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## **Backdrop of Constitutional Crisis in Poland**

This paper discusses selected changes serving as a backdrop to events concerning the election of Constitutional Court judges and amendments to the Constitutional Court Act. While this backdrop bears no direct impact on Constitutional Court-related developments, it does outline the overall political climate and condition of public life in Poland.

### Table of content

1. Political context	2
2. The pardon power of the President in Mariusz Kamiński case	2
3. Prosecution Services Act	3
4. Amendment of the Civil Service Act	3
5. Amendment of the Radio and Television Act	4
6. Deterioration of lawmaking process	4
7. Positions taken by legal communities and authorities with regard to constitutional court-related events	6
A. General opinions	6
B. Opinions indicative of the duty of the president of the Republic of Poland to accept the oath taken by judges appointed by the Sejm under the previous term:	8
C. Opinions concerning the content and course of amendment proceedings for the constitutional court act of November 19th 2015	8
D. Opinions concerning the obligation to publish the related constitutional court judgment of December 3rd 2015 without undue delay	9
E. Opinions concerning legal provisions introduced by virtue of amendments to the constitutional court act of December 22nd 2015	9
8. Public statements of the Representatives of the state authorities and the ruling party on The Constitutional Tribunal	10
A. Statements regarding the validity of the judgements made by the Constitutional Tribunal	11
B. Statements regarding the role of the Constitutional Tribunal in the system	12
C. Statements regarding the political involvement of the Tribunal judges	13

## 1. Political context

On May 10<sup>th</sup> and 24<sup>th</sup> 2015, the two respective rounds of presidential elections were held in Poland. Andrzej Duda, the Prawo i Sprawiedliwość (Law and Justice, hereinafter referred to as "PiS") party candidate, came out victorious. The electoral process triggered no controversy, its validity confirmed by the Supreme Court. On July 20<sup>th</sup> 2015, Andrzej Duda took the presidential oath before the National Assembly, and took office as the President of the Republic of Poland.

On October 25<sup>th</sup> 2015, parliamentary elections were held in Poland, constituents electing members of both houses: the Sejm (lower house) and the Senate. The Law and Justice Electoral Committee won with 235 seats (51%) and 61 seats (61%) in the Sejm and Senate, respectively.

On November 13<sup>th</sup> 2015, President of the Republic of Poland Andrzej Duda appointed Law and Justice representative Beata Szydło as Prime Minister (President of the Council of Ministers). Three days later, the Sejm passed a vote of confidence in the newly appointed cabinet.

Since that day, **practically all legislative and executive power in Poland remains with representatives or supporters of the Law and Justice party.** For the first time in 26 years – ever since the socialist system in Poland collapsed – a single party received a sufficient number of votes allowing for independent lawmaking (acts of law), excepting amendments to the Constitution (the process requires a two-thirds majority in the Sejm).

Once the new authorities were formed, **an intense process of "good change"** – to quote representatives of the ruling party in their reference to the key reform package – commenced. Reform is to result in the creation of a "strong, solidarity-based state". PiS believes the objective shall require a consolidation of state structures, and a more just (more equal) distribution of benefits offered by Poland's economic development.

Beata Szydło's cabinet is the seventeenth government since the system transformation in Poland (in 1989). President Andrzej Duda is the sixth President of the Republic of Poland. Nonetheless, changes to Polish public life introduced by current authorities are **unprecedented in the perspective of the past twenty-five years, both in terms of the law-changing process and direction and of the overall direction of changes to public life standards.**

## 2. The pardon power of the President in Mariusz Kamiński case

On November 16<sup>th</sup> 2015, President Andrzej Duda – exercising his prerogatives as head of state – pardoned Mariusz Kamiński, Law and Justice activist and former head of the Central Anti-Corruption Bureau. In March 2015, Mariusz Kamiński was sentenced by a court of law to three years of imprisonment and a ten-year ban on holding public office. He filed an appeal; yet before review by a court of second instance, i.e. when Kamiński had still been recognised as innocent and non-convicted, he was pardoned by President Andrzej Duda. "(...) I decided to thus relieve the justice system of the case (...)", President Andrzej Duda explained.

The act of pardon as well as the related explanation of its circumstances caused turmoil in legal circles. Not only was the President accused of having broken the law with regard to the act of pardon itself (only a person convicted under a final judgment can be pardoned), he

also violated the rule of tripartition of power by interfering with areas reserved for the judiciary.

Notably, Mariusz Kamiński – convicted for having **exceeded his powers with relation to his position** at the Central Anti-Corruption Bureau (forming part of the special forces structure) – was appointed **Minister Co-ordinator of Special Forces** as of November 18<sup>th</sup> 2015.

### 3. Prosecution Services Act

On January 28<sup>th</sup> 2016, the **Sejm of the Republic of Poland** – with votes cast by the Law and Justice party and nearly all oppositionist MPs voting against (236 votes against 209) **passed the Prosecution Services Act**. New legal solutions include the following, among others:

- The Minister of Justice and Prosecutor General offices shall be combined,
- **The authority of the Prosecutor General shall be expanded** – he or she will be authorised to interfere with all and any prosecution proceedings in the country,
- Requirements for the Prosecutor General office shall be reduced: the office shall be open to practically any non-convicted law school graduate,
- The set terms of office of circuit and district prosecutors shall be cancelled: they will be appointed and dismissed by the Prosecutor General under random conditions.

According to non-governmental organisations, the changes as planned may result in the politicising of prosecution services, and prove detrimental to rights of parties to criminal proceedings and to the integrity of the same. The Helsinki Foundation for Human Rights has already suggested that solutions adopted may cause “risk to prosecutor availability”.

### 4. Amendment of the Civil Service Act

On January 7<sup>th</sup> 2016, President Andrzej Duda signed the law of January 30<sup>th</sup> 2016 amending **the Civil Service Act**. **The law shall apply to 1,600 management positions in government administration**. Under the aforementioned law:

- All former directors and their deputies at ministries, voivodship (regional) authorities, and other institutions reporting to the government will **lose their jobs**,
- **Open and transparent competitions concerning aforementioned positions will be cancelled**, to be replaced by simple civil servant appointment and dismissal procedures,
- The candidate requirement of no party membership over a term of five years preceding the date of applying for the head of civil service office and for all director positions shall be cancelled,
- Candidate requirements will be lowered. A person with no previous managerial experience will be able to apply for the position of a director with a ministry or other governmental administration authority.

Civil servant and legal communities suggest that such changes will result in the politicising of administrative structures and with decision-making positions being manned with individuals loyal to the ruling party (while not necessarily competent). They further declare that **changes currently in progress may be a blow to the integrity, impartiality, and political neutrality of public officials as guaranteed in Article 153 of the Constitution of the Republic of Poland.**

## 5. Amendment of the Radio and Television Act

On January 7<sup>th</sup> 2016, **President Andrzej Duda signed the law of December 30<sup>th</sup> 2015 amending the Radio and Television Act.** It was enacted as of the day following the day of its publication.

Non-governmental communities pointed to the unconstitutionality of the new legal provisions, and to the related threats to public media pluralism, i.a.:

- **Increased dependence of public media on the government** (Minister of Treasury),
- The National Broadcasting Council – i.e. the organ “safeguarding the freedom of speech, the right to information, and public interest in radio and television” under Article 213 of the Constitution of the Republic of Poland being deprived of its right to hold competitions for supervisory council and management board seats on public radio and television,
- Liquidation of terms of office for public media authorities, and of open and transparent competitions for positions in public media authorities, making those in media authority even more dependent on political will.

The enactment confirmed all concerns: over just a few days, authorities of the Polish Radio and Polish Television were replaced; many information service publishers, journalists and presenters were laid off, their positions filled with Law and Justice activists, members, and supporters.

All motives were clarified by Ryszard Terlecki, Deputy Speaker of the Sejm and chairman of the Law and Justice parliamentary club. On December 29<sup>th</sup>, he declared, **“If the media think that they can engage Poles in criticism of our changes over the coming months, this has to be stopped.”**

## 6. Deterioration of lawmaking process

As of the moment of Law and Justice assuming power, lower standards of its exercising were coupled with deterioration in lawmaking culture. For example:

- By virtue of a Sejm resolution of November 12<sup>th</sup> 2015, Law and Justice caused a Deputy Speaker of the House representing Polskie Stronnictwo Ludowe (PSL, Polish Peasant Party) not to be elected. Thus the Polish Peasant Party was deprived of a representative in the Presidium of the Sejm, albeit formerly followed customs and standards ensured that all parliamentary clubs were represented.
- On November 13<sup>th</sup> 2015, Law and Justice votes amended Article 138 of Rules and Regulations of the Sejm of the Republic of Poland, which provided for a nine-person

membership of the Sejm Committee for Special Forces (the number was reduced to seven), and guaranteed a semi-annual change of the chairperson. Thus, the Polish Peasant Party has no representative of its own on this Committee (a body of key importance to rule of law), representatives of the opposition having practically lost all opportunity of chairing the Committee for Special Forces – whereas such opportunity had been recognised as good practice for many years.

- The government are in violation of legislative principles contained in the Rules and Regulations of the Council of Ministers. These Rules and Regulations provide that all governmental draft legislation shall be published on the Government Legislation Centre website, and undergo a transparent process of inter-governmental and public consultation. Moreover, all such drafts shall be expanded to include an assessment of social, financial, and legal results of their passing. In reality, the government are filing all their draft legislation with the Sejm labelled as parliamentary drafts, which means that none of the aforementioned conditions have to be met. Of the 77 (seventy-seven) drafts processed or passed by the Sejm of the current term, 58 (fifty-eight), or 75 percent, have been submitted as parliamentary proposals. All draft legislation in violation of the constitutional rule (laws regarding the Constitutional Court, civil service, public media, prosecution services, surveillance) was drafted by the government and passed as parliamentary drafts.
- Furthermore, premises have arisen in justification of claims that Law and Justice representatives with special parliamentary functions have been exceeding their authority. On January 27<sup>th</sup> 2016 during a vote concerning an amendment to the Prosecution Services Act by the Sejm Committee for Justice and Human Rights, the Committee's Chairman Stanisław Piotrowicz announced a repeated vote once he noticed that some Law and Justice members had been voting against the party's programme line. That was no isolated case: on December 21<sup>st</sup> 2015, a closed voting procedure was repeated to achieve a result conforming to the ruling party's expectations.
- Non-governmental organisations – watchdog organisations included – have also expressed their concern with regard to frequent (not justified by any extraordinary circumstances) nocturnal Sejm sessions, to exceedingly rapid legislative procedures, and to the constant shortening of the *vacatio legis* period for laws passed. Fundamental system changes are being enacted without any *vacatio legis*, immediately upon publication. Of the thirty-three (33) laws resolved as of mid-November 2015 through late January 2016, eleven (11) came into force as of the date of publication or the next day, 2 (two) – within three days, 4 (four) – within seven days, 12 (twelve) – within fourteen days, 2 (two) – within three weeks, and 2 (two) – within three months, respectively.

In light of the above (selected) cases, one can hardly be an optimist and conclude that the irregularities we identified with regard to the process of appointing new Constitutional Court judges and amending the Constitutional Court Act are a mere coincidence rather than a prelude to new authority and lawmaking standards in Poland.

## **7. Positions taken by legal communities and authorities with regard to constitutional court-related events**

### **A. General opinions**

The case of the President of the Republic of Poland having failed to accept the oath to be taken by Constitutional Court judges elected by the Sejm (lower house of the Polish Parliament) under the previous term, the issue of appointing new judges, and the matter of exceedingly hasty November and December amendments to the Constitutional Court Act reverberated across legal communities: from councils of university law departments, law corporations, and judicial federations to individual lawyers with considerable professional authority. The following organisations and individuals drafted and published critical opinions concerning actions taken by public authorities, and/or expressing concern with regard to Constitutional Court-related events:

- National Council of the Judiciary of Poland, Polish Bar Council, Human Rights Committee of the Polish Bar Council, National Council of Legal Advisors, Iustitia Association of Polish Judges, Convention of Professional Governance Organisations and Law Associations, Assembly of Judicial Representation of Łódź Appellate Courts, General Judicial Assembly of Szczecin Appellate Courts;
- General Assembly of the Polish Academy of Sciences (the Academy hereinafter referred to as “PAN”), PAN Committee on Legal Sciences, PAN Committee on Ethics in Science; Scientific Council of the PAN Institute of Legal Studies;
- Senate of the University of Warsaw, Council of the Law and Administration Department of the University of Warsaw, Council of the Law, Administration and Economy Department of the University of Wrocław, Council of the Law and Administration Department of the Adam Mickiewicz University in Poznań, Council of the Law and Administration Department of the Silesian University in Katowice, Council of the Law and Administration Department of the Jagiellonian University in Cracow, and (indirectly) the Senate of the Jagiellonian University, who refused to waive a resolution of the Council of the Law and Administration Department summoning the President of the Republic of Poland to respect the constitutional order;
- Moreover, criticism was offered by four former Constitutional Court Presidents: Marek Safjan, Jerzy Stępień, Bohdan Zdziennicki, and Andrzej Zoll;
- Legal steps to express refusal to accept actions taken by the Sejm and President of the Republic of Poland with regard to judiciary appointments in the Constitutional Court were also initiated by the Senior President of the Supreme Court and by the Ombudsman;
- Furthermore, numerous non-governmental organisations active in monitoring the rule of law in Poland for many years proclaimed their objections to actions they believe to be detrimental to the legal order and authority of the Constitutional Court.

The high number and diversity of aforementioned opinions, expert comments, and appeals addressing Polish authorities notwithstanding, numerous arguments and phrasing choices are similar. In particular, the legal community wish to emphasise that given the key role of the Constitutional Court in the Polish legal order, any interference in its operations – and actions paralysing the Court’s work in particular – are a blow to the very foundations of the Polish political system, to the extent of the Constitution of the Republic of Poland being

suspended. Given such backdrop information, an intervention by Professor Marek Safjan, judge of the European (Union) Court of Justice and former President of the Constitutional Court, seems particularly sonorous.

*"(...) the importance of a constitutional court to any regular state seems to have been neglected. Constitutional courts have been devised to limit powers of a parliamentary majority by outlining boundaries within which such powers may operate. Constitutional courts have been established in the wake of Nazi and totalitarian experience in Europe. They were a response to a claim that a democratically elected majority may do anything. A scrutiny of the current attack on the Constitutional Court may suggest that that its ultimate purpose is to annihilate a mechanism standing between the majority and its omnipotence."*

- excerpt from an intervention by Professor Marek Safjan, judge of the European (Union) Court of Justice, former President of the Constitutional Court

Furthermore, positions taken by such bodies as the Committee on Legal Sciences of the Polish Academy of Sciences and the National Council of Legal Advisors serve to emphasise that the Constitutional Court case should not be perceived as a set of events relating to that institution only, but in a broader, general context – also in the context of other controversial developments both the Sejm and the President of the Republic of Poland have become part of (such as the pardoning of Mariusz Kamiński).

*"(...) recently intensifying phenomena directly concerning the Constitution of the Republic of Poland and the current rule of law prove violations to system principles, such as the division of power and the independence of judges and the judiciary. (...)*

*The Committee (...) wishes to highlight a threat of changes to the fundamental rule of the division of powers, which may result in changes to the overall political system of the Republic of Poland. The constitutional judiciary apart, the constitutional division of power (as a rule and system practice) forms the most important mechanism serving the purpose of blocking authoritarian tendencies. Any interference of legislative and/or executive authorities in areas reserved for the judiciary is particularly unacceptable".*

- excerpt from a position expressed by the Committee on Legal Sciences of the Polish Academy of Sciences on November 25th 2015

*"It is with sorrow that we have observed cases proving disrespect for rules and values expressed in the Constitution of the Republic of Poland, acts of said disrespect comprising the following:*

- *Questioning the foundations of the system of the Republic of Poland which base on the division and balance of legislative, executive, and judiciary powers,*
  - *Undermining the independence of judges and the judiciary;*
  - *Depreciating the system position of the Constitutional Court and its judgments.*
- (...) such behaviour jeopardises the position of the Republic of Poland in the democratic family of nations."*

- excerpt from a position of the National Council of Legal Advisors of December 12th 2015

Numerous opinions and positions presented are a detailed reference to specific facts: such as the refusal by the President of the Republic of Poland to accept the oath of Constitutional

Court judges elected by the Sejm under the previous term, controversies concerning the publication of the Constitutional Court judgment of December 3rd 2015, and the two hasty procedures to amend the Constitutional Court Act.

Selected opinions have been quoted below:

**B. Opinions indicative of the duty of the president of the Republic of Poland to accept the oath taken by judges appointed by the Sejm under the previous term:**

*"(...) No circumstance can be quoted as justification for precluding the possibility of taking oath by judges elected by the Sejm of the Republic of Poland (...). The fact of a motion to examine the constitutionality of the new Constitutional Court Act having been filed with the Constitutional Court shall not be recognised as such circumstance. Indubitably, the Act shall be assumed constitutional until declared as non-conforming to the Constitution by virtue of a Constitutional Court judgment. (...)"*

- excerpt from the position of four former Constitutional Court Presidents:  
Marek Safjan, Jerzy Stępień, Bohdan Zdziennicki, and Andrzej Zoll;

*"(...) we hereby express our disapproval of the delay by the President of the Republic of Poland in accepting the oath of Constitutional Court judges elected by the Sejm as of October 8<sup>th</sup> 2015.*

*We believe that regardless of any evaluation of legal provisions under which the Sejm of the previous term elected judges to the Court, no delay in the application of such provisions shall be countenanced, and neither shall a refusal to apply the same. (...) Furthermore, it is unacceptable to void a judicial election under any act of law with retroactive effect. All aforementioned rules constitute principles of a democratic state of law."*

- excerpt from position No. 5/2015 of the Convention of  
Professional Governance Organisations and Law Associations

*"The (...) President's refusal to accept the oath to be taken by three Constitutional Court judges elected as of October 8<sup>th</sup> 2015 in particular evokes considerable objection."*

- excerpt from resolution No. 1/12/2015 of the Council of the Law and Administration  
Department of the University of Warsaw

**C. Opinions concerning the content and course of amendment proceedings for the constitutional court act of November 19th 2015**

*"The National Council of the Judiciary of Poland hereby expresses its firm disapproval of proceedings as conducted (...). The very core and essence of the legislative process, and of provisions of Article 2 of the Constitution of the Republic of Poland, have been violated.*

*Under Article 186 of the Constitution of the Republic of Poland, the National Council of the Judiciary of Poland shall be entrusted with safeguarding the independence of courts of law and of the judiciary. The aforementioned constitutional competence provides the Council with authority to comment on all and any matters related, opinions concerning draft legislation included. (...)*

*Legislative authorities applied to the Council for its position as of November 17<sup>th</sup> 2015, i.e. on the date of the draft legislation having been submitted for the first reading in Sejm session.*



*The Sejm resolved to amend the Constitutional Court Act as of November 20<sup>th</sup> 2015. (...) It was impossible for the National Council of the Judiciary of Poland to provide their opinion within a single day. (...)*

- excerpt from the position of the National Council of the Judiciary of Poland of November 24<sup>th</sup> 2015

*"(...) The law to amend the Constitutional Court Act of November 19<sup>th</sup> 2015 signed by the President cannot be reconciled against rules of a democratic state of law, as it is in violation of such requirements as legalism, irremovability of judges, and preclusion for any law to have retroactive effect. Such developments undermine confidence in the Constitutional Court, depriving the Polish state of a lead institution ensuring fundamental rights protection."*

- excerpt from resolution No. 303/XI/2015 of the Council of the Law and Administration Department of the Jagiellonian University in Cracow

*"We believe that ending terms of office for the President and Vice-President of the Constitutional Court by virtue of an act of law, and introducing new proceedings of electing judges to these offices will become tantamount to increased influence of the executive authority on the Constitutional Court, a phenomenon which cannot be reconciled with the independence and distinctness of the judiciary. (...)*

*Circumstances of Sejms of two consecutive terms engaging in a law-and-resolution battle (...) will definitely give rise to a public conviction that the Constitutional Court is a political authority (...) which in turn will spell a downfall of the Court's legal and moral authority (...)"*

- excerpt from position No. 5/2015 of the Convention of Professional Governance Organisations and Law Associations

#### **D. Opinions concerning the obligation to publish the related constitutional court judgment of December 3<sup>rd</sup> 2015 without undue delay**

*"The Committee (...) hereby expresses profound concern with regard to the position expressed by the Head of the Chancellery of the President of the Council of Ministers, giving rise to serious doubt as to the possibility of publishing the Constitutional Court judgment of December 3<sup>rd</sup> 2015 (...).*

*(...) the lack of immediate publication (...) undermines the valid legal order of the Republic of Poland, and violates the solemnity of the Constitutional Court as an institution (...)"*

- excerpt from resolution of the Human Rights Committee of the Polish Bar Council

*"(...) The Council hereby object to making the publication of Constitutional Court judgments dependent on their assessment by executive authorities".*

- excerpt from resolution No. 149/XII2015 of the Council of the Law, Administration and Economy Department of the University of Wrocław

#### **E. Opinions concerning legal provisions introduced by virtue of amendments to the constitutional court act of December 22<sup>nd</sup> 2015**

*"The draft law assumes (...) that in the majority of cases, the Court shall proceed with all members present, i.e. thirteen judges. (...) Judgments are to be passed with a two-third majority of votes (...).*

Such circumstances (...) will actually result in a paralysis of Constitutional Court works: the Court will not be able to review all cases filed within a reasonable timeframe. The development cannot be perceived as anything other than a blatant violation to civic rights and freedoms, the right to fair court trial included (...).

Draft authors have failed to recognise the obvious lack of axiological justification of Court judgments being passed with all judges present, especially in cases of lesser importance, such as the conformity of ordinances with acts of law. Nonetheless and primarily, the requirement of passing decisions with a two-thirds majority is obviously inconsistent with Article 190 clause 5 of the Constitution. (...) will deprive the Court of any option of effective adjudication. (...)

Furthermore, the removal of Article 16 of the Constitutional Court Act has been recognised as unjustified as well. Under said Article, Constitutional Court judges shall when serving in office be independent and remain subject to provisions of the Constitution only. (...)"

- excerpt from an opinion of the Senior President of the Supreme Court of December 16<sup>th</sup> 2015, signed by Professor Małgorzata Gersdorf, Ph.D. Hab.

*[we wish to hereby express] "(...) firm objection to the parliamentary draft law of December 16<sup>th</sup> 2015 amending the Constitutional Court Act (...); said amendment may become an obstacle, causing paralysis to the work of a major constitutional authority (...), and the resulting violation of Article 10 of the Constitution, according to which the democratic political system of the Republic of Poland shall base upon the division and balance of powers. (...)*

*[the suggested] "(...) requirement that the Constitutional Court shall in principle review cases with all thirteen judges present will cause a major extension of the waiting time for final conclusions. Furthermore, this may prove a major issue whenever individual judges need to abstain from adjudicating, (...) or be absent for reasons of sickness or force majeure. (...) under the current factual and legal status, only ten Constitutional Court judges are fully and indubitably authorised to adjudicate. (...) Under such circumstances, the introduction of a principle of adjudication with all thirteen judges present may lead to an actual paralysis in Court operations. (...)*

*Attempts to introduce changes of fundamental importance to the system overnight and without extensive public consultation or necessary consideration are inconsistent with rules of decent legislation; more importantly, they jeopardise public trust in the state (...)."*

- excerpt from the position of the Iustitia Association of Polish Judges of December 17<sup>th</sup> 2015

## **8. Public statements of the Representatives of the state authorities and the ruling party on The Constitutional Tribunal**

Ever since late November 2015, members of the public in Poland have focused on the swearing in of the new Constitutional Tribunal judges by the President of Poland, and on the amendments to the Constitutional Tribunal law. Also the media have given much attention to that topic. Presented below are selected statements made by prominent representatives of state authorities and of the ruling party (together with Kukiz'15, the coalition party), addressed to the media or to the public.

It needs to be noted that the statements form a coherent narrative; by extension, they influence the public discourse and shape the public opinion in a specific manner. Certain common themes may be observed:

- A. statements that **challenge the validity (binding nature) of the rulings made by the Constitutional Tribunal**, and their importance in view of current developments
- B. statements that **undermine the social mandate of the Constitutional Tribunal** and its role in the Polish system,
- C. critical statements addressed to the current members of the Constitutional Tribunal due to their alleged political involvement, and – by extension – lack of objectivism; statements **implying that the Tribunal will thwart the reforms** desired by a significant part of the society.

**A. Statements regarding the validity of the judgements made by the Constitutional Tribunal**

*“It would be incorrect to think that the Constitutional Tribunal gave me clear guidelines for the swearing in of the judges. Such an interpretation of law is currently represented by many opposition politicians and journalists, and it is incorrect. I am saying that also as a lawyer.”*

**Andrzej Duda, President of Poland**

Interview for “Der Spiegel” weekly, 25 December 2015

<http://www.prezydent.pl/aktualnosci/wypowiedzi-prezydenta-rp/wywiady/art,33,wywiad-dla-tygodnika-der-spiegel.html>

[pursuant to article 194 of the Constitution] *“the Constitutional Tribunal is composed of 15 judges. And at the moment, there are 15 judges. (...) Everyone who says that he [the President] should appoint new judges, wants the President to breach the Constitution. The President won’t do that.”*

**Andrzej Duda, President of Poland**

TVP Info, „Dziś wieczorem”, 2 February 2016

A statement made with reference to the judgment of the Constitutional Tribunal in which the Tribunal held that the President is obliged to swear in the Tribunal judges who had been elected by the previous Sejm: *“As regards the today’s ruling of the Constitutional Tribunal, I wish to say that its value is primarily historical as it refers to a legal situation that has undergone a major change in recent days.”*

**Marek Kuchciński, Speaker of the Sejm**

Statement of 3 December 2015

<http://www.sejm.gov.pl/Sejm8.nsf/komunikat.xsp?documentId=A87DC2997352B6D2C1257F10005A1932>

*“The publication of the Constitutional Tribunal’s ruling of 3 December has no impact on the decision of President Andrzej Duda who did not swear in the Constitutional Tribunal judges elected by the previous Sejm.” (...) “They [the Sejm resolutions passed in October] do not exist*

under law. The only ones that exist are the recent ones, whereby the Sejm elected five judges.”

**Andrzej Dera, Secretary of State, Chancellery of the President of the Republic of Poland**

16 December 2015 for the Polish Press Agency

“... The Tribunal breached Article 7 of the Constitution of the Republic of Poland. In effect, the judgement is invalid, in my opinion. The foregoing gives rise to serious doubts as to the possibility of publishing the said judgement in the Journal of Laws of the Republic of Poland.”

**Beata Kempa, the head of the Chancellery of the Prime Minister of Poland, In the letter of to the President of the Constitutional Tribunal**

10 December 2015, regarding Constitutional Tribunal’s judgement of 3 December 2015

<http://www.polskieradio.pl/5/3/Artykul/1556365,Pismo-szefowej-KPRM-do-prezesa-Trybunalu-Konstytucyjnego-upublicznione-przez-TK-dokumentacja>

“A ruling of that type must not be published in any case. Because its legal status is absolutely unclear, to say the least (...). This ruling is questionable, to the greatest extent possible, also for procedural reasons.”

“I hope that the Speaker of the Sejm will approach the Tribunal pursuant to the Civil Procedure Code, and request annulment of that judgement...”

**Jarosław Kaczyński, chairman of Law and Justice**

Telewizja Republika, W punkt, 11 December 2015

[https://www.youtube.com/watch?v=LCK\\_biZe\\_KU](https://www.youtube.com/watch?v=LCK_biZe_KU)

[this is not a judgment] These are merely opinions of the Tribunal – opinions of members of Constitutional Tribunal. (...) Tribunal may not comment on the choices made by the Parliament. “

**Ryszard Terlecki, MP, Deputy Speaker of the Sejm, Law and Justice**

## B. Statements regarding the role of the Constitutional Tribunal in the system

“The Constitutional Tribunal is a specific institution. It has enormous power, totally uncontrolled, and at the same time a very weak mandate. It is, in fact, a political body. (...) a party-ruled body. And that is absolutely unacceptable. And that is why it needs to be changed.”

“This is actually a post-communist institution, like the entire judicial system.”

**Jarosław Kaczyński, chairman of Law and Justice**

Telewizja Republika, W punkt, 25 November 2015

<https://www.youtube.com/watch?v=Kl5lz3FO4jY>

“The question is: who rules in Poland? Is it the democratically elected Sejm or is it the Constitutional Tribunal? The Sejm Deputies, members of the government are accountable for their actions to the citizens, for example during the next elections. And what is the

Ewa 16/3/2016 07:52

**Comment [1]:** Niejasne cytat czy nie cytat. Por. oryginalpolski

accountability of the Tribunal judges for their decisions? None. Even if they don't perform their basic duties properly."

**Andrzej Duda, President of Poland**

"wSieci", 23 January 2016

<http://www.wsieci.pl/wsieci-wywiad-z-prezydentem-pnews-2648.html>

"... what is the nature of that constitutional court (...) it is a very specific court, if the Constitutional Tribunal may be actually called 'a court'..."

"The power of that Tribunal is really enormous. It is not as much a constitutional court as a political court. (...) the third chamber of the parliament, with enormous power, with power to halt the changes."

**Zbigniew Ziobro, Minister of Justice**

Radio Maryja, Rozmowy Niedokończone, 4 December 2015

<https://www.youtube.com/watch?v=dikebA-zDu4>

"The Constitutional Tribunal frequently usurped the role of the third chamber of the Parliament, (...). We hope that thanks to the amendments to be made to the Act, the Constitutional Tribunal will not be, or will no longer be, the main body halting major political changes in Poland..."

**Stanisław Tyszka, MP, Deputy Speaker of the Sejm, Kukiz'15**

the 5th session of the Sejm, on 17 December 2015

### **C. Statements regarding the political involvement of the Tribunal judges**

"The evaluations [are] very general because those judgements are frequently based on a statement that something is in conflict with the idea of a state of law (...). This depends on the individual opinions, view, leanings of those judges. And let's say, they are of the view that the proposal to give 500 zlotys per each child is in conflict with the state of law principle for whatever reason, then it can turn out that the commitment passed by the Sejm, and by the Senate, and signed by the President – the commitment our government made to Poles – will be 'blown up'..., destroyed (...). Well, such a threat is very, very real..."

**Zbigniew Ziobro, Minister of Justice**

Radio Maryja, Rozmowy Niedokończone, 4 December 2015

<https://www.youtube.com/watch?v=dikebA-zDu4>

"I am not saying that it will happen but that it might happen. Let us assume that the [opponents of the reforms] appeal to the Tribunal all the social projects enacted by the Parliament (...) [including 500 zlotys per child and lowering the retirement age]. It may be assumed that the Tribunal as the protector of the judiciary, protecting the Constitution, should follow only and exclusively the interest expressed in the Constitution and the will of the people. (...) [however] "it is hard to feel that it will be like that when the Tribunal Chairman is so active politically. (...) they [the opponents of the reforms] protect their own privileges and their own interests."

**Beata Szydło, President of the Council of Ministers**

Telewizja Trwam, 25 December 2015

<http://tv-trwam.pl/film/wywiad-z-premier-beata-szydlo>

*“As regards the other cases with the Tribunal, it is a kind of redoubt – a locked position, to use the military jargon, which protects all that is wrong in Poland. All the defects of the Polish democracy, all the defects of Polish law, and – which is the most important thing, or at least very, very important – all what is wrong with the Polish social life. That great injustice. (...) It is about the basic rights – the retirement age, the 500 zlotys, the income tax threshold at 8000 zlotys...*

*“Judge Rzepliński commits one disciplinary violation after another. If he had at least an ounce of honour left, he and the other two judges would simply resign. But don’t bet on it. This problem will need to be solved in some way because the members of the Constitutional Tribunal must not be people who blatantly break the law and make a mockery of their mission.”*

**Jarosław Kaczyński, chairman of Law and Justice**  
Telewizja Republika, W punkt, 11 December 2015  
[https://www.youtube.com/watch?v=LCK\\_biZe\\_KU](https://www.youtube.com/watch?v=LCK_biZe_KU)

*“The judges of the Constitutional Tribunal (...) They earn some 20,000 zlotys. They are guaranteed retirement after 9 years of work, regardless of their age. The legislator wanted that the judges of the Constitutional Tribunal do what they had been appointed to do. The reality looks different though. (...) in addition to their work on Constitutional Tribunal, the judges also take up many, many other activities at various universities in Poland. This begs a question: Doesn’t entering into an employer – employee relationship violate the principle of neutrality and independence?”*

**Stanisław Piotrowicz, chairman of the Committee for Justice and Human Rights**  
the 6th session of the Sejm on 22 December 2015