

Violating the Principle of the Rule of Law Weakens Poland's Position in the World

Position of the Conference of Ambassadors of the Republic of Poland¹

1. The European Union, of which Poland is a member, is a unique organisation. Not only does it concern itself with political relations between states, but it also regulates many aspects of life important to both citizens and businesses. The basis for co-operation within the European Union, as well as its effectiveness, is the democratic principle of the rule of law: respect for the separation of powers; independence of the judiciary; lawfulness of actions of state authorities; and legal certainty.
2. The actions being taken by the current Polish authorities, in breach of the principle of the rule of law, inciting xenophobia and antisemitism, lead to the undermining of the democratic structure of the state. They also bring damaging consequences for the status, credibility and place of Poland in the world, especially in relations with its most important partners. They affect the quality of NATO and European Union membership. Poland is losing standing and influence on important decisions in the international arena. The costs of such a policy will be calculable and painful. We will feel their effects in proposals for allocation of funds in the EU budget for the period 2021–2027.
3. The principle of the rule of law is legally binding in the European Union. European treaties uphold it. Its violation not only has political consequences, but also impacts on citizens and businesses. Where the European Union's values are violated, its laws provide for corrective and preventative measures. In addition to complaints brought before the European Court of Justice, amongst the best known is the procedure under Art. 7 of the Treaty on European Union (TEU). Its preliminary, political stage has been launched against Poland. The procedure does not aim to punish a Member State. Its objective is to ensure a return to the principle of the rule of law, via dialogue. Recommendations made by the European Commission with respect to Poland are the direct result of Poland's violation of the principle of the rule of law, not the expression of some international conspiracy. The implementation of these recommendations is a *sine qua non* for Poland to maintain its rightful place in the international community of democracies.
4. Independently of the procedure under Art. 7 of TEU, the European Commission may bring an action before the European Court of Justice in cases when a Member State violates European law. Such proceedings are numerous. There are, however, instances in which the judgements of the Court are of specific importance, namely when they indicate a violation of the principle of the rule of law. Such was the case in the judgement of 6 November 2012, when the Court held that Hungarian legislation, on the basis of which judges were collectively forced to retire, was in breach of the principle of non-discrimination based on age. Similarly, in its judgement of 17 April 2018, the Court declared that tree felling in the Białowieża Forest had taken place in breach of European laws binding on Poland.
5. The European Commission can therefore bring the matter before the European Court of Justice in respect of the adoption by the current Polish authorities of legislation on the functioning of the judiciary, including the Law on the Supreme Court. It may then submit a request for the Court to apply interim measures, ordering a stay on applying

the Polish law until the Court's final judgement. This is of particular importance, as changes proposed with respect to the Supreme Court are the final stage in a process of political usurpation of the judiciary. They will be tantamount to a loss of independence of Poland's judicial system. Given the subjugation of the Constitutional Court, this will be difficult to reverse based on the current system in Poland.

* * *

Poland's current authorities are turning it into a weak, isolated and lonely state. The foreign policy achievements of independent Poland are being wasted and spoilt. This is happening at a time of deep reform of the European Union, and in a climate of growing international tensions.

Fundamentally, decisions regarding Poland's fate are in the hands of its electorate. The actions of international organisations are no substitute for this. The position of European institutions with respect to the actions of the Polish authorities, however, can only help see a return to the principle of rule of law in Poland.

Jan Barcz
Marcin Bosacki
Iwo Byczewski
Maria Krzysztof Byrski
Mieczysław Cieniuch
Tadeusz Diem
Paweł Dobrowolski
Grzegorz Dziemidowicz
Urszula Gacek
Marek Grela

Andrzej Jaroszyński
Maciej Klimczak
Tomasz Knothe
Maciej Kozłowski
Jerzy Kranz
Henryk Lipszyc
Bogumił Luft
Piotr Łukasiewicz
Jacek Najder
Anna Niewiadomska

Jerzy Maria Nowak
Piotr Nowina-Konopka
Agnieszka Magdziak-Miszewska
Piotr Ogrodziński
Katarzyna Pełczyńska-Nałęcz
Ryszard Schnepf
Katarzyna Skórzyńska
Tadeusz Szumowski
Maria Wodzyńska-Walicka
Maciej Koźmiński

ⁱ The Conference of Ambassadors of the Republic of Poland was established by former representatives of Poland. Its purpose is to analyse foreign policy, point out emerging threats to Poland, and make recommendations. We aim to bring these issues to the attention of the general public. We share common professional experience in shaping Poland's position as a modern European State and a significant member of the Transatlantic community. We firmly believe that foreign policy is an expression of the interests of the State and not of the interests of the ruling party.