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Rule of Law - Recent Developments in Poland¹

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 managed to take political control over this institution ensuring that the process of judicial review by this body is entirely ineffective.
- 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 violation of the Polish Constitution.
- The Supreme Court – the Court plays a crucial role in sustaining the independence of the justice system. It is tasked with supervising the works of the lower instance courts. Furthermore, the Court confirms the validity of parliamentary and presidential elections. In late 2017, the governing majority changed the Act on the Supreme Court to allow the unconstitutional dismissal of almost 40% of sitting judges, including the First President of the Supreme Court, whose term of office is fixed in the Constitution.
- Common courts – in 2017, the governing majority adopted changes which give the Minister of Justice/Prosecutor General discretion to dismiss and replace the presidents and deputy presidents of all common courts without reason.

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 to give the government (and later the special council composed of the representatives of the Parliament) power to dismiss members of the supervisory boards and directors of public media channels. Within a couple of days, all members of the

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supervisory boards and all directors of the public media channels were dismissed. An estimated 150 and 200 journalists were dismissed on the basis of this law.

- 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.
- In November 2017, the National Broadcasting Council fined a foreign – U.S.-owned TV station \$414,000 for “promoting illegal activities” because it broadcasted a protest of government policy. However, after a couple weeks later, the Council revoked its decision.

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 – recently, the governing majority adopted new provisions introducing civil remedies for tarnishing the reputation of the Republic of Poland. This law may hamper the work of NGOs that routinely provide vital information to the European Union, United Nations and other international organisations. The U.S. Department of State stated that “[if enacted] this draft legislation could undermine free speech and academic discourse”.

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 squandered its positions a leader of democratic change and human rights protection. As a member of the international democratic community, Poland must fulfill its international obligations to maintain the foundations of a democratic system based on the rule of law and human rights protection. Recognising that democratic backsliding is not an internal problem of a given country, but 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. U.S. stakeholders should consider specific steps to address the on-going crisis in Poland:

- The U.S. Congress should adopt a resolution addressing the rule of law crisis in Poland. The resolution should refer to the threats to the rule of law posed by the changes in functioning of the judiciary system, threats to the freedom of expression posed by the changes in public media and recently adopted regulations as well as weakening the protection of the democratic state which results from these changes.
- The U.S. authorities should address their Polish partners in both formal and informal ways, expressing concerns regarding the deepening violations of the rule of law in Poland. Furthermore, the U.S. administration (including the U.S. Embassy in Poland) should follow-up on these calls by responding in a timely manner publicly each time the Polish government makes a serious step that threatens the rule of law or the protection of human rights.
- U.S. Government officials should raise threats to rule of law in bilateral talks and in the frame of joint initiatives with their Polish counterparts. at every opportunity including meetings of the Security Council, at the NATO Summit, and NATO Parliamentary Assembly where both will be present. The U.S. should consider proposing a Rule of Law-type framework within the NATO body.

All U.S. interventions addressing the situation in Poland should be pro-Polish, and support Polish democracy on the international stage. Our history proves that Poles are a profoundly democratic Nation. All interventions should demonstrate support for the legal safety of the Polish Nation and Polish citizens, against governmental actions that do not respect the basic principles of constitutional democracy and human rights.