

The Social and  
Political  
Foundations of  
Constitutions

# The Constitutional Court of Poland: The Battle for Judicial Independence

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Policy Brief

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The Foundation for Law, Justice and Society

in association with **the Centre for Socio-Legal Studies**  
and **Wolfson College, University of Oxford**

## The Foundation for Law, Justice and Society

### **The Social and Political Foundations of Constitutions**

Constitutions take various forms in different societies, but essentially determine how policy issues, often of fundamental social importance, are to be decided and implemented.

Constitutions and constitutionalism are usually studied either doctrinally, as the source of fundamental legal doctrine, or conceptually, as the subject of philosophical methods of analysis. The approach of this programme offers a third way: the study of constitutions and constitutionalism in their social context, emphasizing their social character and role, their social goals, and their links to other parts of society, especially economic and political aspects.

Drawing on the research and literature of politics, economics, and sociology, the programme examines the concept and practice of representation, the legislative process and the character of modern administrative government, and the role of the judiciary in shaping constitutional instruments such as bills of rights.

*I thank Małgorzata Mączka-Pacholak, Maria Radziejowska, and Filip Rak from Pietrzak Sidor & Partners Law Firm for help in preparing this publication.*

# Executive Summary

- Since the parliamentary elections of November 2015, Poland has been experiencing a turbulent political and constitutional crisis. The new governing majority — the conservative Law and Justice Party — is realizing a programme of deep constitutional, social, and political change, which includes broadening the scope of executive power and limiting that of the judiciary, thus posing a threat to the constitutionally enshrined separation of powers and the system of constitutional checks and balances.
- At the centre of the ongoing crisis is a battle for the shape and composition of the Polish Constitutional Court — a body responsible for assessing the compliance of statutory acts with the Constitution and, ultimately, for striking them down in the event of their unconstitutionality. The authority and position of the Constitutional Court, which it has held since its creation in 1988, is seen by the Law and Justice Party as an obstacle to the introduction of its political programme.
- The governing majority, through a series of statutes, passed by parliament, relating to the functioning of the Constitutional Court and the process of appointing new judges, has managed to undermine the position and legal stability of the Court. The government refused to publish crucial judgments of the Constitutional Court (without legal authority to do so), thus raising the threat of dualism in the Polish legal system, in which part of the state institutions would respect the judgments of the Constitutional Court, and the other would not.
- The battle for the Constitutional Court and an attempt to change its composition by the governing majority should be seen in the context of the controversial legislation that has since that time been passed by the current parliament. These legislative initiatives — such as the law on public media, the Anti-terrorism Act 2016, the increased powers of the Prosecutor General, restrictions on civil rights, and the recent introduction of political control of the National Council of the Judiciary — raise serious concerns regarding their constitutionality and would probably have been struck down by the Constitutional Court in its previous composition.

# The Constitutional Court of Poland: The Battle for Judicial Independence

## Historical and political background

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To understand Poland and the ongoing constitutional crisis facing the country, one must assess the current situation from a broader historical and political perspective. The process of democratic transformation after the fall of Communism has been heavily influenced by a series of key developments over the years that followed, including the adoption of the Polish Constitution of 1997, the history of the Constitutional Court, and political trends over the last ten years, which are directly connected with the present crisis.

### *Democratic transformation*

The elections at the end of the 1980s that marked the spectacular loss of power by the Communist Party were preceded by turbulent economic and social currents that had developed throughout the decade. The decline of the economy that was based on central management of a system of state ownership, the waves of strikes that swept across the country in 1988, and formal recognition of the Solidarity movement — all of these factors made inevitable the roundtable talks in February 1989 that resulted in the June elections to the Sejm (lower chamber of the parliament), and eventually to a political crisis.

In 1989, Poland engaged in political transformation for good. The 1989 June elections led to the formation of a new government by Tadeusz Mazowiecki and to presidential elections in 1990 in which Lech Wałęsa was elected as the country's president. In December 1989, the Sejm approved the government's reform programme to rapidly transform the Polish economy from centrally planned to a free-market economy. Furthermore, the reference to the 'leading role' of the Communist Party in the 1952 Constitution, which still remained in force at the time, was removed.

Work on a new democratic Constitution commenced, and the so-called 'Small Constitution' was adopted in December 1992. The Small Constitution had a limited scope: it introduced the division of powers, with the Sejm and Senate of Poland constituting the legislative; the Polish President and the Council of Ministers forming the executive; and independent courts, the judicial power. Some parts of the 1952 Constitution remained in force until 1997, alongside the Small Constitution.

The Constitution of the Republic of Poland (1997) was adopted on 2 April 1997, approved by a national referendum on 25 May 1997, and came into force on 17 October 1997. It recognized that the Republic of Poland is 'a democratic state ruled by law and implementing the principles of social justice' (art. 2).

### *Constitutional Court*

The Constitution of 1997 established the Constitutional Court as a constitutional organ, yet the Constitutional Court had already been established, with limited competences, in 1985. Then, decisions on the incompatibility of statutes with the Constitution were subject to review by the Sejm, which could overrule the Tribunal's decisions with resolutions adopted with a two-thirds majority vote. Such an arrangement was an attempt at a compromise between establishing a constitutional judiciary and maintaining the principle of the unity of state authority. Nevertheless, since the pronouncement of its first decision on 28 May 1986, the Polish Constitutional Court was successful in securing a relatively independent position within the framework of the state.

Significant changes were not possible until the transformation of the political system in 1989. The need to retain the Constitutional Court was not questioned at the time, just as no question was

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raised over the moves to reinforce its position and remove limitations upon its activity. Despite the fact that it was still the competence of the Sejm to overrule the Court's decisions, the Tribunal's jurisprudence expanded such constitutional clauses as 'the principle of the state ruled by law' or 'the principle of equality', eliminating gaps and uncertainties resulting from the lack of a modern constitution. The breakthrough came when the Constitution of 2 April 1997 entered into force on 17 October 1997 and the Constitutional Court Act of 1 August 1997 — adjusted to the new constitutional regime — was adopted, granting the Court full independence.

### ***The past ten years — causes underlying the current crisis***

Democratic transformation has led to improved social and economic conditions in Poland, but many Poles believe that the benefits brought by the transformation and the country's accession to the EU in 2004 have been distributed less than equally throughout society. Over the last ten years, the political scene has become increasingly divided. One of the first symptoms of the current political divisions occurred during the first period of rule of the Law and Justice Party in 2005–7. During that time, many investigations against politicians and parliamentarians were initiated, and there was a legislative battle to secure measures to allow stronger and more invasive lustration of public figures with respect to their connections with the communist state. Significantly, in 2007, the law on lustration introduced by the ruling party was struck down by the Constitutional Court.<sup>1</sup>

In 2007, the centrist Civic Platform Party came to power, headed by then Polish Prime Minister Donald Tusk, and remained in power until 2014, and yet their seven-year rule ultimately led to stagnation and did little to appease the growing social discontent and divisions in Poland. The presidential plane crash in 2010 in which the President of Poland Lech Kaczyński (brother of Jarosław Kaczyński, leader of the Law and Justice Party) died was a critical turning point, heralding yet further political divisions. Since then, Jarosław Kaczyński and his political supporters have been blaming their political opponents (including accusations levelled at Donald Tusk personally) for the catastrophe. The breaking point came with the presidential election of 2015, in which

the Law and Justice MP, Andrzej Duda, defeated Bronisław Komorowski.

## **The crisis around the Constitutional Court**

### ***Beginning of the crisis***

The crisis around the Constitutional Court has its origins in one of the intertemporal provisions of the Act on the Constitutional Court of June 2015 that allowed the previous governing majority to choose five new judges of the Constitutional Court. During the Sejm's seventh term, five judges were elected, despite the fact that only three judicial offices were vacated (as a result of the elapse of constitutionally defined judicial terms). Consequently, two of the five judges were chosen to replace judges whose term would end during the eighth term of the Sejm, after the parliamentary elections.

The parliamentary elections took place on 25 October 2015. The Law and Justice Party won 37.5 per cent of votes, which translated into 235 seats in the Sejm. It was able to constitute the first single-party government since 1989.

### ***The Act of November 2015 and election of five new judges***

Immediately after the elections, the new governing majority passed the Act of November 2015, amending the Act of June 2015 on the Constitutional Tribunal. The reform aimed to repeal the election of all five judges by the Sejm of the previous term and to appoint new judges through voting by the Law and Justice Party.

On the very same day that the Act of November 2015 was passed, resolutions voiding the election of five Constitutional Court Judges by the previous Sejm were issued by the Sejm. The Constitutional Court called upon the Sejm not to make any judicial appointments until the Court had ruled on the issue of the appointments of the previous term's Sejm (which was supposed to take place on 3 December 2015). Nonetheless, the governing majority elected five new judges to the Constitutional Court on 2 December 2015. The election of the judges was based on provisions which were not yet in force at the time (since the Act of November 2015 entered into force on 4 December 2015), denuding it of legal authority. However, President Andrzej Duda received the oath from four judges immediately, during the

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night of 2 December 2015, without the president of the Constitutional Court, Professor Andrzej Rzepliński, being invited to the ceremony, breaking the previous convention that the inauguration of the new judges would be presided over by the president of the Constitutional Court. The legality of the abovementioned resolutions was questioned by a motion to the Constitutional Court. At a closed hearing in January 2016, the Constitutional Court held itself incompetent to decide as to the legality of non-statutory acts such as resolutions of the Sejm, and discontinued the proceedings.

#### **Constitutional Court's judgments of December 2015**

On 3 December 2015, the Constitutional Court considered the motion regarding the Act of June 2015. The Constitutional Court held that the transitional provision which allowed for the election of all five judges at once was unconstitutional to the extent that it allowed for the appointment by the previous Sejm of judges to replace those whose tenures expired during the Sejm's new term. However, the election of three judges to replace those whose tenures expired during the previous Sejm's term did not violate the Constitution. In *obiter dicta* the Court held that it is the president's obligation to take the oath from the newly elected judges immediately without any unreasonable delay. The Constitutional Court also remarked that the Court's judgments are binding and final and no legal authority has the power to verify their legality.

However, the judgment of the Constitutional Court was not published immediately, and, in a letter to the president of the Constitutional Court, the Chief of the Chancellery of the Prime Minister responsible for the publication of the judgment noted that *in her opinion* the judgment was invalid, since it was delivered by an inappropriate bench, and she refused to publish the judgment. Eventually, after a series of public, wide-ranging protests and political turmoil, almost two weeks after its delivery, the judgment was published in the *Journal of Laws*.

As a result of motions submitted by a group of opposition MPs, the Commissioner for Human Rights, the National Council of the Judiciary of Poland, and the first president of the Supreme Court, on 9 December 2015 the Constitutional Court delivered a judgment concerning the Act of

November 2015 on the Constitutional Court.

The Constitutional Court held as unconstitutional, in particular, the provisions regulating the tenures of the president and vice president of the Constitutional Court, as well as a provision stating that the tenures of the president and vice president of the Constitutional Court were to expire within three months of the act's entry into force. In the Court's opinion, those provisions did not comply with the principle of the separation of powers. The Court also held that the provisions which set a thirty-day timeframe for the president to take the oath from the newly elected judges was unconstitutional since the Constitution does not set any term in this matter, thus the obligation should be fulfilled immediately. The Constitutional Court also applied its 3 December 2015 judgment in order to strike down a rule setting a seven-day deadline for submitting candidates for judges whose tenures expired in 2015. The judgment was published in the *Journal of Laws* on 18 December 2015.

#### **The Act of December 2015 on the Constitutional Court**

On 15 December 2015 (shortly before the publication of the 9 December judgment), the Law and Justice Party presented another draft Act amending the Act on the Constitutional Court.

The most important changes that the draft was supposed to introduce comprised:

- an increase in the minimum number of judges necessary to constitute a full bench;
- a requirement of two-thirds majority to deliver a judgment;
- a requirement to consider the cases in the sequence in which they were filed (without any exceptions);
- a provision allowing the removal of a judge from office 'in particularly serious cases' by the Sejm, through a resolution upon a motion of the General Assembly of Judges of the Constitutional Court;
- a provision allowing disciplinary proceedings to be initiated against a judge of the Court upon a motion filed by the Minister of Justice or the president of Poland.

Moreover, the Act of December 2015 was supposed to enter into force on the day of its publication, without any *vacatio legis* period.

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The judgment by the Constitutional Court issued on 9 December 2015 on the constitutionality of the Act of December 2015 became a lightning rod of the Polish constitutional crisis and the epicentre of many controversies. The governing majority exploited the situation in which it had put the Constitutional Court, since the latter was supposed to decide on the legality of the Act which regulated the rules of the Court's procedure — thus, the invalidity of the Act should, theoretically, imply the invalidity of the procedure itself, depriving it of legal basis. At the same time, the judgment issued on the grounds of the Act on the Constitutional Court in the shape in which it was in force before the entry into force of the Act of December 2015, despite that the latter was already in force, deprived the judgment of legal authority — at least in the opinion of the governing majority, who used this as a reason not to publish the judgment. The situation was that of a snake eating its own tail.

The judgment was delivered upon a motion submitted by the first president of the Supreme Court, the Commissioner for Human Rights, the National Council of the Judiciary of Poland, and two groups of MPs. *Amicus curiae* briefs were submitted by the National Bar Council, National Council of Legal Advisors, Helsinki Foundation for Human Rights, and the Stefan Batory Foundation. On 8 March 2016 the Constitutional Court declared the Act of December 2015 unconstitutional in its entirety. The Constitutional Court decided to consider the case on the basis of the Constitution itself, and those provisions of the Act on the Constitutional Court 2015 which were not questioned. The Constitutional Court ruled as a bench composed of twelve judges.

The Constitutional Court held that the speed of legislative procedure in which the Act was passed was in breach of the Constitution, since it made it impossible for all interested parties to review the draft. The Court also found the lack of a *vacatio legis* to be unconstitutional, and it criticized particular regulations (such as the requirement that cases be considered in the sequence in which they were filed) for similar reasons to those underlying the judgment of 9 December 2015. The Constitutional Court held that the Act of December 2015, in terms of legal consequences, is void, and the previously binding provisions of the Act on the Constitutional Court were restored.

Prime Minister Beata Szydło did not recognize the judgment and refused to publish it. In March 2016, the Warsaw Prosecutor's Office received over 1,500 notifications regarding the failure to publish the judgment of 8 March 2016. The prosecutor initially refused to investigate, and it was only the Court that compelled the prosecutor to initiate an investigation. It was discontinued, however, as he did not find sufficient grounds for prosecution.

### ***The new Act on the Constitutional Court and its constitutionality***

The governing majority promptly initiated a new legislative procedure regarding a new Act on the Constitutional Court, the draft act being submitted on 3 June 2016. According to the report of the Helsinki Foundation for Human Rights on the Polish constitutional crisis, *'the choice of this date could have been motivated by the development of events in relation to the Rule of Law Framework initiated by the European Commission'*.<sup>2</sup> Once again, the draft act of the new Act on the Constitutional Court did not have to wait long to be passed by the parliament and became law on 22 June 2016, with only a fourteen-day *vacatio legis* period.

The most important changes the Act of June 2016 introduced are:

- deciding the cases in the sequence in which they were filed, unless the president of the Constitutional Court decides otherwise (the provision which in its first part was already assessed as unconstitutional in the unpublished judgment of 8 March 2016 and which was probably drafted with a view to fill the office of president of the Constitutional Court by a person elected by the governing majority);
- an obligation to postpone a full bench hearing in the event of the absence of the Prosecutor General;
- a requirement of a motion of the president of the Constitutional Court filed to the prime minister in order to publish a Constitutional Court judgment.

The Act of June 2016 also contains a number of important intermediary provisions, which authorized the unlawful status quo:

- the three judges who took the oath before President Duda (thereby elected illegally by

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- the Law and Justice Party) were to immediately take up office;
  - the judgment of 9 March 2016 was excluded from publication;
  - the Constitutional Court was obliged to finalize all current cases within one year of the Act's entry into force;
  - the new rules of procedure were imposed in current proceedings before the Constitutional Court.

The constitutionality of the abovementioned Act was questioned by a number of state and non-governmental authorities. The most controversial provisions include: the excessively long period required to set up a hearing before the Court; the unreasonable rule of judging cases in order of submission; the excessive power accorded to the position of the Prosecutor General in the proceedings; the unjustified requirement of the president of the Constitutional Court to file a motion to the prime minister in order to publish a judgment; and non-conformity with the unpublished jurisprudence of the Constitutional Court.

On 11 August 2016, the Constitutional Court held the Act on the Constitutional Court of June 2016 to be partially unconstitutional. The Court rendered invalid the provisions forcing the president of the Constitutional Court to assign cases to the judges elected contrary to the judgment of 8 March 2016, provisions excluding this judgment from publication, and a number of irrational rules that would slow down the proceedings before the Court (such as a requirement to assess cases in order of filing them), or grant excessive control to the executive power.

As a result of the entry into force of the Act of June 2016 on the Constitutional Court, the previous Act on the Constitutional Court lost its binding force. At the same time, as a result of the Constitutional Court's judgment of 11 August 2016, almost all of the provisions of this Act were removed from the legal system, making the Act non-applicable in practice. However, once again — and following the same argumentation — the judgment of 11 August 2016 was not published by the government. The judgment remains unpublished to this day, despite strong internal and international interventions.

### ***The recent legislative initiatives concerning the Constitutional Court***

Recently, in October 2016, the Sejm commenced new works on three new Acts on the Constitutional Court: the Act on the Functioning of the Constitutional Court, the Act on the Status of the Constitutional Court Judges, and Implementing Provisions. The legislative process was speedy again, with President Duda signing the new laws in November and December 2016, and the views of the public (including NGOs) were not taken into account.

One of the issues regulated by the abovementioned Acts was the election of a new president of the Constitutional Court. The term of office of the previous president of the Constitutional Court, Professor Andrzej Rzepliński, who firmly opposed the reforms passed by the governing majority, was bound to end on 19 December 2016. The ruling party focused on the election of a new president, chosen from among the judges elected by the party in 2015 and 2016.

According to the Act on the Functioning of the Constitutional Court of 2016 (which entered into force on 1 January 2017), when the tenure of the president of the Constitutional Court comes to an end, the most senior judge with the longest record of work in a state central administration becomes acting president of the Constitutional Court. This criterion was designed so that one of the judges elected by the governing majority — Justice Julia Przyłębska — could take up this function. The acting president of the Constitutional Court promptly gathered a General Assembly of the Constitutional Court Judges, which, despite lacking the required *quorum*, decided to present candidates for the vacant office. On 21 December, Julia Przyłębska was appointed as the new president of the Constitutional Court by the Polish President Andrzej Duda.

During the term of office of the previous president of the Constitutional Court, the Court was composed of twelve judges, as Professor Rzepliński refused to admit into office three judges elected by the governing majority (against the Court's judgment of 8 March 2016) in November 2015, and the President of Poland refused to take oath from three judges elected by the previous Parliament. The first decision



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made by Julia Przyłębska as acting president was to admit into office those judges that were elected unlawfully by the Law and Justice Party.

This state of affairs made the Constitutional Court a 'false Court' or 'Unconstitutional Court' in view of both the public and the institutions of Poland. The legislative chaos around the Constitutional Court, the failure to implement the 9 December 2015 judgment, and the non-publication of the 8 March 2016 and 11 August 2016 judgments, has created a grave uncertainty as to the legal status of the Constitutional Court and its future judgments. The other courts, such as the Supreme Court and Supreme Administrative Court, have already declared that they will respect the Constitutional Court's judgments from 8 March 2016 and 11 August 2016, despite their not having been published or implemented. This poses the serious threat of legal dualism in the legal system of Poland, since the executive declares respect for other legal norms than those of the judiciary. This situation, in turn, poses a serious threat to the system of protection of rights and freedoms.

### **New laws regarding the Constitutional Court — but why?**

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Some of the true reasons behind the deadlock of the Constitutional Court can be found in the new laws proposed by the ruling political party. The new laws severely interfere with fundamental rights and freedoms, the separation of powers, the principles of a democratic state, and freedom of expression. The new laws are aimed at maximizing the political goals of the ruling party, extending the competences of government over rights and freedoms, limiting opportunities to present critical views on the ruling party's actions. Furthermore, the Parliament adopts new laws in extreme haste, often at sessions conducted late at night.

There have been a number of critical new laws — not to mention a range of other controversial legislative initiatives of the ruling party — adopted during the constitutional crisis. Unsurprisingly, each of these new laws was questioned before the Constitutional Court by the Polish Commissioner for Human Rights.

### ***New law on public media***

The new laws are contrary to the principle of a free public media, formulated during the transformation process in the last decade of the twentieth century. The public media, as opposed to government media, are characterized by internal pluralism and their independence from policymakers, in particular, from the executive authorities. The Polish Commissioner for Human Rights pointed out that some provisions are contrary to the Polish Constitution, as well as international and EU law. The new law deprives the National Broadcasting Council of its leading role as the independent media authority. It also abolishes the statutory guarantees of independence and stability of the supervisory and management boards of public radio and television, shortening the term of office of those supervisory and management boards. In practice, the new laws allow for any appointment and dismissal in units of public radio and television by the government minister, and thus abolishes the existing system of a 'buffer' between the government and the public media.

Indeed, the Law on Public Media was held to be unconstitutional by the Constitutional Court in a judgment on 13 December 2016, but the judgment has not been implemented nor respected by the government and the National Broadcasting Council.

### ***New law on surveillance (anti-terrorism)***

The government deemed that the new law had to be implemented before the NATO summit in Warsaw and World Youth Days in Cracow (summer 2016), and that these time restrictions would not allow for an extensive consultation period. The need for security during these high-profile events was used as an opportunity to introduce new regulations, which profoundly altered the right to privacy and the principle of equal treatment.

The Anti-Terrorism Act of 2016 introduced a very broad definition of 'an event of a terrorist nature', far exceeding the definition contained in the Criminal Code. The Act gave the Minister of the Interior power to issue executive regulations defining a catalogue of events of a terrorist nature. The broad definition of the term should be assessed in the context of the provisions that granted law enforcement agencies the right to detain on remand for 14 days any suspect of a terrorist offence. Furthermore, in such cases, the

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general rules of applying preventive measures were modified, so as to be more invasive and restrictive. The Anti-Terrorism Act also grants security agencies a right of secret surveillance of all foreigners. This surveillance may be carried out for a period of three months, and during this time, is not subject to judicial control. Moreover, the Act also grants the security agencies authority to conduct mass night searches (ordinary criminal procedure excludes this possibility), for example, in multiple residential premises in a single neighbourhood, if there is a suspicion that a suspect is living in the area.

The Act also provides the security agencies with the authority to block access to certain websites on extremely vague and broad premises. While, in principle, this is subject to judicial control (the court imposes a block on the website in question upon a motion of the Chief of the Internal Security Agency, issued with the consent of the Prosecutor General), in 'exceptional situations' the Chief of the Internal Security Agency (with the consent of the Prosecutor General) has the authority to order the blocking measure without prior judicial control for a period of up to five days.

#### ***'Reorganization' of the Prosecutor's Office***

Soon after the parliamentary elections, the ruling party implemented a fundamental reform of the administration of public prosecution. Firstly, the functions of the Minister of Justice and Prosecutor General were united in one office, making the Prosecutor General now an acting, and active, politician, in a return to the arrangement held in the period of 2005–7. The Prosecutor General was also accorded new powers, including the right to issue binding orders to every prosecutor in Poland, and the right to disclose material from each case to the public, which may threaten the principle of presumption of innocence, and might be deliberately used against political opponents.

This move was accompanied by a drastic reform in the structure of public prosecution. New administrative units were created to replace the existing ones in a reorganization that served only one objective: to 'verify', and ultimately, to substitute various prosecutors in the former structures. Many

highly experienced prosecutors, often those conducting controversial cases or cases with a political element (not always deciding in favour of the members of the ruling party), were degraded, and many (obedient) prosecutors from small units were promoted.

The demoted prosecutors filed complaints to the European Court of Human Rights, claiming that their demotion was of a political nature and that they were deprived of the right to challenge the demotion in court.

#### ***The new law on the National Council of the Judiciary***

The most recent legislative initiative concerning the functioning of the judiciary was introduced by the Minister of Justice–Prosecutor General. The draft act concerns the reorganization of the National Council of the Judiciary — a constitutional body that plays a fundamental role in the process of appointing new judges. The draft act aims to expire the mandates of the judicial members of the National Council of the Judiciary and, effectively, transfers the right to appoint the new judges and members of the Council from the judicial assemblies of the particular courts to the Parliament. The act also divides the Council into two assemblies (despite the fact that the Constitution does not recognize such a division): one comprising the judicial members and the second comprising the members of the executive and legislative, thereby granting the second assembly a right to veto the judicial appointment of the first. The draft act was adopted by the government on 7 March 2017.

The new law — if it comes into force — would highly politicize the process of judicial appointments. On 28 March 2017 the Organization for Security and Co-operation in Europe issued an opinion in which it strongly condemns the governmental proposition. It remains to be seen whether international condemnation of the prevailing political currents in Poland that seek to defy the Constitution and threaten the independence of the judiciary will have any impact on a populist government that has thus far remained resolutely impervious to both internal and international criticism.

## **Notes**

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<sup>1</sup> Case no. K2/2007.

<sup>2</sup> *The Constitutional Crisis in Poland 2015-2016*, Helsinki Foundation for Human Rights, Warsaw 2016, p. 37.



### The Foundation

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