

Warsaw, 3rd December 2020

The years 2015-2020 will be recorded in the history of Poland as the greatest rollbacks in human rights protection since 1989. The ruling party, despite the lack of a sufficient majority to amend the Constitution, has introduced several changes to the state system, thereby putting at risk the protection of the rule of law and the principle of tripartite governance. By aligning legislation with political objectives, the rule of law, which is at the heart of democratic systems, has been replaced by a rule using the law.

The steps taken by the ruling majority have led the members of Law and Justice to a hostile takeover of prosecution, Constitutional Tribunal, and a gradual decrease in the level of protection of judicial independence.

By using disciplinary sanctions, disciplinary proceedings or threats of initiating such proceedings, the ruling majority sends a signal to all Polish judges that they are not safe. They send a message that judges verdicts might be analyzed in any moment in search of irregularities, enabling the disciplinary commissioner or public prosecutor to initiate disciplinary proceedings or criminal proceedings against particular judges. The legal and policy changes concerning judiciary are accompanied by on-going smearing campaign against judges run by the public media

The fundamental changes in the area of the judiciary have not left the system for the protection of human rights unaffected. They had created a huge, systemic gap leading to a situation in which no one in Poland is safe and cannot be sure that his basic human rights will be protected.

This phenomenon was assisted by the ruling majority efforts to limit the independent control of the government. We have witnessed stigmatisation of non-governmental organisations and cutting off their funding. Political influence on public media modified its profile shifting it from a source of information to a tool of government's propaganda. Budget cuts weakened the Commissioner for Human Rights office, one of the last truly independent state actor.

All of those steps had specific aims. To strengthen the powers of government, establish mechanisms of its influence on other actors, to weaken their resistance, as well as to encourage the opportunism and conformity of others.

In the result of these so-called reforms, Poland has crossed the thin red line differentiating the states based on the rule of law principle and those who are rejecting its meaning. The law has been instrumentalised and used as a tool to subject other branches of power.

This might be illustrated by actions of the Constitutional Tribunal established in the Constitution of Poland as the only body competent to assess the constitutionality of statutes adopted by Sejm.

Currently, the Constitutional Court is a body loyal to the governing majority and no longer performs its role of an independent institution of the check and balances mechanisms. The CT has been used to rubber-stamp the most controversial elements of the so-called reform of judiciary system and as a convenient ally to the ruling majority whenever there is a need to put the certain discussion on hold (like e.g. the case of the Stambul Convention).

It is also used as a way to reduce tensions in the ruling majority on one hand, and on the other to avoid negative consequences (e.g. social protests or media interest) of recognizing the issue in the Parliament and adopting specific law. This happened particularly in the case of access to legal abortion.

In this case, the Constitutional Tribunal for months has been delaying the recognition of a motion of the ruling party members. The judges were told that the motion cannot be recognized due to upcoming

elections. After the presidential election, in the middle of the pandemic, when Poland was observing a peak in the COVID infections, the Tribunal finally delivered the judgement. It ruled that women in Poland are not allowed to terminate their pregnancy due to embryopathological reasons, which means that they are forced to give births to children who do not have a chance to live. This is a violation of human rights standards.

The judgement of the Constitutional Court raised a powerful resistance of Poles. Hundreds of thousand Poles gathered in spontaneous, peaceful assembly to present lack of their objection to the violations of woman rights.

After a few days of peace, Mr Jarosław Kaczyński, leader of the ruling party, accused the opposition parties of supporting the protests, which in his opinion resulted in the growing number of COVID infections. He demanded Police take specific actions against the nation. The police quickly started to act firmly. Dispersed peaceful assemblies, identified participants of the protest and took steps to make them accountable for violating COVID restrictions.

In response to the protests, the government used an already trained method and decided not to publish the Tribunal's judgement in the promulgation journal. This prevented the judgement from coming into force. The same judgement, that was issued by the Tribunal shaped by the Law and Justice, with judges elected by Law and Justice, in response to the motions of Law and Justice members and probably with the consent of the ruling majority leader.

It proves that for our government there are no barriers. Shortly there is no chance that Poland will leave the European Union. That the government will organize a referendum, ask the nation etc. There will not be any formal PolExit or PolEnd. But our government will be weakening the Union, by gradually demolishing system of cooperation, undermining mutual trust and common values. Constitutional Tribunal will be one of the tools used in this process. It is an open question to the other Member States and the Commission, as Treaties guardian, how they will respond to this threat.