

The rule of law crisis in Poland

Since late 2015, Poland has been facing an on-going rule of law crisis. The governing majority, Law and Justice, adopted a number of bills that threaten Polish constitutional democracy, stability and in effect, the system of protection of human rights. The governing majority aims at changing the entire system of the state in violation of the Polish Constitution.

The Independence of the Judiciary

The governing majority has implemented numerous changes that affect the key institutions of the justice system, violate its independence and broaden political control over them:

- The Constitutional Tribunal – the Tribunal is a key element of the system of checks and balances. After adoption of six different Acts concerning the Tribunal, the governing majority has managed to take political control over this institution making it ineffective in the process of judicial review.
- The National Council of the Judiciary in Poland – the Council is a constitutional body responsible for protecting the independence of judges and courts. As a result of changes adopted in 2017, the Parliament gained almost exclusive competence to elect new members of the Council, and in consequence, gained control over the process of appointing new judges of the common courts, in contradiction to the Polish Constitution.
- The Supreme Court – the Court plays a crucial role in sustaining the independence of the justice system in Poland by supervising the works of the lower instance courts in terms of judicial control. Furthermore, the Court confirms the validity of parliamentary and presidential elections. In late 2017, the governing majority changed the Act on the Supreme Court which allowed the unconstitutional dismissal of almost 40% of sitting judges from the Court, including the First President of the Supreme Court, whose term of office is fixed in the Constitution. Eventually, after the interim measure issued by the European Court of Justice, the governing majority abolished these provisions. Nevertheless, the proceeding before the European Court of Justice concerning the violation of the EU law by the new Act on the Supreme Court is still on-going.
- Common courts - in 2017, the governing majority adopted changes which allow the Minister of Justice/Prosecutor General to dismiss and replace the presidents and deputy presidents of all common courts on the basis of his discretionary decision.

Freedom of the Media

The public media remain under complete political control and their role has been reduced to publicizing the official narrative of the authorities.

- Public media - the governing majority changed the media law in a way that gave the government (and later the special council composed of the representatives of the Parliament) the power to dismiss the members of the supervisory boards and directors of the public media channels. Within a couple of days since this law came into power, all the members of the

supervisory boards and all directors of the public media channels were dismissed. In the aftermath of these changes, it is estimated that between 150 and 200 journalists were dismissed from public media.

- Private media - the governing majority has been also working on draft legislation changing the status of the private media, however none of the draft reforms have been published yet.

Civil Society Organisations

Polish civil society organizations are facing numerous challenges related to laws and policies limiting their scope of activity and undermining their independence.

- Funds for civil society – certain civil society organisations supporting migrants and refugees as well as victims of domestic violence were cut from access to public funds for NGOs which forced them to significantly limit their work and support provided to people relying on their help,
- Limitations on advocacy activity – in 2018, the governing majority adopted new provisions introducing civil remedies for tarnishing the reputation of the Republic of Poland. This law may lead to hampering the work of NGOs that routinely provide vital information to the European Union, United Nations and other international organisations.

International Problems

By weakening the independence of judiciary and undermining effectiveness of the system of checks-and-balances, slowly yet persistently the Polish governing majority has been squandering the position of Poland as a leader of democratic change and human rights protection in the region. Poland, as a member of the international democratic community, must fulfil its duties in creating the democratic system of the state based on the rule of law and human rights protection. Recognising the fact that democratic backsliding is not an internal problem of a given country, but it may bring a greater influence on the regional or global cooperation between states, the international community, should closely monitor the situation in Poland and encourage it to restore the full safeguards to the rule of law and human rights.

To find more information concerning the situation of judiciary and civil society organizations please find Annexes 1 and 2 attached to this brief.

