STUDIA POLITOLOGICZNE VOL. 58
DOI: 10.33896/SPolit.2020.58.1

*Dariusz Skrzypiński**

Policy towards the Judiciary as a symptom the transformation of the Polish political system in years 2015–2020

Keywords: *policy, political system, judiciary, tripartite separation of powers, transformation*

Abstract: *The article provides an analysis of PiS[1]. actions with respect to the judiciary. PiS is the ruling party in Poland since 2015. It implemented very deep institutional reforms and took intensive communication measures of propaganda-like discrediting nature which brought significant political consequences. Firstly, the principles of rule of law and separation of powers were breached leading to a departure from standards of liberal democracy. Secondly, very strong polarisation of attitudes occurred in the society and legal elites with respect to the introduced reforms, causing politicisation of the judiciary and confrontation inside the judiciary between those in favour and those against the government's actions.*

Introduction

Political experience in functioning of liberal democracies in the 21st century shows an increase of populist attitudes and criticism of the traditional forms of democracy. Consequently, researchers and commentators realised that elites which had democratic (electoral) legitimacy might use it for a thorough revision or even destruction of the democratic politi-

* ORCID ID: https://orcid.org/0000-0003-2097-1456, prof. UWr, Institute of Political Science at the University of Wrocław; email: dariusz.skrzypinski@uwr.edu.pl

1 Law and Justice.

cal order[2]. One of the strategies they apply is to neutralise institutions aimed at protection of political minorities' rights, such as constitutional courts, common courts and ombudsmen.

This is the context of opinions by many scholars who noted that rulers of illiberal democracies start with steps against independent judiciary as an institution authorised to control their activities and to enforce responsibility[3].

D. Landau, also perceived actions by populist leaders that sought institutional and normative changes in the functioning of the judiciary as designed not to 'abolish', but to break the judiciary, and make their activities part of the operations of the new regime operations, contrary to foundations of liberal democracy[4].

Referring these conclusions to policies versus the judiciary taken by PiS, the ruling party in Poland since 2015, I discuss the following thesis in this paper:

Actions proposed by PiS government and aimed at reforming the judiciary breached significantly principles of rule of law and independence of judiciary[5]. This situation led to serious polarisation of attitudes among the society and legal elites. The process triggered an increase of politicisation of the judiciary, evidenced by: confrontation among judges between those who support and those who oppose the government's actions, and conflict between the judges' milieu and the Ministry of Justice, President, and parliamentary majority – all controlled by Law and Justice.

In the context of this thesis, it should be mentioned that the judiciary, as a branch of power, is political and there are strong traditions of judicial activity[6], resulting in the deep judicialization of politics. However, such a situation should not be mistaken for the politicisation of the judiciary defined as the involvement of an institution in informal

---

2 S. Levitsky, D. Ziblatt, *Tak umierają demokracje*, Łódź 2018, p. 11.

3 E.g.: A. Antoszewski, *Współczesne teorie demokracji*, Warszawa 2016, p. 139; P. Solomon, *Courts and Judges in Authoritarian Regimes*, «World Politics» 2007, vol. 60, Issue 1, pp. 122–145; A. Stepan and C. Skach, *Modele konstytucyjne a umacnianie demokracji*, «Państwo i Prawo» 1994, No. 4, p. 40; F. Zakaria, *Przyszłość wolności. Nieliberalna demokracja w Stanach Zjednoczonych i na świecie*, Warszawa 2018, p. 98.

4 D. Landau, *Populist Constitutions*, «The University of Chicago Law Review» 2018, Vol. 85, No. 2, p. 525.

5 K. Kovacs, K.L. Scheppele, *The fragility of an independent judiciary: Lessons from Hungary and Poland – and the European Union*, «Communist and Post-Communist Studies» 2018, Vol. 51, Issue 3, pp. 196–197.

6 R. Hirschl, *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*, London 2007, pp. 170–171.

relationships or conflicts with centres of public authority or political officials, disconnected to its legal responsibilities[7].

In order to verify this thesis I will answer the following research questions:

1. What institutional reforms concerning organisation and functioning of the common courts were introduced in Poland after 2015?
2. How did the ruling party strive to affect the image of the judiciary and judges with the general public?
3. What were judges' reactions to these activities?
4. How was this situation perceived in Poland and abroad?
5. How did the reforms and reaction thereto affect transformation of the Polish political system?

As far as methodology is concerned, the paper refers to:

1. systems perspective, considering the judiciary as a sub-system of the institutional political system.
2. neo-institutional approach, focusing especially on motivations and objectives of actions by institutions' staff.
3. normative approach in analysing rules of institutions' functioning.

Problems of efficiency and political dimension of the functioning of the judiciary

In Poland after the parliamentary elections of 2015, the victorious national conservative party PiS formed a one-party government. The lesson that the party's leaders, and in particular J. Kaczyński, took from their previous term in office (2005–2007) was that the Constitutional Tribunal and the common judiciary, as the guardians of the principles and values of the liberal democracy, were a major obstacle in implementation of their political plans. They started to perceive the significant potential of raising electoral support by a launching comprehensive attack on the entire legal protection system. This might have seen as an easy task to complete as there is a broad perception in the Polish society of it being inefficient and open to corruption[8].

This is why changing of the legal protection system became a strategic priority for PiS immediately after the 2015 electoral victory. The

[7] J. Kędzierski, *O niezależność prokuratury – w kręgu faktów i mitów*, «Prokuratura i Prawo» 2009, Nr 1, p. 108.

[8] D. Skrzypiński, *Władza sądownicza w procesie transformacji polskiego systemu politycznego. Studium politologiczne*, Wrocław 2009, pp. 395–409.

early reforms included the reintegration of the positions of the Minister of Justice and the Attorney General, making the Attorney's Office subordinate to the government. Later, slogans demanding improvement of the courts efficiency, were used to trigger institutional reforms, which will be discussed in detail further in the text.

It should be stressed, however, that an analysis of the reports by the European Commission for the Efficiency of Justice (CEPEJ) reveals an equivocal image of the much criticised by PiS Polish judiciary in comparison with quality of work of courts in other European countries. The data presented in Table 1 (please see below) show that before the implementation of the reforms by PiS, the efficiency of Polish courts was improving in many aspects. It should also be mentioned that in general the in-flow of cases into the civil and criminal courts (excluding administrative courts) per 100 inhabitants was at least 40–50% higher than the European median rate[9]. These differences were due to many factors, including the weakness of extrajudicial methods of dispute resolution and other court procedures.

The indicators included (please see Table 1 below) are the Clearance Rate and the Disposition Time. The former concerns the smoothness of proceedings, and reflects the relationship between the number of in-flowing cases in the courts to cases closed. The higher value of this indicator signals that the analysed judiciary is more efficient. While the Disposition Time, reflects the average consideration time, which is calculated as the average number of days for the consideration of a single case at court.

It seems, however, that the political will to reform the judiciary arose from many sources, and not necessarily related to improving the efficiency of the courts. Firstly, this is an effect of the growing juridisation of social life, which signifies the increasing role for the law as the regulator of social relations, and a resultant increase of the impact of courts as institutions, which control the operation of the executive and legislative. The process enhances the importance of the judiciary, resulting in the phenomenon referred to as the judicialization of politics[10]. This development is strongly criticised by supporters of 'majority democracy', who assert that the judiciary lacks of democratic legitimacy.

---

[9] https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Overviewv5_0EN/Overview, (28.12.2019).

[10] T. Koopmans, *Courts and Political Institutions: A Comparative View*, Cambridge University Press, Cambridge 2003, p. 269; J. Ferejohn, F. McCall Rosenbluth, Ch. Shipan, *Comparative judicial politics*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154123, p. 1 (14.01.2020).

Table 1. Efficiency of the Polish and European courts (%)

Category of cases	The Clearance Rate (%)							
	I Instance				II Instance			
	2010		2016		2010		2016	
	Poland	European median	Poland	European median	Poland	European median	Poland	European median
Administrative	94,5	95,1	103,0	99,7	75,1	99,5	88,8	97,8
Civil and commercial litigious	95,0	98,1	98,8	100,0	99,1	96,6	96,1	100,2
Criminal	90,8	99,2	105,0	101,1	98,0	99,1	99,0	100,2
Category of cases	The Disposition Time (days)							
	I Instance				II Instance			
	2010		2016		2010		2016	
	Poland	European median	Poland	European median	Poland	European median	Poland	European median
Administrative	121	226	143	241	445	233	607	241
Civil and commercial litigious	180	195	225	192	45	189	105,0	121,0
Criminal	96	104	95	117	58	67	39	77

Source: original development of https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Overviewv5_0EN/Overview (28.12.2019).

The second motivation involves a broader phenomenon, the consequence of a confrontation between parliamentary representatives and their leaders with an electoral mandate from society on one hand, and the courts and tribunals, which guard the principle of the rule of law, on the other. This principle is defined as a guarantee of a fair trial held by independent and politically neutral courts, but – as noted by L. Diamond – in recent decades it has become one of the foundations of liberal democracy[11]. In this context, one should also quote the concept of 'embedded democracy' by W. Merkel, who argues that this 'mature' form of democracy, also requires a set of rights to protect citizens from the arbitrary decisions of their rulers as well as a clear separation of powers to ensure the regular and constant supervision of parliament and

[11] L. Diamond, *Developing Democracy. Towards Consolidation*, Baltimore 1999, pp. 11–13.

government by other institutions of the state, which means horizontal responsibility, executed, among others, by the courts[12].

Thirdly, there were specific political strategies aimed at discrediting the judiciary at the time when the judiciary got involved in actions that might potentially threaten the achievement of pre-defined political goals. Such circumstances occurred not only in Poland, but in other democratic states, too (D. Trump in the USA, V. Orban in Hungary, B. Natanjahu in Israel) where the functioning of the courts was strongly criticized[13].

Analysis of the actions of the PiS

In choosing to transform the organisation and the rules governing the operation of the judiciary, PiS started by amending the regulations concerning the Supreme Court (Sąd Najwyższy, SN), the common courts and the National Council of the Judiciary (Krajowa Rada Sądownictwa, KRS).

The legal reforms concerning the Supreme Court included reducing the retirement age to 65, allowing the government to replace some of the SN judges of the SN[14]. A new institution (for extraordinary complaints) was introduced, as a special measure to appeal against valid court rulings, designed to present the government's sensitivity to the social demand for just rulings. To accomplish this, two new chambers of the Supreme Court were established: the Extraordinary Control and Public Affairs Chamber, which is responsible for considering extraordinary complaints and election protests; and the Disciplinary Chamber[15]. The latter was granted special status, marked by a separate chancellery, budget, and higher remunerations for judges of this chamber. The new chambers were staffed with judges approved by the new National Council of the Judiciary, which is controlled by PiS.

---

12 W. Merkel, *Embedded and defective democracies*, «Democratization» 2004, Vol. 11, No. 5, pp. 36–43.

13 D. Landau, *Populist Constitutions*, «The University of Chicago Law Review» 2018, Vol. 85, No. 2, p. 526.

14 These regulations were withdrawn upon the opinion of the European Commission and the ruling of the European Union's Tribunal of Justice.

15 A. Grzelak, *Kadrowa reforma Sądu Najwyższego jako odpowiedź na problemy wymiaru sprawiedliwości-próba nieudana*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek, *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019, pp. 156–175.

In the case of the common courts, a series of legislative changes were implemented in a short time, between March and December 2017. Their main outcome was that the court directors became directly responsible to the Minister of Justice[16]. Finally, a major amendment entrusted the Minister with the power to appoint and dismiss arbitrary the presidents and deputy presidents of any court in Poland, within 6 months from the act's coming into force. It deprived assemblies of judges of respective courts and the National Council of the Judiciary of any influence on these decisions. According to the data published by the Ministry of Justice[17], all, 149 presidents an deputy presidents were replaced. It should also be noted, that the procedure to dismiss presidents was negatively received by whom, as the presidents were notified by a fax.

In addition, there was a thorough reform of the disciplinary proceedings for judges. The Minister of Justice became responsible for appointing the Disciplinary Proceedings Representative for common courts' Judges and their deputies, and the disciplinary courts' judges at the Courts of Appeal. Furthermore, they can request the initiation of a procedure against a selected judge, in which a disciplinary spokesman appointed by the minister may replace another spokesman.

In the case of the National Council of the Judiciary – a constitutional organ designed to guard the independence of courts and judges, composed of representatives of the judges, legislative and executive (government and president), the procedure of selection of the 15 judges – members of the Council was changed. Their election by a judges' assembly was passed to the Sejm, who chose from candidate-judges, who were supported by at least 25 other judges or 2,000 citizens. These changes have resulted in the introduction of an anti-constitutional solution to the legal order[18]. Further, striving to elect the new members of the Council, the Sejm terminated the mandate of previously elected judges and the parliamentary majority refused to disclose the lists of those who

---

16 Court director is responsible for organisational matters and not for consideration of cases and rulings.

17 B. Grabowska-Moroz, M. Szuleka, *„Od kadr się zaczęło", czyli o skutkach nowelizacji z 12.07.2019 r. ustawy – Prawo o ustroju sądów powszechnych*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019, pp. 183–186.

18 A. Rakowska-Trela, *Krajowa Rada Sądownictwa po wejściu w życie nowelizacji z 8.12.2017 r. – organ nada konstytucyjny czy pozakonstutycyjny*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek, *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019, pp. 111–112.

effectively supported the candidates elected to the Council, because the government feared charges of political control in the electoral process[19].

Upon assessment of the above reforms, one may conclude, as K.L. Scheppele did, that many of these reforms: the possibility to dismiss any president of a court in the state (except for the Supreme Court) or control of the Ministry of Justice over the process of selecting new members of the the National Council of the Judiciary could be perceived as actions aimed at subordinating the judiciary to the executive power including[20].

The next step in process of reforming of polish judiciary occurred after the parliamentary elections, taking placed on December 2019, when the PiS-controlled Sejm passed an amendment to next the Act on the system of common courts, which significantly limited the judges' freedom of speech.

At the same time the government also suggested a change to the rules that calculated the pension received by judges, who leave the service before completing their 20 years tenure. This was perceived by judges as another act of harassment by PiS against thems. However, the government explained that this is a reaction to a situation, when people relatively young and able to work get a full pension.

To summarize, in implementing all of the these reforms the politicians of the ruling party have applied law-making practices, which resulted in the establishment of the "Frankenstate". K.L. Scheppele proposed that these are activities which technically conform to the constitution or refer to seemingly analogical solutions applied elsewhere in Europe, but taken all together, they bring the political system closer to authoritarian patterns[21].

From this perspective it is important to realise that without achieving a parliamentary majority sufficient to amend the Constitution, PiS is actually striving to create a new constitutional order through ordinary legislation. Therefore, these practices resemble the 'rule by law'[22] according to T. Carothers. In circumstances of a poor legal culture and political

[19] The Supreme Administrative Court ordered their disclosure, but the Chancellery of the Sejm refused to execute this ruling, quoting the decision by the President of the Personal Data Protection Office (selected by PiS).

[20] K.L. Scheppele, *Autocratic legalism*, «The University of Chicago Law Review» 2018, Vol. 85, No. 2, p. 553.

[21] K.L. Scheppele, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, «Governance: An International Journal of Policy, Administration, and Institutions» 2013, Vol. 26, No. 4, p. 559.

[22] Ibidem, p. 534.

pressure, the 'rule by law' supersedes the principle of the 'rule of law', which is fundamental for liberal democracy[23]. From this perspective the evaluation dynamics of the changes in the nature of the rule of law in Poland based Rule of Law Index, which is part of World Justice Project (WJP) in should raise anxiety (please see Table 2 below).

Table 2. Assessment of the rule of law in Poland in 2015–2019

Criterion	Years	
	2015	**2019**
Overall score	0.71	0.66
Fundamental rights[24]	0.77	0.66
Civil justice[25]	0.65	0.64
Penal justice[26]	0.74	0.61

Source: original development of data from: https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019 and https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2015-report, (18.12.2019).

The reception of PiS activities in Poland and in the international opinion

First we can concentrate on EU reaction. On April 2019, the European Commission initiated infringement proceedings because the new system of disciplinary measures undermines the independence of judges in Poland and does not provide the necessary guarantees to protect

[23] T. Carothers, *The Rule of Law Revival*, «Foreign Affairs» 1998, Vol. 77, No. 2, p. 4.

[24] The criterion includes: Equal treatment and absence of discrimination; Effective guarantees of the right to life and security; Guarantees of the due process of law and rights of the accused; Effective guarantees of freedom of opinion and expression; Freedom of belief and religion; Legal protection of the freedom from arbitrary interference with privacy; Effective guarantees of the freedom of assembly and association; Effective guarantees of fundamental labour rights.

[25] The criterion includes: Accessibility and affordability of civil courts; Freedom from discrimination in the judiciary; Freedom from corruption in the judiciary; Freedom from improper government influence in the judiciary; No unreasonable delay in civil justice; Effective enforcement of sentences; Access to impartial and effective alternative dispute resolution mechanisms.

[26] The criterion includes: Effectiveness of criminal investigation; Timely and effective criminal adjudication; Effectiveness of the correctional system; Impartiality of courts; Freedom from corruption in the judiciary; Freedom from improper government influence in the judiciary; Due process of law and protection of rights of the accused.

judges against political control, as required by the Court of Justice of the EU. At the end of the same year the Act which significantly limited the judges' freedom of speech drew the attention of the European Union, who saw it as a following threat to the rule of law in Poland.

The other international perception of these reforms has been unequivocal. The assessment of Freedom House is that over the past few years, the functioning of the Polish judiciary has changed from being an element typical for consolidated democracy, later to a semi-consolidated democracy and finally as transformation or a hybrid regime. In 2018 the judiciary became the worst-assessed component of the Polish political system in the context of democracy, and one of two (with openness and transparency of government) which obtained an assessment of these areas of functioning of public institutions in Poland as undemocratic[27]. As a result of these changes Freedom House in 2020 changed its assesment and classifyied whole polish political system not as a consolidated democracy, but as semi-consolidated democracy[28].

Table 3. Assessment of independence of the Polish judiciary by Freedom House

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
Score	2.50	2.50	2.50	2.50	2.50	2.50	2.75	3.25	4.25

Source: https://freedomhouse.org/report/nations-transit/2018/poland (18.12.2019).

However, the political plan of PiS was not limited to legal reforms. It also involved the symbolical sphere, e.g. in response to the protests of judges in 2017, an information campaign Just Courts was organised, with a budget of 8 million PLN (app. 1.860 million euro) provided by the Polish National Foundation. This institution was established by the biggest public-owned companies, which are controlled by managers closely connected the ruling party, and its task was to promote Poland abroad. The campaign itself accused judges of legal infringements, protecting their own interests. It also referred to controversial sentences. However, critics of the campaign pointed out that some of the situations it presented had never happened, or their circumstances were different to those portrayed on television or on billboards. In 2018 a first instance

[27] https://freedomhouse.org/report/nations-transit/2018/poland (18.12.2019), the rating are based on a scale of 1 to 7, with 1 representing the highest level of democracy and 7 the lowest (not free country), but last year Freedom House changed this scale and reversed it and because of that comparing data from years later than 2018 is difficult.

[28] https://freedomhouse.org/country/poland/nations-transit/2020 (11.07.2020).

civil court in Warsaw ruled that by organising this campaign, the Foundation breached its Statute.

Finally reforms which started in 2016 with accompanying negative narrative and campaign which was initialized in 2017 contributed to a dramatic decrease in the public respect for judges and the judiciary (please see Table 4 below). This may come to threaten functioning in the longer term, as the judiciary is not legitimised by the direct will of voters, and instead relies strongly on public respect.

Table 4. Level of trust in the judiciary and legal system in Poland (%)

Year	2014	2015	2016	2017	2018	2019
Percentage of people expressing trust	41	41	42	32	33	37

Source: https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/themeKy/18/groupKy/100 (18.12.2019).

Those critical of the reforms by PiS have strived to respond to the above campaign and other measures in the symbolical sphere. They have established a Social Movement called the Free Courts Initiative, in which activists have organised demonstrations and manage the website ruleoflaw.pl[29].

Because the opposition of some judges to the government's actions was getting stronger, the Ministry of Justice took further steps. For example, disciplinary proceedings were instituted against judges who, contrary to the will of the ministry, referred prejudicial questions on various aspects of the reform to the Court of Justice of the European Union. Furthermore, disciplinary proceedings were also initiated with respect to the participation of judges in a workshop for school children concerning the constitution and the separation of powers or participation in court trial simulations held for educational purposes.

It would appear that the coordination of such actions was the main reason for establishing in 2018 a new team within the Ministry of Justice. The Team of Ministry of justice to matters of disciplinary measureses of judges and court assesors was tasked with developing analyses and recommendations related to disciplinary proceedings concerning judges. The team was led by the Deputy Minister, Ł. Piebiak, who resigned in August 2019. This decision was a reaction on fact a disclosure, that he had coordinated the activities of judges related to the Ministry, who

[29] https://ruleoflaw.pl (14.12.2019).

leaded Caste Watch account on Twitter[30]. On this account were published compromising information about the private lives of judges, who opposed to reforms in the judiciary introduced by the Ministry.

The actions that have been described above have resulted in a growing polarisation among the judiciary and their gradual politicisation. There are currently grups oriented towards either the government or the opposition. The former group were selected to sit on the new National Council of the Judiciary, received promotions, became proponents to the Ministry of Justice, and gained financial benefits. The latter group protested against legal and staff changes at judicial assemblies, participated in demonstrations and appealed to the European institutions (e.g. asking prejudicial questions). It is this group that strives to defend what remains from the pre-reforms rule of law.

Is this a strange situation in a democratic state? M. Weber observed that judges are not, "an automaton into which legal documents and fees are stuffed at the top in order that it may spill forth the verdict at the bottom"[31]. Obviously, to ensure their independence, limitations were imposed on judges' political activity, but these limitations do not deprive judges of their political opinions and preferences. These were exactly the reasons why the implementation of reforms by PiS brought about such a dramatic polarisation among judges.

Therefore, it is also important to examine the practices of other countries in the context of the Polish experience. For example, in Argentina multiple actions were taken by the executive with respect to the judiciary. This involved, for example mremoving individual judges, even the entire membership of the Supreme Court, and exerting physical pressure. As a result, the judges started to build a particular strategy of defence, within which they started to 'orient' their rulings in expectations of the executive[32]. However P. Shane noted, the potential 'flexibility' of the judiciary with respect to the demands of the legislative and executive powers is not certain to protect the judiciary's independence, on the contrary it may encourage the other two powers to continue asserting pressure in the future[33]. Would this be also the main objective of PiS, who expects growing judicial favor from the courts?

---

30 https://twitter.com/kastawatch (8.03.2020).

31 M. Weber, *Gospodarka i Społeczeństwo*, Warszawa 2002, p. 710.

32 B. Nowotarski, *Jak budować a jak burzyć demokrację*, Warszawa 2012, p. 314.

33 P.M. Shane, *Interbranch Accountability In State Government And The Constitutional Requirement Of Judicial Independence*, «Law and Contemporary Problems» 1998, Vol. 61, No. 3, p. 34.

Moreover, the further escalation of the conflict, and the deepening of the transformation process of the judiciary into a new arena of political confrontation brings serious long term dangers related to the social perception of the judiciary:

– the risk of eroding the public image of courts as politically neutral organisations;
– the risk of the opposition using courts as a tool to fight against the government;
– the risk of burdening the courts with the responsibility for difficult or unpopular decisions on public issues[34].

The risks are significant, since the implemented reforms did not contribute to the improved efficiency of the Polish courts. For example, many experts claim even that the introduction of the extraordinary complaint may result in the prolongation of some proceedings[35]. Moreover, the prolonged dispute over the constitutional status of the National Council of the Judiciary has resulted in the questioning of the status of judges that were nominated by the President at its request. It may lead to the questioning of the validity of the sentences issued by these judges, which potentially could lead to a widespread chaos in the legal system. This outcome would be felt by hundreds of thousands of Polish citizens. It is highly probable that many of them will blame the courts and judges for this situation instead of the government.

There was a chance to prevent the danger of increasing the legal chaos through imitative the Round Table imitative that was organised early in 2020 by politicians of the Polish Peasant Party (Polskie Stronnictwo Ludowe, PSL), an opposition party. Thus, the first opening meeting was attended exclusively by the opposition and sympathetic lawyers. The government and the President were not represented. Thus, nothing was achieved and the polarisation of attitudes towards the development of the Polish judiciary continues.

---

[34] R. Hirschl, *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*, London 2007, p. 15; K. Metelska-Szaniawska, *Ekonomiczna teoria władzy…*, [in:] J. Wilkin (ed.), *Teoria wyboru publicznego. Wstęp do ekonomicznej analizy polityki i funkcjonowania sfery publicznej*, Warszawa 2005, p. 135.

[35] D. Mazur, *Sędziowie pod specjalnym nadzorem, czyli „wielka reforma" wymiaru sprawiedliwości*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019, p. 262.

Conclusions

PiS came to power in 2015, promising a programme of broad reforms covering issues of the political regime, culture and social-economic sphere. An important element of this programme concerned a proposition of changed organisation and functioning of the judiciary. Politicians of the ruling party justified the need for such reforms by too long duration of court proceedings, lack of effective mechanisms of enforcing judges' responsibility and presence of people appointed in the communist time among judges.

The proposed reforms were implemented in two areas. For the first one – the legal sphere, relevant amendments were introduced to acts on the Supreme Court, National Council of the Judiciary and the system of the common courts. The other area involved dismissal of many presidents of courts and intensive communication activities to shape a negative image of the judiciary, thus justifying the reforms with the public opinion, and finally initiation of multiple disciplinary proceedings against judges.

The amendments to the said acts of law brought solutions which significantly enhanced the position of the minister of justice versus courts. While announcing changes to improve functioning of the judiciary, PiS focused on replacement of court elite and gaining control over the process of appointment of judges. Thus, the scope of political control over the judiciary was increased, but courts' efficiency was not affected significantly. Dangers involved in such approach are discussed by C. Guarnieri who claimed it was necessary to ensure balance in mutual impact between the legislative, the executive and the judiciary in all projects of reforms concerning the judiciary, as otherwise foundations of democracy might be shaken[36].

Consequently, parliamentary opposition, multiple civic organisations and many judges pointed to a breach of independence of the judiciary and rule of law. Further, the European Commission found that the introduced changes infringed the rule of law as one of the founding values of the Treaty on the European Union. As a result, international analytical centres and other institutions recognised that the Polish judiciary did

[36] C. Guarnieri, *Courts as an Instrument of Horizontal Accountability: The Case of Latin Europe*, [in:] J.M. Maravall, A. Przeworski (eds.), *Democracy and the Rule of Law (Cambridge Studies in the Theory of Democracy)*, Cambridge 2003, pp. 239–240.

not meet requirements necessary to consider it as fully independent[37]. Poland also found itself in procedural disputes with institutions of the European Union, which may have negative impact on the state's leverage when it comes to negotiating the Union's budget.

Another major consequence of the reforms was polarisation of attitudes among judges and polarisation of public opinion's assessment of the judiciary. On one hand, legality of appointment of judges by the PiS-controlled National Council of the Judiciary was questioned[38]. On the other hand, information campaigns funded by organisations related to the government spread negative information about judges. All this led to a collapse of citizens' trust in courts, thus weakening significantly the judiciary's legitimacy, because legitimisation o this branch of public authorities relies on trust, and not electoral decisions[39].

Thus, the question of reforming the judiciary has become one of the major problems that cause confrontational attitudes within the society, among judges, between political parties and in Poland's relations with the European Union and governments of many of its member-states. It seems that the confrontation will escalate and in near future new symptoms of the conflict can be expected. In this context, researchers should focus on such issues as: gradual politicisation of the Supreme Court and its role in considering disciplinary proceedings, as well as objections to election results; studying efficiency of courts in the context of the planned reform of their organisational structure; analysis of effects of proceedings against Poland instituted by the European Commission and those at the Court of Justice of the European Union.

Bibliography

A. Antoszewski, *Współczesne teorie demokracji*, Warszawa 2016.

T. Carothers, *The Rule of Law Revival*, «Foreign Affairs» 1998, Vol. 77, No. 2.

L. Diamond, *Developing Democracy. Towards Consolidation*, Baltimore 1999.

J. Ferejohn, F. McCall Rosenbluth, Ch. Shipan, *Comparative judicial politics*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154123 (14.01.2020).

J.L. Gibson, *Judicial Institutions*, [in:] R.A. Rhodes, S.A. Binder, B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions*, Oxford 2006.

[37] E.g.: Courts from Germany and Netherlands refused the extradition of Polish citizens acknowledging that Polish courts were not independent and do not warrant to them the honest trial.

[38] In 2018 KRS was suspended as a member of European Network of Councils for the Judiciary.

[39] J.L. Gibson, *Judicial Institutions*, [in:] R.A. Rhodes, S.A. Binder, B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions*, Oxford 2006, pp. 525–526.

B. Grabowska-Moroz, M. Szuleka, *„Od kadr się zaczęło", czyli o skutkach nowelizacji z 12.07.2019 r. ustawy – Prawo o ustroju sądów powszechnych*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019.

A. Grzelak, *Kadrowa reforma Sądu Najwyższego jako odpowiedź na problemy wymiaru sprawiedliwości-próba nieudana*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019.

C. Guarnieri, *Courts as an Instrument of Horizontal Accountability: The Case of Latin Europe*, [in:] J.M. Maravall, A. Przeworski (eds.), *Democracy and the Rule of Law (Cambridge Studies in the Theory of Democracy)*, Cambridge 2003.

R. Hirschl, *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*, London 2007.

J. Kędzierski, *O niezależność prokuratury – w kręgu faktów i mitów*, «Prokuratura i Prawo» 2009, nr 1.

T. Koopmans, *Courts and Political Institutions: A Comparative View*, Cambridge 2003.

K. Kovacs, K.L. Scheppele, *The fragility of an independent judiciary: Lessons from Hungary and Poland – and the European Union*, «Communist and Post-Communist Studies» 2018, Vol. 51, Issue 3.

D. Landau, *Populist Constitutions*, «The University of Chicago Law Review» 2018, Vol. 85, No. 2.

S. Levitsky, D. Ziblatt, *Tak umierają demokracje*, Łódź 2018.

D. Mazur, *Sędziowie pod specjalnym nadzorem, czyli „wielka reforma" wymiaru sprawiedliwości*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019.

W. Merkel, *Embedded and defective democracies*, «Democratization» 2004, Vol. 11, No. 5.

B. Nowotarski, *Jak budować a jak burzyć demokrację*, Warszawa 2012.

A. Rakowska-Trela, *Krajowa Rada Sądownictwa po wejściu w życie nowelizacji z 8.12.2017 r. – organ nadal konstytucyjny czy pozakonstutycyjny*, [in:] Ł. Bojarski, K. Grajewski, J. Kremer, G. Ott, W. Żurek (eds.), *Konstytucja. Praworządność. Władza Sądownicza. Aktualne problem trzeciej władzy w Polsce*, Warszawa 2019.

K.L. Scheppele, *Autocratic legalism*, «The University of Chicago Law Review» 2018, Vol. 85, No. 2.

K.L. Scheppele, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, «Governance: An International Journal of Policy, Administration, and Institutions» 2013, Vol. 26, No. 4.

P.M. Shane, *Interbranch Accountability In State Government And The Constitutional Requirement Of Judicial Independence*, «Law and Contemporary Problems» 1998, Vol. 61, No 3.

D. Skrzypiński, *Władza sądownicza w procesie transformacji polskiego systemu politycznego. Studium politologiczne*, Wrocław 2009.

P. Solomon, *Courts and Judges in Authoritarian Regimes*, «World Politics» 2007, Vol. 60, Issue 1.

A. Stepan, C. Skach, *Modele konstytucyjne a umacnianie demokracji*, «Państwo i Prawo», 1994, No. 4.

M. Weber, *Gospodarka i Społeczeństwo*, Warszawa 2002.

F. Zakaria, *Przyszłość wolności. Nieliberalna demokracja w Stanach Zjednoczonych i na świecie*, Warszawa 2018.