

Calendar of the most important dates for the crisis of the rule of law

In May 2015, Poland underwent a political change: Andrzej Duda, the candidate for the populist, right-wing party Law and Order (PiS), became president. In October that year, candidates from the PiS lists won a majority in the parliament, thus defeating the Civil Platform (PO). PiS formed the United Right parliamentary club and started to govern independently and thanks to their majority in the lower parliamentary chamber (the Sejm), the United Right was able to vote through any bill themselves.

It soon turned out that the change was much more than merely a natural power shift. The political majority has taken over not only the legislative, but has also subordinated the prosecutor's office and has been unrelenting in their work to subordinate the judiciary, independent control institutions and the media. By doing so, they circumvent and breach the law, and enforce new laws which serve their political needs.

May 2015 - Andrzej Duda (PiS) becomes President

The candidate of the right-wing Law and Justice (PiS), Andrzej Duda, defeats the incumbent President and Civic Platform's (PO) candidate, Bronisław Komorowski.

October 2015 - PiS wins parliamentary elections

Candidates from PiS lists win a majority in parliament, they form the United Right parliamentary club, which can vote through any bill.

12 November 2015 - Inaugural Sejm session

The first session of the new Sejm begins, led by the majority United Right (PiS and its coalition partners).

13 November 2015 - Works begin on changes to the Constitutional Court

PiS MPs begin working on an amendment to the Constitutional Court Act. They want to appoint five of their judges to the panel of the Constitutional Court.

Soon after the elections, the term of five Constitutional Court judges was supposed to end. Their successors had been selected just before the parliamentary elections, by MPs from the then PO majority-led Sejm. PiS declared this selection to be invalid and decided that they would appoint the five judges themselves. The regulations that the MPs started working on

in November were supposed to make this possible.

The bill was ready on 19 November 2015 and the President signed it the following day. This marked the beginning of the constitutional crisis and legal dualism in Poland.

2 December 2015 - New judges are selected to the Constitutional Court for already-filled positions

The United Right selects five judges to the Constitutional Court (Henryk Cioch, Leon Morawski, Mariusz Muszyński, Julia Przyłębska, and Piotr Pszczółkowski) for the positions which had been filled before the elections by the previous PO-led Sejm. The President swears them in the same night, although the judges selected by the previous parliament had been waiting to be sworn in for a long time. Since then, Constitutional Court judges can be divided into judges and so-called judges-doublers.

3 December 2015 - Constitutional Court's judgement on judges-doublers

The Constitutional Court unanimously rules that three out of five judges selected before the elections by the PO-led Sejm were selected in the correct way, which means they are Constitutional Court judges, and not judges-doublers selected for their posts. Two judges had been selected in an incorrect way by the previous parliament, so their positions could be filled with new judges. The President should have sworn in the three judges previously selected by the parliament, and not the judges-doublers. How was this problem solved?

Prime Minister Beata Szydło did not publish the Constitutional Court's judgement on judge-doublers in the Journal of Laws, as if it did not exist. Until then, the publication of judgements was but a formality, the judges' decisions were the most important thing. At this point, the mere publication of the judgement became crucial, as if Prime Minister Szydło had a right to decide which Constitutional Court's judgements were real judgements and which were not.

22 December 2015 - Constitutional Court becomes paralysed

Another change of the Constitutional Court takes place, namely the Legal Repair Act, which paralyses the Court's proceedings. The Constitutional Court is now supposed to rule according to the order in which it receives cases (and not according to their importance). Its enlarged panel is supposed to rule on almost all the cases and then decisions are to be made with a 2/3 majority. This makes adjudicating very difficult, but the situation is convenient for the party in power, as long as the President of the Constitutional Court has no ties to them (it was Prof. Andrzej Rzepliński at that time). This act of law also makes it possible to initiate disciplinary proceedings against the judge of the Constitutional Court at the request of the Minister of Justice or the President.

22 July 2016 - Judge-doublers are allowed to adjudicate

The third Legal Repair Act obliged the President of the Constitutional Court to allow judge-doublers to adjudicate. A so called “blocking mechanism” is introduced, which means that four Constitutional Court judges can oppose the ruling, and thus postpone it for three months. This was intended to make it easier to delay rulings which were inconvenient for the party in power.

19 December 2016 - Julia Przyłębska takes over the Constitutional Court

That day marked the end of the term of the President of the Constitutional Court, Prof. Andrzej Rzepliński. Julia Przyłębska was appointed as the new President of the Constitutional Court by President Andrzej Duda. Her first decision is a to allow judge-doublers to adjudicate, which the previous president declined to do. The same day, she convened the General Assembly of the Judges of the Constitutional Court to select candidates for the position of the Court’s president. Only judges selected by PiS participated in the voting (with one exception), because the rest boycotted the Assembly, as it had been convened illegally (too quickly, without the required composition). This flawed Assembly chose Julia Przyłębska as a candidate for the position of the president and on 21 December 2016 the President of Poland appointed her to the post. Given that since that moment the Constitutional Court has been acting illegally, we will henceforth refer to it as Julia Przyłębska’s Court.

2016 - Ramifications of the changes in the Constitutional Court

The number of questions referred to the Constitutional Court by courts dropped to 21 (in 2015 it was 135). Instead of referring questions to the Court, courts examine compliance with the Constitution themselves. In March 2017, the National Council of the Judiciary (KRS) withdrew all the requests to Julia Przyłębska’s Court submitted before, as it did not agree with judge-doublers being allowed to adjudicate.

8 January 2016 - The Media Act

The Media Act entered into force, which has made it possible to terminate the terms of the most important public media directors. The act changed the rules of filling the posts of CEO and management board members of TVP and Polish Radio. Up until then, the National Broadcasting Council had organised recruitment competitions to fill the posts, but they are now appointed directly by the Minister of the Treasury.

8 January 2016 - Jacek Kurski becomes the head of TVP

Jacek Kurski became the CEO of TVP and has since gradually subordinated the state broadcaster to the ruling party. News programmes are manipulated and present false information, resembling propaganda rather than journalism. During the presidential

campaign, President Andrzej Duda was clearly favoured by broadcaster and material about him resembled political spot ads. Duda's rivals were presented in a negative light, and information about them was manipulated. In particular, materials about the rival with the strongest chance to defeat Duda, Rafał Trzaskowski, looked like a hate campaign. This could have impacted Duda's victory. All other public media are also biased.

22 June 2016 - Formation of the Council of National Media

The Council of National Media was formed, staffed mainly by PiS. The Council appoints and dismisses the CEOs, management and supervisory boards members of public media. In December 2016, the Constitutional Court decided that the formation of the Council without the participation of the National Broadcasting Council was unconstitutional, but the decision remained ineffective, as the Council still functions.

1 March 2021 - Orlen purchases regional media

The gas state-owned company Orlen purchased the Polska Press publishing house from the German Verlagsgruppe Passau Capital Group. Polska Presse had a network of regional media, newspapers and internet portals. Dorota Kania joined the management board of the publisher. She is a right-wing journalist close to PiS, who began her job by firing several editors-in-chief from the media from the publisher's portfolio and appointed PiS loyalists as new editors-in-chief.

28 January 2016 - Amendment of the Act on the Prosecution Office

The minister of justice became the general prosecutor and thus the head of all prosecutors. Over time, it became clear that prosecutors who issued decisions that the general prosecutor did not like would suffer professional consequences, such as being transferred to work in another city, or asked to conduct cases well below their competences.

July 2017 - Acts on courts

The Sejm adopted the Courts Acts in order to subordinate the judiciary, as a rule independent and impartial, to politicians. These Acts encompassed an amendment of the Acts on the National Judiciary Council (KRS), the Supreme Court and common courts.

After mass protests, President Andrzej Duda vetoed two bills - concerning the KRS and the Supreme Court - but signed the Act on the common courts.

12 July 2017 - Minister of Justice gains control over courts

Under the amended Act on common courts, the Minister of Justice became the head of all presidents of courts. He fired more than 150 court presidents and deputy presidents without any justification. In this way, he is able to have considerable influence over persons who

supervise judges' work, assign cases and transfer them to other divisions.

December 2017 - new Acts of law on the Supreme Court and the National Council of the Judiciary

The National Council of the Judiciary (KRS), which is supposed to be the guardian of judges' independence and has a say in their appointments, now consists of politicians with ties to PiS and judges selected by politicians. Since then, it has been called "neo-KRS".

The Disciplinary Chamber and the Extraordinary Review and Public Affairs Chamber were created in the Supreme Court, the members of which are selected by the Neo-KRS, dominated by politicians from the ruling party. The Disciplinary Chamber has the right to deprive judges of their immunity, open disciplinary proceedings against them, and ban them from adjudicating, thus effectively blocking their careers and depriving them of a large portion of their earning.

November 2017 - The case of judge Beata Morawiec and others

Minister of Justice dismissed judge Beata Morawiec, who was vocal in her criticism of judicial reforms, in her role as the President of the Regional Court in Krakow. She was subsequently investigated by the prosecutor's office, despite her immunity. The Disciplinary Chamber revoked her immunity. This is but one example of many cases against "disobedient" judges. Smaller investigations also continue to take place against over 100 judges. Many investigations are concluded at the explanatory stage, as their sole objective is to cause a freezing effect, discouraging judges from questioning changes in the judiciary.

March-October 2019 - the Constitutional Court of Julia Przyłębska legitimises the Neo-KRS

On 29 March 2019, the Constitutional Court of Julia Przyłębska ruled that the provision on the selection of Neo-KRS members was constitutional.

20 April 2020 - the Constitutional Court of Julia Przyłębska defends the Disciplinary Chamber

The Constitutional Court of Julia Przyłębska declared the resolution of the joined chambers of the Supreme Court - Civil, Criminal and Labour and Social Security Chambers - to be unconstitutional, stating that the judges appointed by neo-KRS should not adjudicate. I thus defended the right to adjudicate by judges from the Disciplinary Chamber, amongst others.

22 October 2020 - the Constitutional Court of Julia Przyłębska helps introduce a ban on abortion

The Constitutional Court of Julia Przyłębska ruled that the provision allowing termination of

a pregnancy due to so called embryo-pathological reasons – that is, severe and irreversible foetal defects – was unconstitutional.

20 December 2019 - Disciplinary act of law (muzzle law)

This act listed the various misconducts for which a judge can be held liable on disciplinary grounds. Under the Act, a judge who verifies whether another judge was rightly appointed by neo-KRS to their post is guilty of misconduct. In simple terms this means that a judge who is against illegal changes can be punished. Under this muzzling act, judges who are active in groups protesting against politicising judges can be punished on disciplinary grounds, as well as those who participate in demonstrations in defence of judges' independence. The Act has made it possible to terrorise judges.

30 April 2020 - The term of the First President of the Supreme Court, Małgorzata Gersdorf, expires

The term of the First President of the Supreme Court, Małgorzata Gersdorf, expired and she was succeeded by Małgorzata Manowska, a former co-worker of the Minister of Justice, Zbigniew Ziobro.

2 March 2021 - CJEU judgement: neo-KRS potentially breaches EU law

The Court of Justice of the EU ruled that the amendments to the Act on the National Judiciary Council potentially breached EU law. These amendments have changed the way in which requests to appoint Supreme Court judge candidates were made to the President of Poland (as well as positions in the Disciplinary Chamber). The KRS should have refrained from recommending candidates to the President until the CJEU had ruled whether it had the right to do so, but the President continued on appointing them. According to the CJEU's judgement of 2 March, the Supreme Administrative Court should decide whether judges were rightly appointed and if it decides that no, it is obliged not to recognise them as judges.

29 March 2021 - Morawiecki requests the Constitutional Court to rule on the supremacy of the Polish law

In reaction to the judgement of 2 March, Prime Minister Mateusz Morawiecki requested the Constitutional Court of Julia Przyłębska to recognise the supremacy of the Polish law above the EU law. This would make it possible for Poland not to recognise some of the CJEU's rulings.

7 May 2021 - European Court of Human Rights rules that judge-doublers cannot adjudicate in the Constitutional Court

The European Court of Human Rights in Strasbourg ruled that the presence of a judge-

doubler, Mariusz Muszyński, on the adjudicating panel of XE RO FLOR against Poland makes the panel illegitimate. Hence, a judge-doubler cannot adjudicate in the Constitutional Court. It can therefore be assumed that other judge-doublers are not allowed to adjudicate either and cases with their participation can be challenged in Strasbourg. This could potentially make many judgements invalid.

7 July 2021 - TVN has problems with its licence

A group of PiS MPs prepared a draft bill of amendments to the Media Act. The draft mentioned that a licence can only be granted to a radio or TV station with an owner established in the area of the European Economic Community. The biggest TV station, TVN, is openly against the changes in Poland since 2015. It is owned by the American Discovery conglomerate and was waiting waiting 1,5 year for its licence to be renewed. If the Act enters into force, the American owner of the station would not be allowed to broadcast in Poland and would most probably be forced to sell TVN. A state-owned company would most certainly be willing to buy it, so TVN would lose its independence. However, it is doubtful that the act would enter into force, because it was rejected by the Senate. If the Sejm votes for it once again, the President can veto it. The so called "Lex TVN" is, however, not the first, and definitely not the last attempt to subordinate independent media to the ruling party.

14 July 2021 - CJEU calls for the Disciplinary Chamber to stop disciplining judges

The Court of Justice of the European Union froze the power of the Disciplinary Chamber to adjudicate on matters related to judicial immunity. The Disciplinary Chamber cannot deprive judges of their immunity. Those deprived of it, should be able to work again.

15 July 2021 - CJEU rules that the disciplinary regime for judges is not compliant with EU law

The Court of Justice of the European Union ruled that key changes in the disciplinary regime in Poland were not compliant with EU law. In another challenge to the legitimacy of the recent changes in the country, the CJEU ruled that the Disciplinary Chamber of the Supreme Court cannot be considered an independent and unbiased court. It was another breakthrough.

7 October 2021 - Poland will not apply the CJEU rulings

Julia Przyłębska's Tribunal ruled that some regulations of the Treaty on European Union were inconsistent with the Polish Constitution, and therefore Polish law was superior to EU law. According to that judgment Poland not to have to recognise some of the CJEU's rulings.

Author:

Katarzyna Skrzydłowska-Kalukin, journalist of “Kultura Liberalna”, coordinator of the “Let law rule” project

Substantive assessment of the calendar was made by Jarosław Gwizdak, lawyer, academic lecturer, former judge, member of the think tank Inpris (Institute of Law and Society).