BALTIC JOURNAL OF LAW & POLITICS
A Journal of Vytautas Magnus University
VOLUME 9, NUMBER 1 (2016)
ISSN 2029-0454

DE GRUYTER OPEN

Cit.: *Baltic Journal of Law & Politics* 9:1 (2016): 49-68
DOI: 10.1515/bjlp-2016-0003

POLISH DEMOCRACY UNDER THREAT?
AN ISSUE OF MERE POLITICS OR A REAL DANGER?

Sava Jankovic

Ph.D. Candidate
University of Dundee, School of Law (United Kingdom)

Contact information
Address: Nethergate, Dundee DD1 4HN, United Kingdom
Phone: +447508001008
E-mail address: sjankovic@dundee.ac.uk

Received: February 19, 2016; reviews: 2; accepted: May 17, 2016.

ABSTRACT

Poland has recently experienced a constitutional crisis. The crisis involves the role of the Law and Justice Party (PiS) in the election of judges and amendments to the Constitutional Tribunal Act which threatens the independence of the Tribunal. The situation is exacerbated by changes in the media, civil service, police, and prosecution laws introduced by the ruling party. This article analyses the changes, as well as the domestic and international reactions to the crisis, and considers whether the heavy criticism of the PiS is justified, or whether it results from, for instance, specific characteristics of the Polish political system and an unfavourable opinion in Europe about the Law and Justice party.

KEYWORDS

Constitutional crisis, Constitutional Tribunal, Poland, Law and Justice Party, criticism, rule of law, democracy

INTRODUCTION

The last few months have been lively for internal politics within Poland and the image of Poland in Europe. Since the victory in the September parliamentary elections, the Law and Justice Party (Prawo i Sprawiedliwość, PiS), with the support of its former member, and the current President of Poland, have revamped the organizational structure of the country in line with their political manifesto. The party has not only kept its campaign promises and filled the highest positions with its own political dignitaries, but also, according to many domestic and foreign analysts, encroached upon the fundamental values of the modern European State: by undermining democracy, the rule of law and the principle of sound governance. Their approach raises questions as to whether movements directed towards the subordination of the Constitutional Tribunal, abrupt changes in media, civil service, prosecution, and police laws are genuinely a matter of concern or simply a reflection of the unfavourable opinion that the conservative Law and Justice Party enjoys in Europe?

1. CRITICISM OF THE LAW AND JUSTICE PARTY – PIS: INTERNAL AND INTERNATIONAL REACTIONS

A vociferous domestic response has been provoked about the situation in Poland in relation to the amending of existing laws in an accelerated legislative procedure and the so called 'Constitutional Tribunal crisis'. Numerous public bodies, NGOs and representatives of academia have expressed their contempt for the actions of the current government. Prominent amongst them are the comments of Jan Zimmermann, a professor of administrative law and (former) supervisor of the doctoral thesis of the current President of Poland, Andrzej Duda. Zimmermann criticized his former student for breaching the Constitution[1] and together with the Law Faculty Board of the Jagiellonian University has called on the President to take "immediate actions to prevent the permanent imbalance between the legislative, executive, and judicial powers".[2] In November 2015, The Committee for the

[1] Whenever a discussion about democracy or the rule of law concept arises in Poland, the primary source of reference is the 1997 Constitution, Journal of Laws [Dz. U.] 1997 No. 78 Item 483, as amended. Poland effectively has a written constitution with democratic values, legalism and the rule of law contained in one single act, in contrast to the UK, where the concept of constitutionalism is based on multiple sources of law (*see* Lech Garlicki, *Polskie prawo konstytucyjne* (Warsaw: Liber, 2006), 53-80; Pawel Sarnecki, *Prawo Konstytucyjne RP* (Cracow: CH Beck, 2013), 69-86; Jaroslaw Sozański, "Zasada demokratycznego państwa prawnego w polskiej praktyce prawnej," *KNUV* 4 (2014)).
[2] *Resolution 303/XI/2015 of the Law Faculty Board of the Jagiellonian University of 30 November 2015*.

Defence of Democracy was established, which organized several protests around Poland.[3]

The revelations quickly reverberated throughout Europe and attracted the attention of most of the international organizations responsible for democracy and the rule of law. On January 13 the EU Commission decided to launch an unprecedented procedure to monitor the threats to the rule of law in Poland. [4] Pursuant to the 2014 EU Rule of Law Framework, it starts with a dialogue between the Commission and the concerned Member State, after which, if a State does not implement the recommendations made by the Commission a procedure set out in Art 7 TEU can be initiated.[5] The trigger for the process envisaged in Art 7 may lead to suspension of treaty rights in relation to the Member State in question (including voting rights). It is unlikely, however, that this would happen due to the complicated voting procedure, which demands unanimity in the Council. [6] The procedure is viewed as more of a political censure than a real judicial instrument since, for example, it does not provide for the exclusion of the State from the Union, even if it undermines the values upon which the Union is founded. [7] On January 19th the European Parliament organized the "debate about Poland", during which the Polish Prime Minister, Beata Szydło, was questioned by members of the EU Parliament with regard to the issues raised in respect of the rule of law. The leaders of the various political groups decided to defer any decision to issue a (unbinding) resolution until the results of the communication between the Polish government and the EU Commission and the opinion of the Venice Commission relating to the same issues.[8] It is highly probable that the EU Parliament will return to this matter, as the latter institution (The Venice Commission) on March 11 published a very unfavourable opinion about Poland.[9]

[3] More about the activities of the Committee at: http://komitetobronydemokracji.pl.
[4] European Commission press release (January 13, 2016) // http://europa.eu/rapid/press-release_MEMO-16-62_en.htm. See also "The EU and the Rule of Law – What next?" EU Justice Commissioner Viviane Reding's speech, Centre for European Policy Studies in Brussels (September 4, 2013); "How to Protect European Values – Assessing European Responses to Recent Reforms in Poland," Webcast of the Max Plank Society and Verfassungsblog (March 14, 2016) // https://www.mpg.de/10330824/max-planck-forum-berlin-protecting-european-values-poland.
[5] "A new EU Framework to strengthen the Rule of Law," Communication from the Commission to the European Parliament and the Council (March 19, 2014), COM(2014) 158 final/2.
[6] Hungary in line with couple of other Member States is very likely to oppose such action.
[7] Jan Werner Müller, "Safeguarding democracy inside the EU: Brussels and the future of liberal order," *Transatlantic Academy Paper Series* 3 (2013): 17-18, 29; Philip Weyand, "Politik, Recht und die Rule of Law irgendwo dazwischen: zur Rechtsstaatlichkeits¬debatte zwischen EU und Polen," *Verfassungsblog* (January 21, 2016) // http://verfassungsblog.de/politik-recht-und-die-rule-of-law-irgendwo-dazwischen-zur-rechtsstaatlichkeitsdebatte-zwischen-eu-und-polen/.
[8] The Venice Commission (European Commission for Democracy through Law) founded in 1990 is an advisory body of the Council of Europe. Its opinions are deemed as most respectful in terms of rule of law and democracy issues. The Polish Prime Minister refused to answer whether Poland will follow its recommendations.
[9] *Venice Commission Opinion CDL-AD (2016)001 on the Amendments of the Act of 25 June 2015 on the Constitutional Tribunal of Poland adopted at 106th Plenary Session*, Venice (March 11-12, 2016).

The Polish actions have also been criticised by nearly all of the European and international media, in particular in Germany.[10] The President of the European Parliament, Martin Schulz, in an interview given to the *Frankfurter Allgemeine Zeitung,* stated that "Polish democracy is carried out in the style of Russian leader Vladimir Putin and the entire democratic spectrum from left to right believes that such politics [conducted by PiS] are contrary to fundamental European values".[11]

2. THE SUBJECT OF CRITICISM: THE CONSTITUTIONAL TRIBUNAL PROBLEM AND CHANGES IN MEDIA, CIVIL SERVICE, THE POLICE, AND PROSECUTION LAW

2.1. THE CONSTITUTIONAL TRIBUNAL CRISIS

The main criticisms directed against PiS include the non-acceptance of the election of five judges on 8th October by the previous Sejm (dominated by the political party, Civic Platform) and amendments introduced to the Constitutional Tribunal Act.[12] The process of becoming a judge, in theory, ends with the election in the Sejm but in practice ends only after being sworn in by the President.[13] The Law and Justice Party and the President argued that the election of two of the five judges was flawed, as their nomination should have been done by the new parliament because the term of office of the judges they were to replace ended during that time. On that basis, the President refused to take the oath from all the judges. On 19th November, the newly composed Parliament amended the Law in respect of the Constitutional Tribunal, which *inter alia* enabled the dismissal of the previously appointed judges. On November 25 the Parliament annulled the election of all five judges[14] and a week later, on December 2, resolved to appoint five new judges[15], from whom the President took the oath immediately. Such actions raised serious constitutional concerns and a group of Sejm Deputies, the National Council of the Judiciary, the Commissioner for Citizens' Rights and the First President of the

[10] Timothy Garton Ash, "The pillars of Poland's democracy are being destroyed," *The Guardian* (January 17, 2016); Joanna Berendt, "Poland's President Approves Controls on State Media, Alarming E.U. Leaders," *The New Your Times* (January 7, 2016); "Pologne: manifestations 'pour la démocratie'," *Le Figaro* (December 19, 2015); Reinhard Veser, "Polens Demokratie ist in Gefahr," *Frankfurter Allgemeine Zeitung* (December 17, 2015); Florian Hassel, "Polen: Kaczyński tritt die Demokratie mit Füßen," *Süddeutsche Zeitung* (November 27, 2015).
[11] Martin Schulz, "Das ist gelenkte Demokratie nach Putins Art," *Frankfurter Allgemeine Zeitung* (January 9, 2016).
[12] *Constitutional Tribunal Act*, Journal of Laws [Dz. U.], 1997 No. 102, item 643, as amended.
[13] Article 5.5 of the Constitutional Tribunal Act stipulates that a person elected to the office of a judge shall take the oath from the President of the Republic of Poland. The refusal to take the oath shall be equivalent to a resignation from the office of a judge of the Tribunal (Art 5.6).
[14] *Resolutions of the Sejm of 25 November 2015*, Official Gazette of the Republic of Poland, Monitor Polski, pos.: 1131, 1132, 1133, 1134, 1135.
[15] *Resolutions of the Sejm of 2 December 2015*, Official Gazette of the Republic of Poland, Monitor Polski, pos.: 1182, 1183, 1184, 1185, 1186.

Supreme Court filed a motion to the Constitutional Tribunal.[16] The Tribunal delivered two judgements. In its first judgement K 34/15 of December 3, 2015, they ruled that the President has to take oath from elected judges immediately and the exclusive right to appoint judges rests with the Sejm.[17] In effect, this confirmed that the appointment of judges, in practice, ends with their appointment by the Sejm and not with their taking of the oath. According to judge-rapporteur of the Constitutional Tribunal Marek Zubik, the instant appointment of the elected state officials is embedded in the European legal culture, 'it is a certain established standard'. The UK equivalent to the constitutional conventions could serve as an example in so much as royal assent is given to Acts of Parliament without unnecessary procrastination and objection.[18] Moreover, the suspicion of invalidity of the Act regulating the election of judges enjoys presumption of constitutionality until proven to the contrary by the Constitutional Tribunal.

In a similar manner, the Tribunal addressed this issue in its second judgement K 35/15, where it declared as unconstitutional the amendment to the Constitutional Tribunal Act of 19th November 2015 (Art 21.1), which introduced a 30 day period, during which the President should take the oath from elected judges. In the reasoning of the Tribunal it would contradict the former judgement, as the President is obliged to take the oath immediately. Moreover it would introduce the President's role to co-participation in the creation of the Tribunal's composition and denote a delay in tenure's running. The Tribunal ruled as unconstitutional provisions regarding expiry of the tenure of the current president and vice-president of the Tribunal 3 months after the Act came into force (Art 2 of the Constitutional Tribunal Act of 19th November 2015). It also excluded the possibility of the re-election of the president of the Tribunal (Art 12 of the Constitutional Tribunal Act of 19th November 2015) on the grounds of 'exceptional political pressure'.[19]

[16] Pursuant to Article 191 of the Constitution of the Republic of Poland the following public bodies can make application to the Constitutional Tribunal: the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights, the National Council of the Judiciary, to the extent specified in Article 186, para. 2, the constitutive organs of units of local government, the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations, churches and religious organizations and the subjects referred to in Article 79 to the extent specified therein.

[17] *Judgement of the Constitutional Tribunal K 34/15 of 3 December 2015*, Journal of Laws [Dz. U.], No. 0, Item 2129. Although the operational ability, including remuneration, and probably immunity commences only after receiving Presidential oath, the nine year long tenure of the judge of the Constitutional Tribunal starts with the election in the Sejm; eventually after the expiry of the tenure of serving judge.

[18] The Royal Assent has not been refused since 1708, when Queen Anne refused it for a Bill for settling the militia in Scotland. See also: *Royal Assent Act 1976*.

[19] *Judgement of the Constitutional Tribunal K 35/15 of 9 December 2015*, Journal of Laws [Dz. U.], No. 0, Item 2147.

In both judgements the Tribunal confirmed that the election of two of the five judges (Professors Andrzej Sokala, and Bronisław Sitek) was flawed. This was because it was done by the VII Sejm, whose term ended on November 12, while the tenure of the elected judges was to commence on the 2nd and 8th of December respectively, the same day the nine-year tenure of the two former judges ended. The three other judges, whose tenure ended on the 6th of November (Professors Roman Hauser, Krzysztof Ślebzak and Andrzej Jakubecki) were elected properly, as the tenure of the Sejm overlapped with the date of the ending of the tenure of three former judges.[20] In other words, only the Sejm in office during which term of office the tenure of the Constitutional Tribunal judge(s) expires is entitled to elect judge(s); it would act *ultra vires* electing judges, whose term ends during the term of office of the prospective Sejm.

The belief held by the Law and Justice Party that the procedure for the appointment of the judges by the previous Sejm was flawed was seen as an obvious reason for not appointing them. As such, it triggered an accelerated procedure for the election and nomination of the five new judges as early as December 2, 2015,[21] although the Constitutional Tribunal, applying preventive measures, requested to abstain from electing new judges until its judgement K 34/15, which was due on December 3.[22] Whilst there was uncertainty regarding the election of two of the judges, which was subsequently declared unconstitutional by the Tribunal, it is inexplicable why the Sejm decided to elect five judges anew, rather than just the two, bearing in mind that, pursuant to Art 194.1 of the Constitution, judges are elected individually. Furthermore, as previously mentioned, neither the President nor any executive or legislative body is competent to question the election of judges, as this is solely within the domain of appropriate judicial body. Therefore, the annulment of the appointments of the elected judges on the 25th of November by the new parliament is highly disputed, as the Parliament is only entitled to elect judges, and not to recall them.[23] Art 36 of the Constitutional Act states that expiry of the mandate of a judge before the end of its tenure is possible only in four instances: death, resignation, conviction by a valid court judgement, and a legally valid disciplinary decision.

[20] The VII Sejm electing of two judges, whose tenure were to commence during the term of the VIII Sejm under Art 137 of the Constitutional Act was in breach of Art 194 of the Constitution.
[21] Four of five judges were elected and took oath from the President in the same day, the fifth judge, Julia Przyłębska, took oath from the President on 8 December, when the tenure of the judge, whom she replaced ended.
[22] On 30 November 2015, on the basis of Articles 755. 1 and 730. 2 of the Civil Procedure Code taken together with Article 74 of the Act, the Constitutional Tribunal decided to take preventive measures requesting the Sejm to abstain from electing new judges until the final verdict in case K 34/15 was delivered.
[23] Arkadiusz Radwan, "Chess-Boxing Around the Rule of Law – Polish Constitutionalism at Trial," *Allerhand Working Paper* 13 (2016): 10.

2.1.1. THE PARALYSIS OF THE TRIBUNAL

The effect of manipulating the law resulted in Poland having 15 Constitutional judges from December 2, and 18 from December 3, contrary to Art 194 of the Constitution which stipulates that the Tribunal is composed of 15 judges.[24] The conflict is between the ruling party and the Tribunal itself. The ruling party, for which the case was closed on the 2nd of December 2015 with the election and oath taking from the five judges it appointed, has to deal with the Tribunal judgement of the 3rd of December, which confirmed the validity of the election of the three judges under the previous Sejm and obliged the President to take the oath from them. This situation presents a real Gordian knot, as on the one side the process of becoming a judge was formally and practically ended, while from the other the Constitutional Tribunal judgements are final.[25] The President has not thus far acknowledged the three correctly elected judges and the President of the Constitutional Tribunal, acting under Art 45 of the Constitutional Tribunal Act has only admitted two judges to the adjudicating bench elected on December 2, leaving the Tribunal with 12 adjudicating judges and six with an uncertain status. The conflict impedes the functioning of the Tribunal and, according to many, may serve the ruling party, which uses every occasion to further downgrade its role. On the 22nd of December, the Law and Justice Party amended, for the second time, the Constitutional Tribunal Act. It introduced the provisions that, for the Tribunal to render a decision initiated by an application, at least 13 of the Court's 15 judges must be present[26] and there must be a two-thirds majority vote (before a simple majority was enough and cases were decided by three, five or all judges depending on the matter).[27] The second novelty is the obligation to exam cases in chronological order, i.e. starting with those that arrive first.[28] In the current state of affairs, it becomes clear that such regulations only lead to suspension of the work of this important institution. The Tribunal, in its judgement of 9th March K 47/15 ruled these, together with some other provisions, unconstitutional.[29] This was a precedent ruling. The Tribunal was not only a judge in its own case but also refused to apply the amended Constitutional Tribunal Act, to which it is obliged, under Article 197 of the Constitution of the Republic of Poland, stipulating that "the organization of the

[24] For an interesting analysis and comparison with the 1929 Austrian Constitutional Court crisis consult: Anna Śledzińska-Simon, "Poland's Constitutional Tribunal under Siege," *Verfassungsblog* (December 4, 2015) // http://verfassungsblog.de/author/anna-sledzinska/.
[25] Article 190 of the Constitution of the Republic of Poland.
[26] Individual complaints and preliminary requests will still only require the presence of seven judges.
[27] *Act amending the Constitutional Tribunal Act of 22 December 2015*, Journal of Laws [Dz. U.], No. 0, Item 2217, Art 1.3
[28] *Ibid*., Art 1.10
[29] *Judgement of the Constitutional Tribunal K 47/15 of 9 December 2015* [the judgement has not been published yet].

Constitutional Tribunal, as well as the mode of proceedings before it, shall be specified by statute". [30] On one hand, the principle of presumption of constitutionality of Statues applies, whereas, on the other hand, it is evident that any Sejm could paralyse the Tribunal and that indeed these provisions were a subject of scrutiny. The Tribunal's argument was based on the grounds that, a) there is no other organ entrusted with the task to determine constitutionality of Statutes, including the Constitutional Tribunal Act; [31] b) the assessment of conformity with the Constitution of an Act regulating the procedure before the Tribunal should take priority. The Tribunal cannot work (and adjudicate) based on provisions that raise serious doubts with regard to their conformity with the Constitution;[32] c) in the formal and legal conditions, on the day of the issuance of the judgement, the full adjudicating bench amounts to twelve judges. According to the judgement K 34/15, which after its publication in the Journal of Laws has become a universally applicable law, three of five judges elected by the VII Sejm were elected properly, from whom the President has to receive oath (though has not yet done so). Therefore the president of the Tribunal has 'legitimized' only two of the five judges elected by VIII Sejm, reserving places for the three formerly properly elected. The ruling Law and Justice party declared the judgement as 'a meeting over coffee' and announced it will not publish it as it was reached with the breach of the law (twelve judges decided instead of thirteen and the simple majority instead of two-thirds were used).[33]

In her almost 'thirty years old democracy', Poland has never been confronted with such an unprecedented situation in which the government refuses to publish the Constitutional Tribunal judgements (to which it is obliged under Art 190.2) and the president of the Tribunal is entangled in a political dispute. Non-publishing of the Constitutional Tribunal judgement will result in a perplexing legal situation, in which the judgment, if not published, strictly speaking, could not be regarded as universally applicable law, but the Tribunal is likely to obey its judgement in future resting on Art 190.1 of the Constitution, which provides that the judgements of the

[30] See also *Decision of the Constitutional Tribunal P 12/98 of 22 March 2000*, OTK ZU No 2/2000, pos. 67.
[31] *Cf*. Art 188.1 of the Constitution of the Republic of Poland.
[32] According to Article 190 of the Polish Constitution the "judgments of the Constitutional Tribunal shall be of universally binding application and shall be final". Because, the Constitution does not provide any form of control or questioning of the Constitutional Tribunal judgements on the basis of procedural flaws, it is of utmost importance that every potential constitutional doubts regarding the basis of its adjudication are resolved before these provisions become applicable. The judges while taking the decision referred to Article 195 (1) of the Constitution that states "Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to the Constitution".
[33] The Tribunal invoked Art 190.5 of the Constitution as *lex superior* stipulating that "judgements shell be made by a majority of votes". Similar objections were raised with regard to the decision of the Constitutional Tribunal U 8/15 of 7 January 2016 about the discontinuation of the proceedings in relation to the Sejm's resolutions of the election of ten new judges. The decision was taken by 10 instead of 13 judges.

Constituting Tribunal are final. The Venice Commission, in its recent opinion 'On Amendments to the Act of 25th June 2015 on the Constitutional Tribunal of Poland' urges Poland to respect the judgement (para 143) and provides two examples, where it dealt with *non liquet* in proceedings before a constitutional court. In the Romanian case in 2006 the Venice Commission opined that the lack of required quorum due to the recusals cannot lead to "inability of the Court to take a decision"[34]. It took a similar approach in the Albanian case, where, in its *amicus curie* opinion for the Constitutional Court of Albania stated that the Albanian Constitutional Court is competent to examine the law, which affects the judges of the same Court, providing that: "the authorization of the Court derives from the necessity to make sure that no law is exempt from constitutional review, including laws that relate to the position of judges".[35] The Commission concludes that "a refusal to publish judgment 47/15 of 9th March 2016 would not only be contrary to the rule of law, such an unprecedented move would further deepen the constitutional crisis triggered by the election of judges in autumn 2015 and the Amendments of 22nd December 2015". In its opinion "crippling the Tribunal's effectiveness will undermine all three basic principles of the Council of Europe: democracy – because of an absence of a central part of checks and balances; human rights – because the access of individuals to the Constitutional Tribunal could be slowed down to a level resulting in the denial of justice;[36] and the rule of law – because the Constitutional Tribunal, which is a central part of the Judiciary in Poland, would become ineffective."[37]

2.1.2. FINDING A WAY OUT

Bearing in mind the complexity of the situation, which is a relic of legal negligence of the previous epochs, it is difficult to say who has right in the present dispute, as legal arguments are on both sides. The gaps in Polish constitutional law are profound enough to cause a stalemate situation, which could be resolved only by political means. Three options seem viable to help to overcome the Polish constitutional crisis. First, to increase the number of judges of the Constitutional Tribunal to 18, which requires a change in the Constitution. Second, to accept all

[34] *Venice Commission Opinion CDL-AD (2006)006 on the Two Draft Laws amending Law No. 47/1992 on the organisation and functioning of the Constitutional Court of Romania adopted at 66th plenary session*, Venice (March 17-18, 2006), par. 7.
[35] *Venice Commission Amicus Curiae Opinion CDL-AD (2009)044 on the Law on the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania adopted at 80th Plenary Session*, Venice (October 9-10, 2009), par. 142.
[36] See, e.g., *Hornsby v. Greece*, European Court of Human Rights, 1997, no. 18357/91, par. 40; *Burdov v. Russia*, European Court of Human Rights, 2002, no. 59498/00), par. 34ff; *Gerasimov and Others v. Russia*, European Court of Human Rights, 2014, no. 29920/05, par. 168.
[37] *Venice Commission Opinion CDL-AD (2016)001*, *supra* note 9, para. 138.

six judges, because in 2016/2017 the tenure of three of the current judges ends. If so, they should serve their term according to the date of election in the Sejm. Third, after the end of the tenure of the current president of the Tribunal (Prof. Anrzej Rzepliński) in December this year, the next president may express a more conformist attitude towards the newly elected judges and admit them to the adjudicating bench, ignoring those who have not been sworn in. The Venice Commission, following some domestic propositions, suggests that in order to 'depoliticize' judges of the Constitutional Tribunal that are currently elected by the Sejm for a nine year tenure it is worth trying to spread the nomination authority across different bodies. So, a third of the judges would be appointed/elected by the President, another third by the Judiciary and the last third by the Parliament (Sejm), which it would elect the with qualified majority (2/3) as opposed to current simple majority.[38] In the worst case scenario, if both parties fail to make an effort to negotiate in good faith, the impasse may continue, resulting in the Tribunal proceeding in line with is ruling K 47/15 and the government not publishing the decisions. This situation would be very dangerous, as the Constitution would be in a tenuous position, which might lead to its abuse and trigger the European Commission action as described above.

2.2. MEDIA, CIVIL SERVICE, THE POLICE, AND PROSECUTION LAWS

Although the Constitutional Court problem seems to have attracted the most international and domestic attention, the Law and Justice Party has also faced serious criticism due to new laws relating to the media, civil service, the police, and prosecution. The new Police Act restricts civil freedoms through monitoring of the Internet. According to the new law, the police and other services[39] can obtain information from internet providers without a court order or any obligation to inform the party concerned. The most troubling issue pertains to Art 20c of the Police Act, which is particularly vague, in relation to the collection of "internet data", which could include the content of sent messages including e-mails.[40] The civil service law is said to favour those loyal to the party. This is demonstrated by the Act allowing for the termination of contracts of all high-ranked state officials 30 days after it comes into force, provided that no offer of extension will be

[38] *Ibid*., para 141.
[39] Treasury Intelligence, Gendarmerie, Border Police, Customs Service, Internal Security Agency, Central Anticorruption Bureau, Military Counterintelligence Service are among entitled institutions.
[40] See more about this problem in Joint letter of the Helsinki Foundation for Human Rights of 30 December 2015, the Panoptykon Foundation of 27 December 2015 and the Polish Bar Council of 29 December 2015 to the Marshal of the Sejm // http://www.hfhr.pl/wp-content/uploads/2015/11/HFHR_venice_comission_2122015.pdf.

available.[41] Until now the work agreement could be terminated by a refusal to take the oath, loss of citizenship, a legally effective ruling on loss of civil rights or the prohibition of exercising the state function in the civil service.[42] Moreover, the employment relationship is no longer stable since it can be terminated at any time. In addition the positions have become politicised. The higher positions are not chosen through fair competition but are nominated, most of them by the Prime Minister. The current Civil Service Council, of which 8 of 15 members were elected by the Prime Minister, was replaced by the Social Service Council, with all members being selected by the Prime Minister. In relation to the law regarding prosecution, the main concern is the linking of functions between the Prosecutor General and the Minister of Justice. According to the opposition party, Civic Platform, it is the last step in taking control of the state.[43] The new function is a clear politicization of the Prosecutor's office and provides significant opportunities to control the work of the whole prosecution service by, for example, issuing decrees, guidelines and recommendations. Moreover, the Prosecutor General gained wide ranging authority for administering personnel policy in the prosecution, i.e. appointing and dismissing directors of prosecution departments without the need for any competition for the posts. Also of concern are provisions empowering the Prosecutor General to hand over to the media information about ongoing preparatory proceedings.[44] In light of ECtHR judgements relating to informing the public about ongoing investigations it has stated that it "requires to be done with consideration and reticence necessary for the respect for the principle of presumption of innocence".[45] Finally, the Law and Justice Party has introduced changes to the law in respect of the media, which appear to serve the ruling party. In the new Media Act senior figures in public radio and television will no longer be hired through a selection process organised by the National Broadcasting Council. They will be appointed—and can be fired—by the treasury minister.[46] In this instance the tenures of the former board members legally end after the appointment of new ones.[47] The Polish Media, in the opinion of many institutions, despite being responsible for independence and pluralism of media, is no longer public and has begun to be an instrument of government.[48]

[41] *Act amending the Civil Service Act and other Acts of 30 December 2015*, Journal of Laws [Dz. U.], No. 0, Item 34, Art 6.1.
[42] *Civil Service Act*, Journal of Laws [Dz. U.], 2008 No. 227, Item 1505, as amended, Art 70.
[43] During the voting in the Sejm on 28 January 2016 all political parties, except for PiS, voted against the proposed changes (209 against, 7 abstained 236 for).
See: http://www.euractiv.pl/demokracja/artykul/projekt-ustawy-o-prokuraturze-przyjty-007924.
[44] *Bill amending the Prosecution Act*, The Sejm Print, no 162, Art 12.
[45] *Mirosław Garlicki v. Poland*, European Court of Human Rights, 2011, no. 36921/07.
[46] *Act amending the National Broadcasting Act of 30 December 2015*, Journal of Laws [Dz. U.], No. 0, Item 25, Art 1.2.
[47] *Ibid*., Art 3.2.
[48] See, *e.g.*, statement of Dunja Mijatović, the OSCE media freedom representative who "urged Poland's government to withdraw proposed changes to the selection of management in public service broadcasters" of 30 December 2015; the joint statement from European Federation of Journalists, the

3. THE RULE OF THE LAW AND JUSTICE PARTY: IS THE CRITICISM JUSTIFIED?

Considering the issues discussed above, it may be concluded that the Law and Justice party operates outside the limits of the law and endangers the fundamental principles of democracy, human rights and the rule of law. However, are the domestic and international criticisms, clothed in legal arguments, really justified? Providing an answer is difficult for at least two reasons. First, the Law and Justice party has not thus far blatantly breached the law. In truth, it has worked on the verge of law, adjusting it for its own purposes but still within the limit enabled/set by the nature of the Polish political system. Second, the Law and Justice party is a conservative party, which firmly solves internal issues and employs Eurosceptic policies when it comes to integration issues. That may facilitate the conflation between *who* rules and *how* he rules, which normally should be separated, by being particular about the party's rule. [49] Political stigmatization may, in certain circumstances, also lead to calumniation by reference to legal instruments being at the disposal of antagonistic political forces.

To elucidate on the first argument, it is necessary to give recourse to the characteristics of the Polish political system, which gives more power to those who gain the most public support. Hence, not all criticism espoused against the ruling party (PiS) can be objectively justified, especially when its opponents complain about the scope of power. In this instance, the Polish political system is at fault and not the party that governs. On May 25, 2015, Andrzej Duda, the PiS candidate, won the presidential elections and on October 25, 2015, the Law and Justice party (PiS) won the parliamentary election without the need to form a coalition (235 of 460 seats in the Sejm and 61 of 100 in the Senate); this happens particularly rarely.[50] As such, the Law and Justice Party was able to form its own government, has a majority in both chambers of parliament and the support of the President. In reality this means there is no mechanism for achieving a balance of power. The legislative process, which in such conditions may operate instantly and without any hindrance, illustrates this. A bill introduced in the Sejm goes to the Senate, which according to Art 121 of the Constitution may approve it without amendments, adopt amendments or reject a proposed Bill within 30 days. The absolute majority in the

European Broadcasting Union, the Association of European Journalists and Reporters Without Borders, which charged that the effect of the new broadcasting law is to abolish existing safeguards for pluralism and independence of public service media governance in Poland of 30 December 2015.

[49] *Cf.* Tomasz Tadeusz Koncewicz, "The Polish Constitutional Crisis and 'Politics of Paranoia'," *Verfassungsblog* (March 11, 2016).

[50] This is an unprecedented situation in the after 1989 Poland. Poland had minority governments in 2004-2005, 2005-2006, and in 2007; however, such governments proved to be very inefficient. The current Sejm (VIII) has commenced its term on 12 November 2015, when President Andrzej Duda convened its first session and when the elected members of Parliament were sworn in.

Sejm might nevertheless overcome a negative vote by the Senate but it is problematic and time-consuming. In order for such a bill to become law it needs the President's signature, who, pursuant to Art 122 of the Constitution, has 21 days either to sign the bill, refer it to the Constitutional Tribunal for adjudication as to whether it conforms with the Constitution, or veto it. The last two options may be fatal to a bill. If it is judged by the Constitutional Tribunal not to be in conformity with the Constitution, such a bill cannot become law, whereas the Presidential veto might, in principle, still be overpowered, but this demands the 3/5 majority in the Sejm.[51] The ability of the PiS to rule seems, therefore, quite privileged. In reality, they are only unable to change the Constitution, which requires a 2/3 majority, in the Sejm. They are subject to the subsequent control of statutes by the Constitutional Tribunal (3/5 majority in the Sejm to bypass the Presidential veto and the *a priori* constitutional control of a Bill by the President does not apply considering the President's allegiance to PiS).[52] The importance of changing the Constitution becomes irrelevant in circumstances when a party is able to subordinate the Constitutional Tribunal, which is a sole guardian of the Constitution. Therefore, the temptation to blame the Law and Justice party for its willingness to subordinate the Constitutional Tribunal, which if politicized, loses its position as an ultimate forum limiting the power of the Government, is quite strong. On the one hand this is a legitimate claim, as the supremacy of the Constitution is a pivotal principle of the Polish political and legal system, unlike the UK, where Acts of Parliament are deemed supreme.[53] Besides the Presidential prerogative of the preventive control of constitutionality of a Bill envisaged by Art 122, the Polish Constitution foresees the second mechanism of controlling the constitutionality of an already passed Act, also known as subsequent control. The latter option appears as more democratic, as Art 56 of the Constitutional Tribunal Act empowers a wide range of parties, including individuals, to institute proceedings before it, if they express doubts as to constitutionality of an act in force.[54] The ability to do so, significantly augments indirect multilateral control over the constitutional values and prevents the realization of antidemocratic and illegal practice and policies by the ruling party. On the other hand, a bill can only be declared unconstitutional and as a result null and void by the Tribunal, whose judges, ironically, according to Art 194 of the Constitution, are elected by the Sejm. Such a situation leads to a

[51] Art 122.5 of the Constitution of the Republic of Poland.
[52] The majority of constitutionalists agree that Art 132 of the Polish Constitution prohibiting the President to hold other offices or to discharge any other public functions should be read as renunciation of political party card. Formal separation from the party does not usually go hand in hand with practical collaboration.
[53] Mark Elliott, "Bicameralism, sovereignty, and the unwritten Constitution," *International Journal of Constitutional Law* 5 (2007): 370; Hilaire Barnett, *Constitutional & Administrative Law* (Oxon: Routledge, 2013), 109-136.
[54] *Cf*. Article 79 and 191 of the Constitution of the Republic of Poland.

blurring of powers, where the Constitution, if not capable of being changed, is susceptible to manipulation by the legislature, executive, and the judiciary. The current rotational system based on a judge's nine year term of office is imperfect, bearing in mind the fact that the last government lasted eight years. That being said, it means that a party, being capable of maintaining power for nine years, can thoroughly dominate the Constitutional Tribunal.

The law-making, and in broader sense the ruling capacities of the Law and Justice party that it owes exclusively to the construction of the Polish political system, cannot therefore be equated with an accusation of violation of law. As much as its ability to enact law in an accelerated procedure should be respected, its standpoint towards the Constitution Tribunal should be regarded alike. The Constitutional Tribunal in Poland is a political court, and will remain as such as long as its judges are elected by the Sejm. As much as it may facilitate the governing of a party that stays long in power, it also can hamper the work of the newly elected party having its judges elected by the previous political regime.

The second argument, put forward at the beginning of this section, was that the Law and Justice Party has been denounced due to its conservative beliefs and the measures it has implemented with regard to the opposition party (Civic Platform, PO). It is suggested that the domestic strikes were primarily organized by those who lost their jobs following the change in power,[55] already referred to in the earlier section.[56] Furthermore, it is maintained that "worsening image European actions" were indeed instigated by the members of the Civic Platform present in international organizations, including its former leader Donald Tusk as a President of the European Council.[57] These actions might have been facilitated owing to the fact that the Law and Justice party enjoys a particularly unfavourable reputation in Europe, emanating from its short period in office, between 2006-2007, at which time it implemented Eurosceptic policies and procrastinated on the ratification of the Treaty of Lisbon. Currently the party opposes the EU compulsory refugee quota. In such circumstances it is problematic to arrive at an objective and impartial conclusion on the matter, as the case is somehow more reminiscent of a wide-scale political rivalry than of a pure legal dispute.[58] Clearly, politics and law are closely entangled in this instance, which is also evident in the Venice Commission Opinion, which, while proposing a solution to the crisis, noted: "As a political actor, the *Sejm*

[55] Beata Mazurek, "KOD to Komitet Obrony Demagogii," *wiadomosci.wp.pl* (March 12, 2016) // http://wiadomosci.wp.pl/kat,1329,title,Beata-Mazurek-KOD-to-Komitet-Obrony-Demagogii,wid,18210107,wiadomosc.html?ticaid=116a9b.
[56] See the Section 2.2. Media, Civil Service, the Police and Prosecution Laws.
[57] "Spirala histerii się nakręca: Schetyna i Petru jadą do Brukseli skarżyć się na polski rząd!?" *wpolityce.pl* (December 7, 2015) // http://wpolityce.pl/polityka/274247-tylko-u-nas-spirala-histerii-sie-nakreca-schetyna-i-petru-jada-do-brukseli-skarzyc-sie-na-polski-rzad-zanosi-sie-tez-na-debate-w-pe.
[58] Arkadiusz Radwan, *supra* note 23: 5-6, 14-15.

is also best placed to establish a dialogue conducive to a political solution".[59] "The Venice Commission calls both on majority and opposition to do their utmost to find a solution in this situation".[60]

CONCLUSION

The Polish 'rule of law and democracy crisis' has occupied a great deal of national and international attention, in which a lay observer who is unfamiliar with the reality of the Polish situation may easily be confused. First of all, a differentiation between *who* rules and *how* he rules should be made. In view of the current situation of the Law and Justice Party these two words tends to be confused for political reasons. Nonetheless, it is worth remembering that the rule of the PiS party takes place within the limits of the law and results from the nature of the Polish political system, which benefits the party that gains the most votes in the elections (including the ability to change the Constitution). The ability to amend and pass laws by an accelerated procedure is legitimate, given that PiS dominates all the institutions responsible for the legislative process (the Sejm, the Senate, the Government and the office of President). Such laws enjoy a presumption of constitutionality until proven otherwise by the Constitutional Tribunal or negatively assessed by the international court. The issue of the appointment of Constitutional Tribunal judges was a consequence of mistakes by the Civic Platform Party, including its willingness to elect two judges that should have been elected during the term of the next Sejm. This was exacerbated by a lack of clarity in respect of the law in relation to the period during which the President has to take oath from the elected judges. This however does not address the ongoing issue of the implementation of the Constitutional Tribunal rulings K/34 of December 3 and K/35 of December 9 as well as the publication of a recent ruling K47/15 of March 9. In fact, it is a European and international standard to implement the judgments of the Constitutional Tribunal/ Court, which is fundamental to judicial independence, the separation of powers and proper functioning of the rule of law.[61] Furthermore, "[e]veryone should be able to challenge governmental actions and decisions adverse to their rights or interests. Prohibitions of such challenges violate the rule

[59] *Venice Commission Opinion CDL-AD (2016)001 Opinion*, *supra* note 9, par. 123.
[60] *Ibid*., par. 136.
[61] "Another aspect of the necessary respect for the Constitutional Court is the execution of its judgments. Not only the rule of law but also the European Constitutional Heritage require the respect and effective implementation of decisions of constitutional courts …." (*Venice Commission Opinion CDL-AD (2012)026-e on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions adopted by the Venice Commission at its 93rd plenary session*, Venice (March 14-15, 2012), par. 67).

of law".[62] Nonetheless, the specifics of the Polish political system do not let us draw such a conclusion. The highest public bodies are intrinsically linked with politics, including judiciary and, as a result of the recent changes, also prosecution.[63] The system remains relatively stable in the short term; however, it fails to address potential threats to the rule of law in the longer term, as shown in the example of the nine-year tenure of a judge of the Constitutional Tribunal. The current situation is unprecedented. Since 1989, every party has ruled as part of a coalition. We might wonder what would happen if a party gained two-thirds seats in the Sejm and was capable of changing the Constitution. The line between democracy and dictatorship seems to be very thin, especially when it comes to Central and Eastern European states' democracies, which remain fragile and profoundly susceptible to subversion.[64] Drawing a parallel between Poland and Orban's Hungary has become a standard[65], but it is certain that even the PiS leader, Jaroslaw Kaczynski, would not be content with the proliferation of Martin Schultz's label of the "Putninization of Polish democracy".

BIBLIOGRAPHY

1. "A New EU Framework to Strengthen the Rule of Law." Communication from the Commission to the European Parliament and the Council (March 19, 2014). COM (2014) 158 final/2.
2. Ash, Timothy-Garton. "The pillars of Poland's democracy are being destroyed." *The Guardian* (January 17, 2016).
3. Barnett, Hilaire. *Constitutional & Administrative Law*. Oxon: Routledge, 2013.
4. Berendt, Joanna. "Poland's President Approves Controls on State Media, Alarming E.U. Leaders." *The New Your Times* (January 7, 2016).
5. Cichowlas, Ola, and Andrew Foxall. "The State of Democracy after 25 Years: Lessons from Central and Eastern Europe." *RSC Policy Paper* 2 (2015).
6. Elliott, Mark. "Bicameralism, sovereignty, and the unwritten Constitution." *International Journal of Constitutional Law* 5 (2007): 370–379.
7. Garlicki, Lech. *Polskie prawo konstytucyjne*. Warsaw: Liber, 2006.
8. Hassel, Florian. "Polen: Kaczyński tritt die Demokratie mit Füßen." *Süddeutsche Zeitung* (November 27, 2015).

[62] *Venice Commission Opinion CDL-AD (2011)003rev, Report on the rule of law – Adopted by the Venice Commission at its 86th plenary session*, Venice (March 25-26, 2011), par. 53
[63] See the Section 2.2. Media, Civil Service, the Police and Prosecution Laws.
[64] Andrew Wilson, "After 25 Years, Are Central and Eastern Europe's Democracies in Danger?" *CIPE Development Blog* (March 19, 2013); Ola Cichowlas and Andrew Foxall, "The State of Democracy After 25 Years: Lessons from Central and Eastern Europe," *RSC Policy Paper* 2 (2015).
[65] Arkadiusz Radwan, "Lange Tradition und kurzes Gedächtnis des polnischen Konstitutionalismus – ein Beitrag zum Verständnis der Verfassungskrise von 2015-16," *Allerhand Working Paper* 14 (2016): 11–12.

9. "How to Protect European Values – Assessing European Responses to Recent Reforms in Poland." Webcast of the Max Plank Society and Verfassungsblog (March 14, 2016) // https://www.mpg.de/10330824/max-planck-forum-berlin-protecting-european-values-poland.
10. Joint letter of the Helsinki Foundation for Human Rights Helsinki Foundation for Human Rights, the Panoptykon Foundation and the Polish Bar Council to the president of Venice Commission Gianni Buquicchio of 2 December 2015 // http://www.hfhr.pl/wp-content/uploads/2015/11/HFHR_venice_comission_2122015.pdf.
11. Koncewicz, Tomasz Tadeusz. "The Polish Constitutional Crisis and 'Politics of Paranoia'." *Verfassungsblog* (March 11, 2016).
12. Mazurek, Beata. "KOD to Komitet Obrony Demagogii." *wiadomosci.wp.pl* (March 12, 2016) // http://wiadomosci.wp.pl/kat,1329,title,Beata-Mazurek-KOD-to-Komitet-Obrony-Demagogii,wid,18210107,wiadomosc.html?ticaid=116a9b.
13. Müller, Jan-Werner. "Safeguarding democracy inside the EU: Brussels and the future of liberal order." *Transatlantic Academy Paper Series* 3 (2013): 1–29.
14. "Pologne: manifestations 'pour la démocratie'." *Le Figaro* (December 19, 2015).
15. "Proposed changes to the selection of management in public service broadcasters." Press statement of the OSCE media freedom representative Dunja Mijatović (December 30, 2015).
16. Radwan, Arkadiusz. "Chess-Boxing Around the Rule of Law – Polish Constitutionalism at Trial." *Allerhand Working Paper* 13 (2016): 1–19.
17. Radwan, Arkadiusz. "Lange Tradition und kurzes Gedächtnis des polnischen Konstitutionalismus – ein Beitrag zum Verständnis der Verfassungskrise von 2015-16" (A Long Tradition and Short Memory of the Polish Constitutionalism – A Contribution Towards Comprehending the Constitutional Crisis of 2015-16). *Allerhand Working Paper* 14 (2016): 1–17.
18. "Safeguards for pluralism and independence of public service media governance in Poland." Joint statement of the European Broadcasting Union, Association of European Journalists, European Federation of Journalists, Reporters Without Borders and Committee to Protect Journalists (December 30, 2015) // http://europeanjournalists.org/blog/2015/12/30/poland-media-organisations-to-oppose-abolition-of-safeguards-for-pluralism-and-independence-in-public-service-media.
19. Sarnecki, Paweł. *Prawo Konstytucyjne RP.* Cracow: CH Beck, 2013.

20. Schulz, Martin. "Das ist gelenkte Demokratie nach Putins Art." *Frankfurter Allgemeine Zeitung* (January 9, 2016).
21. Śledzińska-Simon, Anna. "Poland's Constitutional Tribunal under Siege." *Verfassungsblog* (December 4, 2015) // http://verfassungsblog.de/polands-constitutional-tribunal-under-siege/.
22. Sozański, Jarosław. "Zasada demokratycznego państwa prawnego w polskiej praktyce prawnej." *KNUV* 4 (2014): 28–40.
23. "Spirala histerii się nakręca: Schetyna i Petru jadą do Brukseli skarżyć się na polski rząd!?" *wpolityce.pl* (March 12, 2016) // "http://wpolityce.pl/polityka/274247-tylko-u-nas-spirala-histerii-sie-nakreca-schetyna-i-petru-jada-do-brukseli-skarzyc-sie-na-polski-rzad-zanosi-sie-tez-na-debate-w-pe.
24. "The EU and the Rule of Law – What next?" European Union Justice Commissioner Viviane Reding's speech. Centre for European Policy Studies in Brussels (September 4, 2013) // http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm.
25. Veser, Reinhard. "Polens Demokratie ist in Gefahr." *Frankfurter Allgemeine Zeitung* (December 17, 2015).
26. Weyand, Philip. "Politik, Recht und die Rule of Law irgendwo dazwischen: zur Rechtsstaatlichkeitsdebatte zwischen EU und Polen." *Verfassungsblog*, (January 21, 2016) // http://verfassungsblog.de/politik-recht-und-die-rule-of-law-irgendwo-dazwischen-zur-rechtsstaatlichkeitsdebatte-zwischen-eu-und-polen/.
27. Wilson, Andrew. "After 25 Years, Are Central and Eastern Europe's Democracies in Danger?" *CIPE Development Blog* (March 19, 2013).

LEGAL REFERENCES

1. *Act amending the Civil Service Act and other Acts of 30 December 2015*. Journal of Laws [Dz. U.], No. 0, Item 34.
2. *Act amending the Constitutional Tribunal Act of 22 December 2015*. Journal of Laws [Dz. U.], No. 0, Item 2217.
3. *Act amending the National Broadcasting Act of 30 December 2015*. Journal of Laws [Dz. U.], No. 0, Item 25.
4. *Bill amending the Prosecution Act of 24 December 2015*. The Sejm Print, no 162.
5. *Burdov v. Russia*. European Court of Human Rights. 2002, no. 59498/00.

6. *Civil Procedure Code*. Journal of Laws [Dz. U.], 1964 No. 43, item. 296, as amended.
7. *Civil Service Act*. Journal of Laws [Dz. U.], 2008 No. 227, Item 1505.
8. *Constitutional Tribunal Act*. Journal of Laws [Dz. U.], 1997 No. 102, item 643, as amended.
9. *Constitution of the Republic of Poland*. Journal of Laws [Dz. U.], 1997 No. 78, Item 483, as amended.
10. *Decision of the Constitutional Tribunal U 8/15 of 7 January 2016*. ZU OTK No. A/2016, pos. 1.
11. *Decision of the Constitutional Tribunal P 12/98 of 22 March 2000*. OTK ZU No 2/2000, pos. 67.
12. *Hornsby v. Greece*. European Court of Human Rights. 1997, no. 18357/91.
13. *Gerasimov and Others v. Russia*. European Court of Human Rights. 2014, no. 29920/05.
14. *Judgement of the Constitutional Tribunal K 34/15 of 3 December 2015*. Journal of Laws [Dz. U.], No. 0, Item 2129.
15. *Judgement of the Constitutional Tribunal K 35/15 of 9 December 2015*. Journal of Laws [Dz. U.], No. 0, Item 2147.
16. *Judgement of the Constitutional Tribunal K 47/15 of 9 December 2015*. Not published yet.
17. *Mirosław Garlicki v. Poland*. European Court of Human Rights. 2011, no. 36921/07.
18. *Resolution 303/XI/2015 of the Law Faculty Board of the Jagiellonian University of 30 November 2015*.
19. *Resolutions of the Sejm of 25 November 2015*. Official Gazette of the Republic of Poland, Monitor Polski, pos.: 1131, 1132, 1133, 1134, 1135.
20. *Resolutions of the Sejm of 2 December 2015*. Official Gazette of the Republic of Poland, Monitor Polski, pos.: 1182, 1183, 1184, 1185, 1186.
21. *Royal Assent Act 1976*.
22. *Venice Commission Amicus Curiae Opinion CDL-AD (2009)044 on the Law on the cleanliness of the figure of high functionaries of the Public Administration and Elected Persons of Albania adopted at 80th Plenary Session*. Venice (October 9-10, 2009).
23. *Venice Commission Opinion CDL-AD (2006)006 on the Two Draft Laws amending Law No. 47/1992 on the organisation and functioning of the Constitutional Court of Romania adopted at 66th plenary session*. Venice (March 17-18, 2006).

24. *Venice Commission Opinion CDL-AD (2011)003rev, Report on the rule of law – Adopted at 86th plenary session*. Venice (March 25-26, 2011).
25. *Venice Commission Opinion CDL-AD (2012)026-e on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions adopted by the Venice Commission at its 93rd plenary session*, Venice (March 14-15, 2012).
26. *Venice Commission Opinion CDL-AD (2016)001 on the Amendments of the Act of 25 June 2015 on the Constitutional Tribunal of Poland adopted at 106th Plenary Session*. Venice (March 11-12, 2016).