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**The impact of the activities of the Constitutional Court after 2015 on the standard of human rights protection in Poland**

1. **Introduction**

The lawful and efficient functioning of the Constitutional Court is a fundamental condition for the proper functioning of the state and for ensuring citizens' fundamental rights. In this paper, using the example of Poland and the constitutional crisis that has played out here since 2015, I will show how the functioning of the Constitutional Court has affected the standard of human rights protection in Poland.

1. **Genesis of the Constitutional Court crisis**

June 2015 is indicated as the beginning of the period commonly recognized in Poland as the “Constitutional Court crisis”. This is because it was then that the Sejm of the Republic of Poland of the seventh parliamentary term adopted the Act of 25 June 2015 on the Constitutional Court[[1]](#footnote-1). It replaced the previously existing Act of 1 August 1997 on the Constitutional Court. More importantly, it contained transitional provisions allowing the election of five new judges of the Constitutional Court at once, replacing the three judges whose term of office ended in November 2015 and the two judges whose term of office expired in December 2015[[2]](#footnote-2). The law entered into force on 30 August 2015, and shortly thereafter, at the beginning of October of the same year, the seventh parliamentary term Sejm elected five new judges of the Constitutional Court. Shortly thereafter, on 25 October of the same year, parliamentary elections were also held, in which the United Right camp won an independent majority in both the Sejm and the Senate[[3]](#footnote-3). Since then, the law on the Constitutional Court has been amended three more times[[4]](#footnote-4). In addition to this, in November and December 2016 the Sejm of eighth parliamentary term adopted three additional laws regulating the work of the Constitutional Court: (i) the Act of 30 November 2016 on the organization and procedure before the Constitutional Court[[5]](#footnote-5), (ii) the Act of 30 November 2016 on the status of judges of the Constitutional Court[[6]](#footnote-6) and (iii) the Act of 13 December 2016 - Provisions introducing the Act on the organization and procedure before the Constitutional Court and the Act on the status of judges of the Constitutional Court[[7]](#footnote-7). From the moment that, as a result of the change in the procedure of the election of the President of the Constitutional Court, following the end of the term of office of the previous President of the Court, professor Andrzej Rzepliński, on 20th of December 2016, the President of the Republic of Poland appointed Julia Przyłębska as Acting President of the Constitutional Court, the number of doubts relating to the functioning and independence of the Constitutional Court began to grow very intensely. The purpose of this study is not to provide a detailed recounting of the way in which the Court has operated from the beginning of the crisis to the present day, Therefore the purposes of further analysis, it should be kept in mind that the concerns were primarily:

1. the way in which the President and Vice-President of the Court were elected,
2. the contacts and dependence of certain judges on representatives of the government and the ruling party,
3. the rules for assigning cases to judges,
4. the judging of three persons elected as judges of the Constitutional Court without a valid legal basis,
5. the increasing conflict between individual judges.

Each issue has had an impact on the way the Constitutional Court performs its basic functions, which include upholding the protection of human rights. In the light of the Constitution of the Republic of Poland[[8]](#footnote-8), anyone whose constitutional rights or freedoms have been violated has the right to file a complaint to the Constitutional Court regarding the inconsistency with the Constitution of a bill or other normative act based on which a court or public administration authority has issued a final decision (Article 79 of the Constitution of the Republic of Poland)[[9]](#footnote-9).

1. **The processing of cases by the Constitutional Court from 2016 to 2021**

Looking at the way the Constitutional Court has functioned since the beginning of the crisis, beyond the statistics, one cannot help but notice the issue of the uneven distribution of cases among judges. By April 2017, the Constitutional Court had seven judges elected by the Sejm of the previous term[[10]](#footnote-10). In the years 2017-2018, in cases with the signature 'K', which concern the determination of the compliance of laws or ratified international agreements with the Constitution of the Republic of Poland, judges appointed by the Sejm after 2015, i.e. after the beginning of the constitutional crisis, were assigned to cases much more frequently than judges elected by the Sejm of previous terms. For example, Judge Piotr Tuleja, one of the seven judges sitting in the Court before 2015, was assigned to hear five cases during the above-mentioned period, while the President of the Court, Julia Przyłębska, heard twelve cases. The disproportion is therefore significant, and this trend continued in subsequent years, with the more the number of new judges increased and the expiry of the terms of judges appointed before 2015, the more pronounced the disproportion[[11]](#footnote-11). Such a measure has a direct impact on the standard of protection of human rights, if only because of serious doubts about the correctness of the appointment of the judges to whom the majority of cases were assigned, or in view of their potential links to government and ruling party politicians.

In January 2017, Attorney General Zbigniew Ziobro, who is associated with the ruling political group, filed a motion to the Constitutional Court to examine the compliance with the Polish Constitution of the 2010 resolutions of the Sejm, on the basis of which judges Marek Zubik, Stanisław Rymar and Piotr Tuleja were appointed as Court judges. This situation had affected the way the Court functions. Zbigniew Ziobro demanded that the resolutions be declared contrary to the Constitution of the Republic of Poland, and also began to submit motions for the exclusion of the aforementioned judges from ruling. These motions were considered by judges appointed to the Court by the ruling party, and because of their exclusion (and the enforced leave of absence of Judge Stanisław Biernat), the majority in the Court in cases considered by the full bench was reached by judges appointed as a result of the reforms carried out by the ruling camp. This impasse was resolved in 2020, when the Court resolved the Attorney General's request by discontinuing the case on the grounds of inadmissibility of adjudication. Regardless, the rulings issued during the period remained in force despite the huge doubts about the legitimacy of the Court at the time.

**Since 2016, there has been a decline in the submission of cases to the Constitutional Court in all categories, apart from constitutional complaints[[12]](#footnote-12)**. In 2015, 135 legal questions were submitted to the Court, while between 2016 and 2020 the number has fluctuated between 15 and 23[[13]](#footnote-13). It is interesting to note that despite the constitutional crisis was heavily publicized by the media and there has been a decline in the judges' confidence in the Court (as indicated by the decrease in the number of legal questions received), citizens still seem to recognize the Constitutional Court as a place where they can effectively assert their rights. In 2022, the number of constitutional complaints increased compared to the previous year (107 in 2022 against 87 in 2021, but against 142 in 2020)[[14]](#footnote-14). At the same time, a survey conducted in 2020 shows that only 26.4% of Poles trust the Constitutional Court[[15]](#footnote-15).

At the same time, the downward trend in terms of the number of cases considered annually by the Court continues. In 2023, the Constitutional Court issued 65 orders and 22 judgments. The distribution of cases by category is as follows as regards legal questions and constitutional complaints: 60 considered cases from the 'SK' repertory (constitutional complaint), and only 13 from the 'P' repertory (legal questions). As of the date of preparation of this paper, no data are yet available on the number of cases that have reached the Court in 2023. This does not change the fact that the number of decisions issued by the Court during the entire previous year is alarmingly low. As recently as 2010-2015, there was an average of 140-150 rulings per year, while since 2016 the number of cases heard annually has not exceeded 100.

Meanwhile, the low efficiency of the Constitutional Court is not without its impact on the legal situation of individuals in Poland. The chaos and disorganization of the Court's work has resulted in longer waiting times for the consideration of constitutional complaints brought by individuals. Moreover, the links between the judges sitting in the Court and politicians of the United Right camp, which has a parliamentary majority until October 2023, led to a situation in which politicians have repeatedly used the Court to legitimize the changes they have introduced or to remove from the legal order provisions that are important for the protection of human rights - e.g. on freedom of assembly, prohibition of discrimination based on sexual orientation or access to abortion.

1. **Conclusion**

These considerations are a preliminary step and indicate the need to signal loudly, both to the public and to those who today, having taken up ministerial offices and occupying parliamentary benches, create and pass laws, that the crisis around the Constitutional Court must be efficiently and effectively resolved. Its further continuation has a real impact on the possibility to execute constitutional rights and freedoms of Polish citizens.

**Bibliography**

**Legal acts:**

The Act of 25 June 2015 on the Constitutional Court (Journal of Laws of 2015, item 1064).

The Act of 19 November 2015 amending the Act on the Constitutional Court (Journal of Laws of 2015, item 1928).

The Act of 22 December 2015 amending the Act on the Constitutional Court (Journal of Laws of 2015, item 2217).

The Act of 22 July 2016 on the Constitutional Court (Journal of Laws of 2016, item 1157).

The Act of 30 November 2016, on the organization and procedure before the Constitutional Court (Journal of Laws of 2016, item 2072).

The Act of 30 November 2016, on the status of judges of the Constitutional Court (Journal of Laws of 2016, item 2073).

The Act of 13 December 2016 – Provisions introducing the Act on the organization and procedure before the Constitutional Court and the Act on the status of judges of the Constitutional Court (Journal of Laws of 2016, item 2074).

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483).

**Others:**

1. M. Wolny, M. Szuleka, *A Tool in the Hands of Power. Functioning of the Constitutional Court in 2016-2021*, Helsinki Foundation for Human Rights 2021
2. K. Sobczak, *Only one in four Poles trusts the Constitutional Court*, https://www.prawo.pl/prawnicy-sady/zaufanie-do-trybunalu-konstytucyjne-tylko-26-proc,504866.html.
3. Information on significant problems arising from the activities and jurisprudence of the Constitutional Court, for 2022, 2021 and 2020, https://trybunal.gov.pl/publikacje/informacje-o-problemach-wynikajacych-z-dzialalnosci-i-orzecznictwa-tk/od-2003/.

1. The Act of 25 June 2015 on the Constitutional Court (Journal of Laws of 2015, item 1064). [↑](#footnote-ref-1)
2. M. Wolny, M. Szuleka, *A Tool in the Hands of Power. Functioning of the Constitutional Court in 2016-2021*, Helsinki Foundation for Human Rights 2021, p. 8. [↑](#footnote-ref-2)
3. The Law and Justice Electoral Committee consisted of representatives of the following political groupings: Porozumienie, Solidarna Polska, Partia Republikańska, Stronnictwo "Piast" and, in addition, it included non-party representatives of the Union of Real Politics and Wolni i Solidarni. [↑](#footnote-ref-3)
4. The Act of 19 November 2015 amending the Act on the Constitutional Court (Journal of Laws of 2015, item 1928), which introduced changes to the transitional provisions for the five judges whose terms ended in 2015; the Act of 22 December 2015 amending the Act on the Constitutional Court (Journal of Laws of 2015, item 2217), which introduced changes to the proceedings of the Court and its working rules, including an increase in the minimum number of judges who sit as a full Tribunal, an obligation to make decisions by a 2/3 majority and to consider cases in the order of receipt (no exceptions); the Act of 22 July 2016 on the Constitutional Court (Journal of Laws of 2016, item 1157), which replaced the Act of 25 June 2015, on the Constitutional Court and included provisions on allowing all Constitutional Court judges sworn in by the President to rule and limiting the independence of the Court in terms of its proceedings and work organization. [↑](#footnote-ref-4)
5. The Act of 30 November 2016, on the organization and procedure before the Constitutional Court (Journal of Laws 2016, item 2072). [↑](#footnote-ref-5)
6. The Act of 30 November 2016, on the status of judges of the Constitutional Court (Journal of Laws 2016, item 2073). [↑](#footnote-ref-6)
7. The Act of 13 December 2016 – Provisions introducing the Act on the organization and procedure before the Constitutional Court and the Act on the status of judges of the Constitutional Court (Journal of Laws 2016, item 2074). [↑](#footnote-ref-7)
8. Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483). [↑](#footnote-ref-8)
9. M. Wolny, M. Szuleka, *A Tool in the Hands of Power…,* p. 5. [↑](#footnote-ref-9)
10. M. Wolny, M. Szuleka, *A Tool in the Hands of Power…,* p. 23. [↑](#footnote-ref-10)
11. M. Wolny, M. Szuleka, *A Tool in the Hands of Power…,* p. 24. [↑](#footnote-ref-11)
12. M. Wolny, M. Szuleka, *A Tool in the Hands of Power…,* p. 33. [↑](#footnote-ref-12)
13. M. Wolny, M. Szuleka, *A Tool in the Hands of Power…,* p. 33. [↑](#footnote-ref-13)
14. Statistics obtained from documents *Information on significant problems arising from the activities and jurisprudence of the Constitutional Court*, for 2022, 2021 and 2020, https://trybunal.gov.pl/publikacje/informacje-o-problemach-wynikajacych-z-dzialalnosci-i-orzecznictwa-tk/od-2003/, accessed: 09.02.2024. [↑](#footnote-ref-14)
15. K. Sobczak, *Only one in four Poles trusts the Constitutional Court*, https://www.prawo.pl/prawnicy-sady/zaufanie-do-trybunalu-konstytucyjne-tylko-26-proc,504866.html, accessed: 09.02.2024. [↑](#footnote-ref-15)