



AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW OF POLAND

27TH SESSION OF THE UPR WORKING GROUP

ANNEX

CONSTITUTIONAL TRIBUNAL CRISIS TIMELINE

25 June 2015: outgoing Parliament, led by the Civic Platform (*Platforma Obywatelska*) party adopts Law on the Constitutional Tribunal,¹ criticised by NGOs at the time² and setting out that the outgoing Parliament had the right to elect five Tribunal judges to replace five departing ones, including two whose term was only set to end after the Parliament's term would end;

8 October 2015: outgoing Parliament elects five Tribunal judges. The Polish President subsequently refuses, however, to swear them in;

25 October 2015: Law and Justice (PiS) wins general election;

19 November 2015: new Parliament amends the Law on the Constitutional Tribunal, introducing, for instance, a provision enabling it to replace all five previously elected Tribunal judges;³

2 December 2015: Parliament elects five Tribunal judges to replace the ones elected on 8 October 2015. The President swears four of them in in the middle of the night;

3 December 2015: Constitutional Tribunal rules that two out of the five judges elected by the Civic Platform Parliament were elected in violation of the Constitution as their term was to end after the outgoing Parliament's;⁴

9 December 2015: Constitutional Tribunal rules that the majority of reforms in the 19 November Law are unconstitutional;⁵

22 December 2015: Parliament enacts another law, introducing further far-reaching changes to the Tribunal's procedure, requiring it, for instance, to hear the majority of cases at full bench and decide by a two-thirds, as opposed to a simple majority, and give Poland's President and the Minister of Justice the right to open disciplinary proceedings against Tribunal judges;

24 December 2015: the Senate decides, within two days, to accept the new Law, with no changes;

28 December 2015: only four days later, the President signs the Law;⁶

¹ Law of 25 June 2015 on the Constitutional Tribunal (*Ustawa z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym*) Journal of Laws 2015 item 1064.

² Helsinki Foundation for Human Rights' statement, 10 June 2015: www.hfhr.pl/wp-content/uploads/2015/06/oswiadczenie_kh_11062015.pdf.

³ Law of 19 November 2015 amending the Law on the Constitutional Tribunal (*Ustawa z dnia 19 listopada 2015 r. o zmianie ustawy o Trybunale Konstytucyjnym*) Journal of Laws 2015 item 1928.

⁴ Constitutional Tribunal judgment K 34/15 of 3 December 2015, Journal of Laws 2015 item 2129.

⁵ Constitutional Tribunal judgment K 35/15 of 9 December 2015, Journal of Laws 2015 item 2147.

13 January 2016: European Commission announces the beginning of a structured dialogue with Poland under the Rule of Law Framework;

9 March 2016: Constitutional Tribunal finds the Law of 22 December 2015 unconstitutional.⁷ The Prime Minister refuses to publish the judgment in the Journal of Laws, however, and stops publishing Tribunal judgments from then on;

22 July 2016: the latest amendment to the Law on Constitutional Tribunal is enacted.⁸ It is challenged before the Tribunal by the Human Rights Commissioner, the National Bar Council and groups of MPs;

27 July 2016: the European Commission issues a recommendation to Poland, giving it three months to report on steps taken to remedy the crisis;⁹

30 July 2016: the Polish President signs the 22 July 2016 Law;

11 August 2016: the Tribunal declares some of its provisions unconstitutional in a judgment.¹⁰ Some of these mirror the provisions introduced by previous amendments and include:

- the reinstatement of the publication of Tribunal judgments, excluding those on previous versions of the Law (thus excluding the judgment of 9 March);
- the requirement to allow the three judges elected by Law and Justice in December to adjudicate;
- examining cases in sequence of registration, with some exceptions, which would remove the Tribunal's power to decide which matters to consider as a priority. This provision could seriously paralyse the Tribunal's functioning, with matters of grave public importance, such as, for instance, amendments to surveillance legislation being in force for years, even if violating constitutional rights;
- making applications to the Prime Minister to have judgments published in the official Journal of Laws, transferring to the executive a decision making power exclusive to the judiciary;
- adjourning hearings at which the Prosecutor General's presence is required when he fails to attend;
- the suspension of the Tribunal's work for six months in order to bring pending applications in line with the new Law, coupled with the requirement to consider all pending applications within twelve months from the new Law's entry into force, thus potentially never having numerous motions on the recent legislative amendments considered;
- the provision giving Tribunal judges the ability to stall proceedings instead of dissenting for up to six months, if four judges disagree with the majority decision.

The Prime Minister refuses to publish this judgment.

16 August 2016: The 22 July Law theoretically enters into force, with the exclusion of the unconstitutional provisions. However, the judgment of 9 March 2016 has still not been published in the Journal of Laws and the executive has thus clearly chosen not to accept the latest ruling and instead apply the new Law in its entirety.

⁶ Law of 22 December 2015 amending the Law on the Constitutional Tribunal, Journal of Laws 2015 item 2217.

⁷ Constitutional Tribunal judgment K 47/15 of 9 March 2016, not published in Journal of Laws at the time of drafting.

⁸ Law of 22 July 2016 on the Constitutional Tribunal, Journal of Laws 2016 item 1157.

⁹ European Commission, Rule of Law Recommendation on the situation in Poland, 27 July 2016.

¹⁰ Constitutional Tribunal judgment K 39/16 of 11 August 2016, not published in Journal of Laws at the time of drafting.