migrants and asylum seekers at the border with Belarus fully complies with the right to asylum and EU law, as well as human rights standards? (Greens/EFA)

A: Concerning **the issue of migrants, asylum seeker and the alleged pushbacks on the Belarusian border**, Poland has been dealing with artificially created migration pressure for 3 years. The problem of instrumental use and creation of migration pressure is recognized by all Member States, as evidenced by, among others, provisions in the conclusions of the European Council meeting of 15th December 2023. The situation on the Polish-Belarusian border requires intensified monitoring measures in the context of repeated mass influx of migrants. The priority in state policy must be effectively preventing attempts to create a migration route through Poland to other Western European countries. This issue is a priority for the Ministry of Interior and Administration from the point of view of the need to ensure state security while maintaining the rights of foreigners and respecting the protection of human rights resulting from international agreements ratified by Poland.

Ministry of Interior and Administration analyses current legal solutions to adapt them to current challenges and ensure compliance, among others, with judgments of provincial administrative courts. Amendments to the current legislation will introduce rules for the individual assessment of each migrant who has entered the territory of Poland, which are more tailored to the current situation on the Polish-Belarusian border. However, these changes require amendments to legal acts, including the signature of the President of Poland. Work has begun at the Ministry of Interior and Administration on developing Poland's migration strategy. In fulfilment of this commitment, the Interministerial Team for Migration, coordinated by the Ministry of Interior and Administration, was reactivated to design activities related to the state's response to migration processes and the presence of foreigners. The first meeting of the Team took place on 7th February 2024. Work on the strategy will also include extensive public consultations. The results of this work will consist of, among others, drafts of new legal acts.

The principle adopted by the current government is to strengthen the security of Polish border while taking into account basic human rights. Moreover, the Government of the Republic of Poland adopted the "zero death at the border" principle. For this purpose, special search and rescue teams are established in Border Guard units. Their task will be to carry out activities aimed at preventing humanitarian crises that have so far been reported by activists of non-governmental organizations or local residents. Foreigners found on Polish territory after illegally crossing the state border receive various types of humanitarian support, in case they need it. Border services provide medical assistance (in the form of emergency assistance, calling ambulances, hospitalization), products necessary for life (medicines, food/water, hygiene products, clothing/blankets), conduct life-saving operations (search and rescue operations conducted from land, water and air with the participation of other services, including: Air Ambulance Service, Fire Service, and the Polish Armed Forces).

Access to the procedure for granting international protection is provided in Poland with respect to the principle of non-refoulement and there are legal and organizational guarantees for its full compliance.

Due to the primacy of the international protection procedure, if only a foreigner declares the will to submit an application for international protection, the Border Guard officers collect the application for international protection from the foreigner. Also in that case Border Guard refrain from activities related to returning foreigner to the state border line so that the application for protection international proceedings could be processed in accordance with the law, providing foreigners with access to the procedure.

A foreigner submits an application for international protection to the Head of the Office for Foreigners, through the commandant of a Border Guard unit or the commandant of a Border Guard post. This procedure is regulated by the Act of 13th June 2003 *on granting protection to foreigners in the territory of the Republic of Poland*. A foreigner who is staying in a detention center or a penitentiary institution, submits an application for international protection through the commandant of the Border Guard unit or the commanding officer of the Border Guard post covering the territorial scope of the headquarters of the detention center or prison.

There is no provision of Polish national law that would allow for failure to collect (by Border Guard officers) an application for international protection or a declaration of intention to submit an application for international protection in Poland. Each application for international protection submitted by a foreigner in the Republic of Poland is considered in the first instance by the Head of the Office for Foreigners.

Polish services also comply with the obligation of providing information. Every time, in accordance with the provisions of the Act of 12th December 2013 *on foreigners*, the foreigner is informed in writing (in a language he understands) about the possibility of using legal assistance, along with an indication of the entities providing such assistance (non-governmental organizations), access to legal information regarding the international protection procedure and the possibility of submitting an application for international protection on the territory of the Republic of Poland, as well as the right to appeal against the issued decision.

Each application for international protection in the Republic of Poland is considered individually, objectively, reliably and impartially. Interviews of applicants are conducted in conditions that allow for a comprehensive presentation of the reasons for submitting the application. Confidentiality is assured. Proceedings end with a decision being issued. The decision contains a translation into a language understandable to a person of the legal basis for the decision, ruling and instruction.

Q: 10. We know that draft laws have been prepared by IUSTITIA on the reform of the National Council of the Judiciary (NCJ) and by Lex Super Omnia on the restoration of independence of the prosecution services.

- Are the authorities planning to work towards the formal adoption of these laws and if so, what is their strategy for getting these draft laws signed by President Duda?
- If the authorities are planning to put these draft laws forward in a revised manner in hopes of getting them signed by President Duda, could the authorities then specify what exact elements will be taken up and which elements they expect will be changed? (Greens/EFA)

A: With regard to **the reforms of the National Council of the Judiciary**, legislative work is proceeding on a draft. Regarding the National Council of Judiciary, Minister of Justice has submitted a draft bill restoring its constitutional composition. The bill was adopted by the Council of Ministers on 20 February and sent to the Parliament. The draft regulation envisages increasing the transparency of the

selection of judges to the NCJ through an obligatory public hearing of candidates to the Council. The draft is aimed at restoring the proper - constitutional - shape, depoliticising the election of judges and transferring the conduct of the election to the State Election Commission, which is a permanent supreme electoral authority with jurisdiction over the conduct of elections and referendums, and therefore an institution that provides a guarantee that elections to the Council will be conducted in a professional and efficient manner.

At the same time, supported by public discussions with judges' associations and NGOs, a comprehensive standardisation of the system, organisation and functioning of the National Council of Judiciary are sought, including clarification of the legal status of neo-judges.

Q: 11. We understand that the problem of disciplinary proceedings against judges is ongoing, as the disciplinary prosecutors are still in office and launching cases and there have been no changes yet to the disciplinary court system.

- What are the authorities' plans for addressing these problems?
- And will they also take formal steps to repeal the Muzzle Law? (Greens/EFA)

A: When it comes to **the disciplinary proceedings against judges**, the Minister of Justice, by means of the institution of Disciplinary Ombudsmen of the Minister of Justice (the so-called '*ad hoc* Ombudsmen') introduced in Article 112 b of the Law on the System of Common Courts, designated the Disciplinary Ombudsmen, with the result that the Ombudsmen who have been conducting these cases so far lose the right to take any action in this respect. The nominated persons are criminal judges with more than 20 years of experience, they were nominated to their positions without the participation of the improperly formed NCJ, they have specialised in disciplinary cases for many years and they are not members of judges' associations.

The judges nominated by the Minister as *ad hoc* Ombudsmen provide a guarantee of impartial, independent and professional conduct of the indicated cases, taking into account the standards arising from the rulings of international tribunals and Polish courts, including the judgements of the CJEU concerning the evaluation in the light of the EU standards of the disciplinary proceedings introduced in recent years by the amendments to the Act - Law on the System of Common Courts, including the so-called „muzzle act”.

A preliminary draft bill amending the Act - Law on the System of Common Courts - has been prepared at the Ministry of Justice. The planned amendments provide for:

1. the abolition of regulations providing for the prohibition of challenging the legitimacy of courts and tribunals, constitutional state bodies and authorities for the control and protection of the law, as well as the prohibition of a court or other authority from determining or assessing the lawfulness of a judge's nomination or the resulting power to perform judicial office;
2. the abolition of provisions requiring written declarations of membership of an association, including an association, of a function held on the body of a non-business foundation, of membership of a political party;
3. the abolition of regulations providing for disciplinary liability for „refusal to perform justice”, „an act or omission likely to prevent or significantly impede the functioning of a judicial authority” and „an act that undermines the existence of a judge's employment, the validity of a judge's nomination or the legitimacy of a constitutional organ of the Republic of Poland”.

Q: 12. What are the government's plans for the revetting process of the court system in order to ensure that every court again becomes an independent tribunal within the meaning of the European Convention on Human Rights and meets all the rule of law standards? (Greens/EFA)

A: With respect to **the changes to the court system meant to ensure courts are independent tribunals within the meaning of the European Convention on Human Rights**, a detailed plan for changes to the common justice system is included in the Action Plan on restoring the rule of law.

The Inter-Ministerial Team for the restoration of the rule of law and constitutional order coordinates the government's activities, analytical work and submission of legislative proposals for the restoration of the rule of law and supervises the entire process. It should be emphasised that the work of the Team involves experts, representatives of bodies, institutions and other entities working for the restoration of the rule of law (social factor).

The Government intends to take legislative and non-legislative action leading to the implementation of the constitutional principles so that citizens, as well as other entities under the jurisdiction of the Republic of Poland, have effective and real measures to protect their rights and freedoms.

Legislative activities include the development and implementation of legislative amendments that can be used to selectively change certain systemic mechanisms and eliminate major dysfunctions in the justice system. In addition, work is carried out on draft laws that comprehensively standardise a certain complex of systemic issues. The work concerns amendments to the Act - Law on the System of Common Courts and Military Courts, the Act on the Public Prosecutor's Office, the Act on the Supreme Court and the National Council of the Judiciary.

All actions are currently being carried out with respect for the constitutional principles of the legislation, including the public participation of the justice profession in the legislative work.

Poland also has taken steps to review Polish positions in pending proceedings by the CJEU and ECHR.

It should be pointed out that the Minister of Justice also introduced changes to the executive acts to the Act - Law on the Common Court System (Regulation amending the Rules of Procedure of Common Courts). On the basis of the introduced amendments, in principle, the so-called neo-judges were excluded from consideration of cases for exclusion of a judge due to the circumstances of their nomination.

In addition, analytical work is being carried out at the Ministry of Justice to create an appropriate statutory institutional system for the execution of judgments of the European Court of Human Rights.

Q: 13. The 2023 Rule of Law report of the European Commission raised concerns on the lack of progress on ensuring that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets, and on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media. Which step is the government planning to take in order to remedy the situation? (Greens/EFA)

A: Regarding **the issue of granting of operating licences to media outlets and strengthening the independence of public service media**, the body responsible for granting licenses for the distribution of radio and television programs is the National Broadcasting Council. The National Broadcasting

Council is an independent constitutional regulatory body with jurisdiction over broadcasting. The procedure and prerequisites for granting licenses are regulated at the statutory level, in the Broadcasting Act. At the same time, the licensing process is subject to judicial review and the procedure for granting licenses is based on the provisions of the Administrative Procedure Code. The procedures in place for granting media licenses are fair, transparent and non-discriminatory. Polish licensing regulations are in line with the Audiovisual Media Services Directive and European treaties.

Analytical work has now begun on preparing a deep reform of the public media. The changes being introduced are aimed at bringing Polish media laws in line with European standards, including the European Media Freedom Act.

Q: 17. How does the government plan to ensure that the rights of LGBTIQ persons are fully respected, in particular the right to private and family life and non-discrimination? (Greens/EFA)

A: The Minister for Equality has been meeting with LGBT organizations and initiatives in recent weeks, gathering requests as to the forthcoming draft law on civil unions, which will be made public for broad consultation in the coming weeks. Given **the situation of the LGBTI community in Poland** in recent years and the broad public expectations - the government is paying due attention to its participation in the projects under preparation.

The government plans to strengthen equality and anti-discrimination measures, emphasizing the role of diversity and its role in society. The Minister for Equality, the Minister of Education and the Ombudsman for Children have assumed patronage of the 4th edition of the Ranking of LGBTQ+ Friendly Schools, which this year is held under the slogan "School of Trust." In the near future, the Minister for Equality will also take patronage of the National Day of Visibility of Transgender Persons in Poznan, or the opening of the photo exhibition "Civil weddings of same-sex couples in Poland", showing the need for legal regulation of same-sex couples in the country (April 2024). On March 4th, the Equality Ministry will meet with Rainbow Families to learn about the demands of this social group. The Equality Ministry also plans to support with patronage and participation in events centered around LGBTI issues, including the Equality Marches, especially in smaller cities that need more support. The Equality Ministry is also keen on international cooperation and the inclusion of LGBTI rights, as well as continued support for LGBTI organizations and communities, including the continued presence of diplomats at the Equality Marches, and networking of local governments and cooperation at the local level. Also important is the role of the EEA Funds for LGBTI organizations, thanks to which a great deal of expertise has been developed in recent years, which will allow the continuation of strategic planning as well as educational and advocacy work in the community.

Q: 19. The 2023 Rule of Law report of the European Commission highlighted several issues concerning the Ombudsperson, including (i) insufficient financial resources and (ii) the dismissal of the deputy Ombudspersons dealing with migration related issues at the Polish-Belarusian border. How does the government plan to ensure the Ombudsperson have sufficient financial and human resources in order to implement their mandate properly? (Greens/EFA)

A: With regard to the **concerns about the Commissioner for Human Rights** (the Ombudsman).

The Commissioner for Human Rights is granted budgetary autonomy. His budget has been increasing annually, especially in recent years:

Year:	Budget increased by:
2020	10.6%
2021	18.8%
2022	10.1%
2023	16%
2024	9.2%

The appointment and dismissal of deputies is the prerogative of the Commissioner for Human Rights. Pursuant to Article 210 of the Constitution, the Commissioner for Human Rights is independent in his activities, independent of other state bodies and accountable only to the Sejm.

Q: 20. On what legal basis does the Polish government claim that it will not comply with the Constitutional Court's ruling on public media? (ECR)

A: When it comes to **the issue of the Constitutional Tribunal's ruling on public media**, as indicated in Communication from the Ministry of Culture and National Heritage from 18th January 2024, the Constitutional Tribunal 's ruling made on 18th January 2024 on public broadcasting companies "does not have any legal significance". The rulings and resolutions issued in recent years by the European Court of Human Rights and the Supreme Court relating to the current construction of the Constitutional Tribunal, including the entire circumstances of the appointment and functioning of this institution, confirm that it is not an independent and impartial constitutional court and that its judgments issued with the participation of so-called „understudy-judges" (persons appointed to judicial positions in the Constitutional Tribunal for seats already filled) do not have binding effect and are not final. They should be disregarded in legal proceedings as non-existent.

Jarosław Wyrembak took part in issuing of the (...) ruling. In addition, the ruling panel included Krystyna Pawłowicz and Stanisław Piotrowicz, who, as Law and Justice deputies, participated in the adoption of amendments to the Broadcasting Act in 2015 and 2016, which undermines their ability to remain objective in the case in question. The ruling panel was chaired by Julia Przyłębska (the deciding member), who was defectively appointed to serve as President of the Constitutional Tribunal.

The above flawed ruling of the Constitutional Tribunal has no effect on the functioning of companies carrying out the public service remit and on the liquidation processes underway in them."

The Minister of Culture and National Heritage, as a representative of the State Treasury, exercises, with respect to public media companies, the voting rights as the owner of 100% of shares, acting, on the basis of the provisions of the Law of 15th September 2000, Commercial Companies Code and articles of incorporation of the aforementioned companies.

Q: 21. On what legal basis does the government claim that it will not recognise the court's decision on the new authorities of Polish Public Television (TVP) and Polish Radio and then on the liquidators? (ECR)

A: Concerning **the issues on the liquidation of the Polish Public Television and the Polish Radio**, as indicated in the Communication from the Ministry of Culture and National Heritage from 22nd January 2024, "the record of the court clerk (...) in the National Court Register, refusing to disclose the opening of the liquidation of Polskie Radio S.A., does not have legal effects resulting in a change in the status of the Company and its authorities. Polskie Radio S.A. remains in liquidation based on the resolution of the Company's General Meeting of Shareholders (AGM) from 27th December 2023, at which the State Treasury, holding 100% of the shares in the share capital, was represented in accordance with the law by the Minister of Culture and National Heritage. (...)

Only a final (after all instances have been exhausted) commercial court judgment invalidating the AGM's resolution from 27th December 2023 could effectively challenge the legality of the initiated process of liquidation of Polskie Radio S.A. in liquidation and the appointment of the liquidator, who continues to perform his function. The same applies, by analogy, to the effectiveness of the AGM's appointment of a new Supervisory Board of Polskie Radio S.A. in liquidation (...).

The record in the National Court Register is declaratory (not constitutive) - it is information for business participants that certain data has been entered in the register of entrepreneurs. The record in the register does not create a right or status of bodies, such as the right to sit on the company's authorities. It has only informational value. It is also important that as soon as Polskie Radio S.A. in liquidation files a complaint against action of the court clerk (record in the register), (...), the record made loses all force until the complaint is reviewed by the court, and in the next instance - in the case of a possible appeal - by the court of second instance.(...)

With regard to records in the National Court Register, it is worth adding that entries records have been made by court clerks in a number of courts in Poland regarding the commencement of liquidation processes for the companies operating the local Polish Radio stations (which were also put into liquidation by the Ministry of Culture and National Heritage on behalf of the State Treasury). Such a record was also made (with respect to the Warsaw public radio station) in the District Court for the City of Warsaw, which (...) refused to enter the liquidation of Polskie Radio S.A. This demonstrates, in the opinion of the Minister of Culture and National Heritage, the assumption by the majority of registrars reviewing analogous applications that the liquidation processes were initiated correctly by the competent authority and the liquidators were appointed effectively and in accordance with the law. The decision with regard to the record to which this information relates, after being challenged by the company Polskie Radio S.A. in liquidation, will be subject to the normal instance review procedure by the court. Legal disputes over the appointment of media companies' authorities may continue for some time, while the Minister of Culture and National Heritage, having numerous professorial legal opinions confirming the correctness of the liquidation processes, is confident that the disputes will end successfully."

An analogous situation applies to Telewizja Polska S.A. and is described in the relevant Communication of the Ministry of Culture and National Heritage dated 22nd January 2024.

As a representative of the owner of companies that are supposed to carry out the public service remit, the Ministry of Culture and National Heritage is making every effort to restore pluralistic, reliable public media of the highest quality to the Polish society.

Q: 22. On what legal basis does the government consider the Constitutional Court's decision on the prosecutors to be non-existent? (ECR)

A: In regard to **the Constitutional Tribunal's decision on prosecutors** the Minister of Justice considers that the order was issued in gross violation of the law. In particular, it is inconsistent with Article 188 (5) and Article 79 of the Constitution of the Republic of Poland, as well as with Article 79 (1) in connection with Article 39 (1) pt. 1 of the Act on the organisation and procedure prior the Constitutional Tribunal.

The order was addressed to incorrectly designated entities, including persons who did not participate at all and were not a party to the proceedings before the Constitutional Tribunal. It was issued without the use of the available judicial procedure, by a judge who was subject to exclusion by law.

Pursuant to Article 101 §1 of the Law on Claims arising out of the employment contract, a public prosecutor has the right to proceed before a court with jurisdiction over employment cases. Thus, the constitutional complaint concerning the public prosecutor, as being brought prematurely and without complying with the basic requirements of exhaustion of the judicial path, could not be proceeded with at all, much less should any incidental orders be issued in connection with it.

Q: 23. The Speaker of the Sejm, after an unfavourable court ruling, asks for a new panel of judges to be appointed. Are these the standards of independence? Is it a standard that the Speaker of the Sejm is entitled to request the Supreme Court to appoint such and not other judges to hear his case? (ECR)

A: With reference to **the actions of „the Speaker of the Sejm”**, we presume that the question concerns activities of the Marshal of the Sejm (i.e. the speaker of the house) in course of the proceedings following the expiration of parliamentary mandate of two Deputies to the Sejm of the current (10th) term. The situation described in the question has not taken place. Both Deputies have been sentenced to imprisonment by a final judgment for an intentional indictable offence, in result of which their parliamentary mandates expired under Article 99 para. 3 of the Constitution of the Republic of Poland, as no person sentenced to imprisonment by a final judgment for an intentional indictable offence may be elected to the Sejm or the Senate. In relation with Article 247 para. 1 subpara. 2 of the Electoral Code of 5th January 2011, the expiration of the mandate of a Deputy shall occur in case of loss of right to stand for elections or lack thereof on election day. Acting under Article 249 para. 1 of the Electoral Code, the termination of the mandate of the Deputy shall be immediately declared by the Marshal of the Sejm by means of a decision. The Marshal of the Sejm issued decisions declaring the termination of both mandates, against which appeals to the Supreme Court were filed under Article 250 para. 1 sentences 2 and 3 of the Electoral Code. The decision may be appealed by the Deputy to the Supreme Court within 3 days of the service of the notice of the decision. The appeal must be filed through the Marshal of the Sejm. The Marshal of the Sejm referred both appeals directly to the Labour and Social Security Law Chamber of the Supreme Court, claiming that the Extraordinary Review and Public Affairs Chamber of the Supreme Court (which would be statutorily empowered to consider the appeals) lacks the features of a court. The Marshal of the Sejm justified the above activity by invoking judicial decisions of the European Court of Human Rights (incl. Dolińska-Ficek and Ozimek v. Poland, appl. no. 49868/19 and 57511/19, as well as Wałęsa v. Poland, appl. no. 50849/21) and the Court of Justice of the European Union (in particular Case C 718/21). The above judicial decisions led to the conclusion that “the Extraordinary Review and Public Affairs Chamber of the Supreme Court does not have the status of an independent and impartial tribunal previously established by law for the purposes of the

second subparagraph of Article 19(1) TEU, read in the light of the second paragraph of Article 47 of the Charter” (Case C 718/21, para. 77).