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Breaking News: Polish Legislators Make Waves with New Broadcast Media Law, EU Human Rights Concerns on the Rise

Margery R. Beltran*

“In the future, please have more restraint in instructing and reprimanding the parliament and the government of a sovereign, democratic country.”

-Polish Justice Minister Zbigniew Ziobro¹

In December 2015, Polish constitutional lawmakers signed the National Media amendment that has left the European Union on high alert.² The controversial amendment has two key components.³ The first allows the current government to immediately terminate the positions of all the current heads of government-run broadcast stations.⁴ The second component allows the current government to make replacement appointments for the government stations.⁵ Poland’s current president, Andrzej Duda, fully supports the Polish government potentially gaining full control of the country’s broadcast media.⁶

Fearing Poland’s government is shifting from a relatively progressive democracy to a dictatorship, a number of countries have

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2. Monika Scislowska, *Poland Defends New Media Law as Pluralistic Amid EU Plans to Monitor Warsaw’s Rule of Law*, *U.S. NEWS AND WORLD REPORT* (Jan. 3, 2016, 1:00 PM), <http://www.usnews.com/news/world/articles/2016-01-03/poland-defends-its-new-media-law-as-fair-amid-eu-concerns>.

3. *Id.*

4. *Id.*

5. *Id.*

6. Joanna Plucinska, *A Media Bill in Poland Sparks Concern Over Press Freedom*, *TIME* (Dec. 30, 2015), <http://time.com/4164787/poland-media-bill-press-freedom/>.

openly voiced their concerns regarding the new amendment.⁷ On January 13, 2016, the EU announced their intent to challenge Poland's new law.⁸ EU Commissioner, Frans Timmermans, announced his executive was to develop clear understanding about this law by assessing how it will affect the freedom of speech for Polish citizens.⁹ Timmermans believes this exploration of the law could potentially lead to Poland losing their voting rights in the EU – a radical threat for the union.¹⁰

In the 65 years of the EU's existence, the organization has never suspended the voting rights of a member.¹¹ In 2015, the EU adopted the "rule of law mechanism."¹² Under the rule of law mechanism, the Commission has the ability to pressure member states to "amend any measure considered to be a systematic threat to the EU's fundamental values."¹³

Such a radical suggestion provides insight to how seriously the EU is interpreting the newly adopted law.¹⁴ EU Commissioner, Guenther Oettinger, from Germany, publicly voiced his concerns, noting that there are multiple reasons to monitor Poland as a protective measure.¹⁵ The EU was formed following the events of World War II and one of the founding fathers was the first Chancellor for the Federal Republic of Germany.¹⁶ Currently, Germany is one of the first countries to verbally oppose the Polish law.¹⁷

7. Inken von Borzyskowski & Felicity Vabulas, *Will the E.U. Suspend Poland? Here are 3 Reasons That's Unlikely.*, THE WASHINGTON POST (Jan. 21, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/01/21/will-the-e-u-suspend-poland-here-are-3-reasons-it-wont/>.

8. *Id.*

9. Gabriela Beczynska & Jan Strupczewski, *EU Takes on Poland, Launches Rights Probe Over Court, Media*, REUTERS (Jan. 13, 2016, 5:15 PM), <http://uk.reuters.com/article/uk-poland-eu-idUKKCN0UR1LI20160113>.

10. *Id.*

11. *Id.*

12. *EU Ready to Fight Polish Media Law Amid Row Over Values*, BBC NEWS (Jan. 3, 2016), <http://www.bbc.com/news/world-europe-35217586>.

13. *Id.*

14. Borzyskowski & Vabulas, *supra* note 7.

15. Scislowska, *supra* note 2.

16. *The Founding Fathers of the EU*, EUROPEAN UNION, http://europa.eu/about-eu/eu-history/founding-fathers/index_en.htm (last visited March 14, 2016).

17. *See generally*, Scislowska, *supra* note 2.

In his address in Amsterdam, Timmermans explained, “[L]ooking back over the last quarter of a century, one of the biggest successes of European integration is the transformation of our new member states, in Central and Eastern Europe, away from dictatorship to fully fledged democracies... this collective responsibility is not just of the member states, but of the union as well.”¹⁸ The Commission intends to explore this issue in depth and has clearly warned Poland of the potential consequences in carrying out this violation of a fundamental EU right by depriving their citizens of their freedom of speech.

The current Polish government, under President Duda is conservative and is known to be an EU-skeptic.¹⁹ Duda began his presidency on August 5, 2015 and is the sixth president in Poland since their shift from communism.²⁰ During his election campaign, he eluded to his lack of enthusiasm regarding the EU and felt that Poland should be focusing more on their own interests than those of the union.²¹ The shift to a conservative president and majority party has been referred to as a “shock win” in Poland.²²

Poland has voiced their surprise and frustration with the EU’s response.²³ Poland’s Prime minister, Beata Szydlo, defended the government’s decisions: “Poland has the right to take sovereign decisions concerning the course of home affairs or how the media need to be organized. This is a sovereign decision of any state, including Poland.”²⁴

Another representative, Marek Magierowski, a spokesman for Duda, believes that the legislative changes were necessary because “for eight years under the previous pro-EU government, state broadcasters were deeply one-party media with not a penny’s worth of plu-

18. Casert & Scislowska, *supra* note 1.

19. See generally Ron Synovitz, *Poland’s Next President Could Ruffle Feathers in Moscow and Brussels*, RADIO FREE EUROPE RADIO LIBERTY (May 25, 2015), <http://www.rferl.org/content/poland-next-president-ruffle-feathers/27035651.html>.

20. Wiktor Szary, *Poland’s New President Andrzej Duda Heralds Shift to the Right: Party Takes Cooler Line Towards European Union*, INDEPENDENT (May 24, 2015), <http://www.independent.co.uk/news/world/europe/polands-new-president-andrzej-duda-heralds-shift-to-the-right-10273812.html>.

21. *Id.*

22. *Id.*

23. Casert & Scislowska, *supra* note 1.

24. *Id.*

ralism, but not a single EU commissioner or EU lawmaker expressed any concern over the fact.”²⁵ Despite the EU’s threat to remove voting rights, the Polish government is in full support of their new law and finds it to be a fair and necessary means to bring equality in the media, despite their violating the citizens’s freedom of speech.

The citizens seem to be responding differently to the law than the government officials. Four of the directors in media broadcasting stations have already resigned in protest of the law.²⁶ The speed of these changes in constitutional rights has all led to rallies across Poland demanding for justice and protection of their rights.²⁷

The new government leaders want to increase the nativism throughout Poland and feel

that making a shift in public broadcasting will help.²⁸ Since the media amendment has been approved, many Polish journalists have either been fired or have quit in protest.²⁹ Kryztof Czabański, the Polish Culture Minister released a statement that he hopes to “transform the Polish Press Agency from “public” broadcaster into one with a “national mission” focused on Polish history and patriotism.”³⁰

The Polish government has influenced public media prior to the current administration and has never been thought to be objective.³¹ The concern appears to be derived from the structural changes the government wants to make to the broadcasting system as opposed to the government wanting to simply influence the media.³²

Prior to the media amendment, both the Polish government and public-private National Broadcasting Council of Poland worked together to oversee broadcast media.³³ Now that the amendment has been put into place, the power to make decisions has shifted from the

25. Dan Alexe, *EU Threatens Poland with Infringement Measures Over Media Law*, NEW EUROPE (Jan. 4, 2016) <http://neurope.eu/article/eu-threatens-poland-with-infringement-measures-over-media-law/>.

26. Marc Herman, *In Poland, a Media Grab Signals Rising Power of Nationalists*, COLUMBIA JOURNALISM REVIEW (Feb. 25, 2016), http://www.cjr.org/analysis/poland_media.php.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Herman, *supra* note 26.

32. *Id.*

33. *Id.*

National Broadcasting Council and is now the sole power of the executive branch.³⁴ The Polish Treasury Minister is the prime overseer of broadcast media throughout the country.³⁵ The government's decision to shift the power to the administration has not been well received by the citizens of Poland.³⁶

Upon hearing the news that they were being denied their constitutional right of freedom

of speech, the people of Poland have begun to protest.³⁷ On January 9, 2016, many Polish citizens gathered in front of Warsaw's Polish television station.³⁸ Unhappy with the lack of government response, the Polish Committee for the Defence of Democracy, hosted a march in Warsaw titled "We the People."³⁹ The march protested the recent changes being made by the newly elected government, one of their main complaints being the newly adopted control of the media.⁴⁰ Other protests have occurred near major government buildings such as the presidential office.⁴¹

Other countries have personally voiced their concerns and personally urged Poland to rethink the amendment.⁴² U.S. senators Ben Cardin, John McCain, and Richard J. Durbin wrote a letter to Poland's Prime Minister, Beata Szydlo, on February 10, 2016. The letter contained a list of their concerns with the Polish government's self-appointed media power.⁴³ Cardin described himself and his colleagues who also drafted the letter as having close relationships to Polish-American communities throughout the United States – implying that it was their duty on behalf of the U.S. to represent the U.S.

34. *Id.*

35. *Id.*

36. Filip Warwick, *Protests Across Poland Against New Media*, RFI (May 2, 2016, 12:38 PM), <http://www.english.rfi.fr/europe/20160205-protests-across-poland-against-new-media-law>

37. *Id.*

38. *Id.*

39. Tom Stevens, *Poles Protest Over PiS 'Breaking Constitution,'* THE GUARDIAN (Feb. 26, 2016, 7:56 AM), <http://www.theguardian.com/world/2016/feb/26/poland-views-current-mood-constitution-challenges>.

40. *Id.*

41. *Id.*

42. Michael Dalder, *U.S. Senators Urge Poland to Respect Democracy, Rule of Law*, REUTERS (Feb. 14, 2016, 4:20 PM), <http://www.reuters.com/article/us-poland-usa-idUSKCN0VN0ZG>.

43. *Id.*

opposition to the amendment.⁴⁴ The senators believe that the Polish government is disrespecting the democratic process and human rights.⁴⁵ They also mentioned their concern regarding Poland's role model status to other countries transitioning to democracy, fearing that this behavior will be interpreted as the norm to these other countries.⁴⁶

In response to the letter, Szydlo blamed the government prior to the current administration for the state of the country.⁴⁷ She also noted that she believes the new media law has not breached any European standards of democracy.⁴⁸ In her response, she stated, "...the interest and goodwill of the American politicians cannot be changed into instructing and imposing actions concerning my fatherland."⁴⁹

Poland's most recent government was built on a constitutional tribunal which

supports protection of the freedom of speech, similar to the First Amendment of the U.S. Constitution.⁵⁰ With the rule of the law mechanism's adoption, the EU will have a lot of influence on the Polish government and how much power they get outside of their own country. With Duda's outspoken feelings toward the EU, this threat from the EU may not have a strong influence on his opinions in regards to how he will be leading the country.

The Polish people voted this administration into the office knowing the party is much more right-winged than the previous administration. The party is also known to have somewhat extreme views aligned with the conservative Catholic Church.⁵¹ Since the government shifted far away from a moderate left-wing,⁵² the people of Poland should not be surprised by vast administrative changes. Actually, the young Polish population holds ideals similar to the current administration – they are being generally categorized as nationalistic and rightwing.⁵³ Those who have been protesting have generally

44. *Id.*

45. *Id.*

46. *Id.*

47. Dalder, *supra* note 42.

48. *Id.*

49. *Id.*

50. Casert & Scislowska, *supra* note 1.

51. Stevens, *supra* note 39.

52. *Id.*

53. *Id.*

come from larger Polish cities and have a higher socio-economic status.⁵⁴ Few working class and young people have been seen at demonstrations.⁵⁵

As a democracy, the people are voting in their government representatives. Maybe the majority of Poland wants the government's influence. If that is their prerogative, then the country has the right to vote for an administration that will fulfill their preferences. It will be interesting to watch the EU's reaction to the implementation of this amendment. Even if all of the Polish people were in agreement about waiving their freedom of speech in broadcast media, the government's decision to breach the freedom of people is against the EU's human rights policies. The EU may ban Polish voting rights within the EU. Since the amendment's signing, it appears Poland is not concerned with the EU threats because the administration believes their actions to be completely lawful and are meant to help increase nativism throughout the country.

Further, the U.S. has also voiced their concerns. It seems much more likely for Poland to react to the EU response than to the U.S. Poland's recent media decision could harm their relations with democratic countries. As the amendment has only been in effect for less than a year, it is difficult to gauge how concerned, if at all, Poland is in regards to the future of their State relationships. The Polish government is presenting a united front in support for their recent decisions, but the EU, nor any individual State has made any extreme change in their relationship with Poland. If Poland continues to form laws that contradict their Constitution, thus disregarding the democratic process, Poland's foreign relations are at high risk of becoming negative.

54. *Id.*

55. *Id.*

