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WEAKENING OF DEMOCRATIC STANDARDS IN POLAND 2005–2007

The peaceful political change of 1989 and early 1990s opened a new chapter in the political history of Central and Eastern Europe. For the two following decades, the process of introducing and implementing democratic standards has been steady and firm. Stages of this process: economic liberalisation, transition to democratic institutions and their consolidation, as mentioned by J. Rupnik, must be assumed as a cumulative process, in the sense that once a given stage is achieved there is no turning back.[1] Undoubtedly, all Central and East European countries have passed through all stages of the transition process. Disturbances appeared suddenly, after two decades of a relatively steady march towards western standards of democracy. In Poland and Slovakia, populist parties were elected. In Bulgaria, advancing populists were stopped by an unlikely coalition of the former king Simeon and ex-communists. In Hungary, violent demonstrations followed a political scandal that revealed how the government had lied to the public. In the Czech Republic, political impasse led to seven months without government. Definitely, Poland cannot be seen as an exception. It should be rather considered as the country focusing general political frustration of the last stage of democratic transition in Central and East European countries. Frustration together with populism poses an imminent threat to the fundamental rules of democracy. To avoid generalisation, it is necessary to specify which aspects of democracy and at which stages were threatened by populist movements.

[1] J. Rupnik, *Is East-Central Europe Backsliding?*, "Journal of Democracy" 2007, Vol. 18, No. 4, p. 19.

One of the most popular and accepted ways to describe democracy is by its forms: numerous types can be distinguished, including substantive, procedural, electoral, representative, people's, etc.[2] Alternatively, we may approach the notion of democracy by listing the most prominent criteria as e.g. free election, human rights, political pluralism, separation of powers, etc.[3] Others present democracy using the historical approach: primary, industrial, economical democracy etc.[4] These definitions are well known and generally established in literature. However, the variety of definitions makes it difficult to choose a core catalogue of minimum criteria to allow distinguishing whether a government is democratic. Moreover, while applying some of these notions, it is worth noticing that there are dynamic processes continuing even in countries with strong support and respect for democracy. Thus, it is necessary to stress that in further context of this article the term "democratic standards" will be used with respect to the definitions quoted above, with a strong emphasis on human rights with the "existing sphere of behaviours and acts, which neither are nor should be supposed to be turned into specific legal provisions, but still might determine and appraise proceedings of public officials and institutions".[5]

Bearing these in mind, the article presents a short introduction to democratic changes in the post-1989 transition period in Poland. This part of the article focuses mostly on the historical development of specific legal institutions (e.g. the Constitutional Tribunal of the Republic of Poland, and the Ombudsman) and the accession to and incorporation of international standards of human rights (Council of Europe) and the system of human rights protection (UN and EU). The description of the earliest stages of democracy in Poland is followed by modern standards of human rights and democracy introduced and approved in 1997 with the implementation of the Constitution. Later the analysis focuses on recent Polish history and assessment of the period 2005–2007, when right-wing and populist political parties, whose policy undermined most of the modern standards of democracy and human rights, came to power. The last part answers the questions whether the policy of the populist government presents a real threat to democracy and what should have been done to prevent future attempts at undermining democratic standards.

Introduction to the democratic process in Poland after 1989

The earliest stage of democratic transformation in Poland is generally connected to the compromise of the "Round Table" (6th February – 5th April 1989).[6] One of the

[2] J. Donelly, *Universal Human Rights in Theory and Practice*, Cornell Univ. Press 2003, p. 188.

[3] P. Winczorek, *Demokratyczne ustroje państwowe*, [in:] *Szkoła Praw Człowieka – teksty wykładów*, z. 1, Warszawa 1998, p. 9, 51–53.

[4] G. Sartori, *Teoria demokracji*, Warszawa 1994, p. 23.

[5] M. Safjan, *Państwo a wartości etyczne. Prawo i polityka*, "Monitor Prawniczy" 2006, No. 6.

[6] The most important outcome of Round Table negotiations was the establishment of free trade unions, the institution of the office of President of the Republic and reform of the Senate. The agreement was followed

most important outcomes of negotiations was an amendment to the Constitution of 1952. From the perspective of democracy and standards of human rights, it is hard to say that the amendment of 7th April 1989 provided any significant change. It dealt mostly with building new governmental structures including the reactivation of the Senate, establishment of the President of the Republic of Poland, who replaced the collective Council of State, and preparations to the forthcoming elections. It is hard to disagree with L. Garlicki, who wrote that those changes concerned mostly the preservation and implementation of rules and political instruments whose main goal was to postpone any changes towards a fully developed democratic state.[7]

The following amendment to the Constitution was approved on 29th December 1989 and introduced significant changes into the democratic process. The Article 1 stipulated that Poland shall be a democratic state ruled by law and principles of social justice. This declaration, more philosophical than legal, was followed western standards of constitutional law and became a milestone of democratic change in Poland, and a way of thinking about the role of human rights in Polish legal doctrine and the legal order. Moreover, Art. 2 states that the supreme power shall be vested in the Nation, and Art. 4 stipulates political pluralism. Finally, Art. 7 states that the government is bound to respect and protect private property. The 1990 and 1992 amendments concerned the process of building political institutions rather than the system of democracy and human rights, therefore they do not require further discussion.

Recapitulating, all the political decisions in the earliest development of human rights and democracy in a broader sense were mostly focused on basic elements of the establishment of state structures. Bearing in mind that in early 1990s Poland was about to have its first free parliamentary, presidential, and governmental elections, it was necessary to concentrate on the institution-making process and modification of their operation rather than on defining and implementing stricter and higher West European standards at the same time.

Although activity in human rights and implementation of democracy was slow to develop in the 1990s, Poland was an active participant in external relations in the field of democratisation and human rights. In 1991, in the absence of its own catalogue of human rights included in the Constitution, Polish government decided to ratify the United Nation's International Covenant on Civil and Political Rights (ICCPR) along with the First Optional Protocol. It should be emphasised that the decision was political with significant consequences. Accepting ICCPR means that the standards of human rights developed by Committee of Human Rights (CHR) were to be implemented into the Polish legal system as in the other, mostly West European, countries with a longer tradition of protecting human rights. That was a step forward and away from the communist way of considering human rights,

by an unquestionable success of the democratic opposition in the parliamentary election of 1989. They won 99% seats in the Senate and 35% in the Sejm (lower house) i.e. all seats available to them at the time.

[7] L. Garlicki, *System konstytucyjny RP*, [in:] *Szkoła Praw Człowieka...*, p. 69–70.

where they were seen as a kind of declaration that was not put into force. From that date, UN extended its system for watching and evaluating human rights protection over Poland. Regardless of the inefficiency of the ICCPR system (most non-democratic member countries disobey ICCPR rules), democratic countries and those in transition need to comply with ICCPR rules as they are much more vulnerable to the pressure of international and domestic public opinion.

Moreover, Poland has been an active participant in drafting and accepting other human rights treaties and declarations within the UN system and on the forum of other UN specialised institutions. Poland was elected to the UN Commission of Human Rights for the 1993–1995 term, and in 1992 Poland drafted two resolutions. First about the regulation of civil defence units, and the other on protection of human rights in the context of Human Immunodeficiency Virus (HIV).[8]

Furthermore, Poland together with Germany and Republic of South Africa initiated a resolution to celebrate the anniversary of UN Declaration of Human Rights, which was followed by an international conference held in Warsaw in 1997. Finally, which is significant in the perspective of developing democratic standards, Poland put into force the resolution on good governance in 1998.[9] According to the resolution, good governance means that a government should be transparent, responsible, and keep under control advancing social needs and aspirations.[10] An additional step in acceptance of human rights and democratic standards was taken in 1993 when Poland ratified the European Convention on Human Rights and Fundamental Freedoms in the Council of Europe.[11] That act was of great importance because – for the first time in the post-1989 history of Poland – the Polish legal and constitutional system went under the jurisdiction of an international tribunal, namely, the European Court of Human Rights in Strasbourg (ECHR), whose judgments have to be followed and executed.

Finally, in 2004 Poland joined the European Union with its specific legal system and regulations concerning the protection of so-called fundamental freedoms. The EU operates the Court of Justice of the European Communities (CJEC) whose judgments have to be followed at the same grounds as those of domestic courts. Furthermore, the EU has developed several other institutions (as e.g. the EU Ombudsman), legal standards and guidelines in foreign relations that, taken together, establish a fairly incoherent though broad catalogue of standards of democratisation and protection of human rights.

Apparently, this duality and inconsistency of domestic and international activity in human rights and democratic standards could not last long, and therefore a draft of the new Constitution was submitted to the public in 1997.

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[8] A. Bieńczyk-Missala, *Prawa człowieka w polskiej polityce zagranicznej po 1989 roku*, Warszawa 2005, p. 216–217.

[9] *Ibidem*, p. 224.

[10] *Ibidem*, p. 225.

[11] Entered into force on 1st March 1993.

On 25th May 1997, the new Constitution was accepted in a referendum with a majority of 52.71% votes (came into force on 2nd April 1997). The new Constitution did not modify constitutional structure of the state much. The institutional system confirmed the already existing system of powers: the parliament, the president, the government, and the judicial branch. According to the Constitution, power rests in three different branches of government with a system of checks and balances. The most significant change was that the power of the executive branch was transferred to the government and not to the President, leaving to the latter only ceremonial prerogatives and right to cooperate with government in foreign relations.[12]

Yet with the new Constitution of 1997, changes of great significance in the field of human rights protection and democratic standards were introduced. Shortly speaking, these changes can be described as follows: establishing source of human rights and freedoms and providing mechanisms and institutions dedicated to enforce them.

First, the Constitution states that "the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice" (Art. 2) and that "the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities" (Art. 30). As stated in the Art. 2, the democratic state ruled by law became the fundamental standard for the Polish constitutional system. The Art. 30 states another fundamental value which points at the unquestionable dignity of every human being as the source of rights and freedoms, and the obligation of the state to guarantee them.[13] Moreover, for the first time, the vast catalogue of human rights and freedoms – based on the text of UN Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms – was presented (in the second chapter of the Constitution).

Secondly, the Constitution lays down several mechanisms designed to protect human rights from abridgment by the state. The most imported of these is the "four steps limitation test" implemented in Art. 31 p. 3 and referring to the actions of the state: "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights." If there are serious doubts concerning the constitutionality of such a limitation, "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act" as stated in Art. 79. Furthermore, if such a violation already occurred

[12] L. Garlicki, *op. cit.*, p. 73.

[13] H. Skorowski, *Problematyka praw człowieka*, Warszawa 2005, p. 25–26.

everyone is entitled "to compensation for any harm done to him by any action of an organ of public authority contrary to law" – Art. 77. Moreover, Articles 8 and 178 say that the constitutional provisions should be applied directly by the courts, thus all statutes and other sources of law should be applied in accordance to the Constitution as the supreme law.

Thirdly, the Constitution reaffirms the institutions dedicated to protect human rights and democratic standards that existed before, including the Constitutional Tribunal of the Republic of Poland and the Commissioner for Citizens' Rights and lays down new ones: the Commissioner for Children's Rights (CCR) and the National Broadcasting Council. The Council, as stated in Art. 213 should safeguard the freedom of speech, the right to information, and the public interest regarding radio and television broadcasting.

It is evident that beginning with the 1990s Poland was following a steady way of developing its democratic and human rights standards. The standard of unwritten democratic rules was at adequately high level while the institutions and mechanisms were being developed. Although state actions are unlikely to abridge constitutional standards, wherever it occurred, appropriate countermeasures (judgments of international tribunals and domestic courts followed by changes of legal provisions etc.) were applied swiftly, and generally the idea of human rights and democracy has never been questioned.

The tendencies described above rapidly changed in 2005, when the coalition of populist political parties calling for a "state repossession" came to power.[14] According to this idea, the state was to be given back to the nation instead of being possessed by politicians, oligarchs, and people connected with foreign intelligence services and institutions.

There are several factors that bring about populism. Enough to mention nationalism, social stratification, and the political factor that seems to be adequate to the Polish political scene.[15] Nationalism or, to use a more up-to-date term, "nation solidarity", assumes that the only opportunity for a state to survive and grow up is to do so in firm unity of its society. Thus, all the others claiming more individual approach are presented as a danger to the whole of the state. European Union, with sexual minorities whose lifestyle may pose another threat to moral and religious standards etc., is presented as the antagonist of nation solidarity, allegedly depriving us of sovereignty.[16] The stratification of the society after transition period seems to be a more convincing and realistic factor. As the rejected groups, especially the

[14] In 2005 presidential elections won Lech Kaczyński and parliament election won PiS political party whose leader is Jarosław Kaczyński. Together with two other parties created a parliament coalition (PiS+LPR+Samoobrona) with a majority to create the government and pass legal provisions through parliament proceedings.

[15] J. Dzwończyk, *Populistyczne tendencje w społeczeństwie postsocjalistycznym na przykładzie Polski*, Toruń 2000, p. 57.

[16] In the speech to the nation given by the President Kaczynskis' on the public TV (18.03.2008) that concerned ratification of Lisbone Threaty, we could see: in a background a couple of gays during a marriage ceremony as well as an old geographical maps showing territory of Poland before II WW.

ones that brought about the political change in the 1980s and 1990s (e.g. workers), did not benefit much from the transformation, their great disappointment makes them vulnerable to populist rhetoric. The last factor operating here is the lack of democratic traditions (including generally weak civil society, low legal culture, etc.) characteristic for this part of Europe.[17] In 2005, the combination of these three factors helped the previously marginal populist and extreme right-wing political parties rise to power and acquire necessary support to take control over government and the office of the President of the Republic.

What followed is discussed in the next chapter focusing on the actions and political decisions of the government and the parliament during the 2005–2007 term.

State "repossessed" (2005–2007)

It is worthwhile to begin from noting that the new idea of "state repossession" presented during the political campaign of 2005 concerned political actions rather than taking legal steps towards changing constitutional provisions or international obligations, although the ideas of the latter type were present though never successful as the new coalition could not gather necessary constitutional voting majority in the parliament.[18]

In a situation where the Constitution and other statutory provisions restricted the government, the government would take steps that can be described as a violations of the spirit of democracy. How, then, was that possible in a democratic state and Central and East European leader in developing democratic and human rights standards? The answer is complex, yet a single explanation can be offered.

The new coalition won the election thanks to mostly populist declarations hinging on the fact that majority of Polish society has a very limited knowledge of democracy and its standards, for which reason they are likely to support policies that are contrary to democratic standards: the capital punishment, judicial independence, freedom of speech, rights of minorities etc.[19] The coalition succeeded in convincing voters resorting to populist language and presentation of unrealistic solutions to very difficult social problems. Obviously, in a democracy it is natural that politicians who representing ideas far from reasonable may come to power. That is right; in fact, this opportunity may be called the core of democracy. Nevertheless, what do we need such institutions as the Constitutional Tribunal and the Ombudsman, and mechanisms of human rights protection for? It is the wrong way to think about democracy as a system based only of the separation of powers and majority

[17] M. Marczewska-Rytko, *Populizm na przełomie XX i XIX wieku*, Toruń 2006, p. 119.

[18] Art. 235 of the Constitution – […] A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.

[19] National survey indicates that only 24% Poles accept democracy as prevailing political system over others – *Diagnoza społeczna 2007*, p. 30.

vote. The modern idea of democracy reaches far beyond these, and encompasses the need to protect minorities. It is natural and accepted that the majority reach for the legislative and executive branches of the governmental system. Yet when they are trying to take over the judicial branch as well, it is about time to react. Imbalance among powers causes disruption in the core of democracy.

In its further part, the article follows the process of "repossessing the state" in three steps: repossession of decision making functions, of law enforcement, and of all the remaining functions.

a) "repossessing decision making functions"

The process began from taking over the civil servants corps that according to the Constitution (Art. 153) was to ensure professional, diligent, impartial, and politically neutral discharge of the State's obligations. The statute regulating civil service was changed in August 2006, practically eliminating any guarantees of professional and politically neutral conduct. It was no more necessary to pass any entry exams ensuring high qualifications for civil officers, and a large number of privileged persons (e.g. functionaries of local authorities, former employees of the Supreme Chamber of Audit) were automatically admitted to civil service and received rights equal to former civil servants.[20] Being one of the first, this action degenerated the foundations of democratic state and had significant consequences. Soon, several people connected to the government were gratified with governmental offices for their commitment, without respect to the prevalence of the interest of the state over that of the party.

Even before that date, the idea of "repossessing the state" was applied when terms of offices of the Commissioner for Human Rights and the Commissioner for Children's Rights expired as stipulated in the Constitution. An academic whose qualifications were questionable, mostly due to his lack of experience in the field of human rights, was appointed to the first office.[21] It was an unwritten constitutional custom that lawyers with highest qualifications, and frequently former judges of the Constitutional Tribunal or the Supreme Court were appointed Commissioners for Human Rights. What had been a constitutional custom ceased to exist.

More interesting from the political point of view was the appointment of the Commissioner for Children's Rights whose qualifications of the best candidate for the office were explained by the fact that she is a mother and physician.[22] Even more satirical were some ideas put forth later by the CCR, when she presented a list of jobs that cannot be held by homosexuals and proposed obligatory registration of unmarried couples with children. Sounds satirical? One could think so but the CCR reached the very margin of common sense when suggested that one of the Teletubbies (a TV show for the youngest children) may be homosexual because he

[20] *Uwagi o stanie demokracji*, "Konwersatorium Doświadczenie i Przyszłość" 2007, report 1.

[21] Election of CHR held on 15th February 2006.

[22] Election of CCR held on 7th April 2006.

carries a lady's handbag. It is clear that official policy based on questionable staffing policy brought criticism from political opposition and specialists and, which the government found most worrying, also from the media.

Increasing public support for the government was precisely the reason why the government found it necessary to gain control over public media. Changes in the statute of the National Council of Radio Broadcasting and Television (NCRBT) curtailing the term of the NCRBT before its statutory end were presented. This act, however, was found illegal by the Constitutional Tribunal. As a result, the statutory law was duly changed again, and a new Secretary of the NCRBT, whose qualifications and impartiality were contested, was appointed. Enough to say that on 22nd October 2007 the Organization for Security and Cooperation in Europe (OSCE) presented an assessment of Polish elections held a day before, stating that there are serious challenges remaining in the supervision of the public media. Such an outcome should come as no wonder, as supervision of the public media was entrusted to a former employee of President Kaczyński.

The next step on a road of "repossessing the state" was made when another quite unknown specialist was appointed the President of the National Bank of Poland. His first media conference deprived us of any hope for a better tomorrow.

Finally, there came the right moment to "repossess" the last bastion of democracy, namely, the Constitutional Tribunal. Or, following the fiery political rhetoric of the then Prime Minister, the last constraint on the new social order. The end of 2006 marked the expiration of terms of service for six judges in the Constitutional Tribunal, therefore it became necessary to start a parliamentary procedure of electing new ones. Art. 194 of the Constitution says that the candidates must have the highest legal and professional qualifications (which, however, are not specified). Again, it had been a political custom to grant the right to present candidates to parliamentary political opposition and guarantee election of one of them. In practice, this meant that one or two candidates presented by opposition were to be accepted and elected. This time was different. From the point of view of the political majority it was unnecessary to share the cake with the opposition, and so six new judges were elected, with only two being well known constitutionalists, another two being accused by the media of violating the law. Only one of them decided not to assume the post offered.

Whether this was against the constitutional or international provisions is hard to say, because the state has a discretionary right to decide who is eligible to the highest offices. Yet it was definitely contrary to the so-called spirit and standards of democracy.

b) repossessing law enforcement institutions

The parliamentary elections campaign of 2005 was based mostly on rhetoric concerning improvement of internal security and fighting crime. It was quite convincing as, to quote the statistics, corruption, ineffective judicial system, and signifi-

cantly low respect for law were the concern of the whole society, which meant that immediate changes were necessary. The future political majority promised that as soon as they would win the elections, the process of reconstructing legal order will begin. New Central Anticorruption Bureau was to be created, judgments were to be pronounced faster, and prosecutors were to be forced to initiate criminal proceedings in cases of such offences as youth violence and corruption. Moreover, the capital punishment was to be reinstituted, even though such a decision would be against domestic and international obligations concerning human rights.[23] Soon it occurred that creation of law enforcement policy by winners of parliamentary elections was itself a violation of the law. The goal of gathering society support prevailed over constitutional limitations and human rights.

In June 2006, the parliament established the Central Anticorruption Bureau (CBA). As stated above, creation of such an institution was necessary as corruption was still a significant problem in Poland. The main goal of the CBA was to coordinate anticorruption proceedings that had earlier been conducted by numerous other enforcements institutions.

Yet soon it turned out that the CBA was strongly depended on the political majority, with the head of CBA being a former politician connected to the President and prime minister. Commencement of CBA operations was parallel to the beginning of a continuous process of the so-called "controlled leaks" of secret anticorruption proceedings conducted by the CBA to the media. Clearly, those leaks concerned mostly members of political opposition or those who were unwelcome by the government. Today unlawfulness of acts and proceedings of the CBA are still examined in courts, which in a few cases have confirmed irregularities.

The main actor in fields other than corruption was the Minister of Justice (MJ) appointed soon after elections.[24] Unfortunately, his original role, to present himself as a "tough sheriff" (as the media sarcastically called him), promptly turned into that of the bad character as he became the symbol of politically conditioned dependency.

Beginning with 2005, the Ministry of Justice presented nearly 75 statutory changes. Of these, most were found contrary to the Constitution, while the approved ones were soon found useless and ineffective (e.g. reform of access to bar exams, 24-hours criminal proceedings, lowering of legal taxes) but brought the MJ to public attention and gained him support (in the election of 2007, he gathered 35% more votes than in 2005).

The role of the MJ was more multi-faceted than described above. The spectacle of "repossessing enforcement institutions" received a new panache with the MJ playing a major and direct role in criminal proceedings instead of leaving them to prosecutors. The media were full of conferences presenting MJ accusing public

[23] E.g. Protocol VI to the European Convention on Human Rights and Fundamental Freedoms forbids death penalty except at the time of war. Protocol VI was ratified by Poland in 2000.

[24] Offices of General Prosecutor and Minister of Justice are integrated.

persons of committing serious crimes and violations. Unfortunately, most of these accusations were quashed by courts (e.g. in the case of doctor G. who was accused of bribery and murder of a patient, the court was unable to find convincing proofs of the latter).[25] For the first time in Polish post-1989 history, the independent organisation of prosecutors opposed MJ, saying that prosecutors are supposed to represent the interest of the state and nation rather then the interest of a single political party. Following that statement, the Minister of Justice dismissed the leader of the organisation.

The last accord of this symphony belonged to MJ who presented a statutory modification of judicial system that circumvented the parliament and entered into force in 2007. The amendments empower the MJ with appointing a single judge to another court without the judge's consent. Moreover, if the MJ has any doubts concerning possible violation of law by a judge, he may have him immediately suspended and send his case to a 24-hour disciplinary committee. Needless to say, these changes are clearly against the Constitution as they deprive judges of immunity, but before the decision of the Constitutional Tribunal, which is to be presented in few months, such prerogatives stay valid.

c) "all the other not repossessed yet"

One of the most controversial issues in Polish politics is the continuing process of vetting (Polish: *lustracja*), which in fact began in 1997. In that time a variety of measures were adopted, including legal provisions that disallow assumption of public offices by persons who had cooperated with the communist regime before 1989. The degree of complexity of Polish history and political scene in fact never allowed the fulfilment of the vetting process. This is why the new government, as promised during election campaign, provided significant changes to the law on which the vetting process is based. The new system eliminated the supervision of lustration court and the institution of special lustration prosecutor office, which resulted in poorer procedural guarantees for those accused of cooperation with the former regime. During the preparation of statutory changes, the Constitutional Tribunal signalled several times that there is a high probability of constitutional violation if such changes were to be accepted. Disrespecting objections of the Constitutional Tribunal, the Parliament accepted the amendments, and changes entered into force in 2006. The following year brought a judgment of the Constitutional Court that repealed most of the amendments making lustration process impossible to carry on.[26] Once again, the Constitutional Tribunal became the last constraint on the new social order. The government has nevertheless overridden this obstacle by opening another flow of controlled leaks of secret information and inquires

[25] Finally, Dr G. sent an individual application to the European Court of Human Rights in Strasbourg alleging that his right to a fair trail (presumption of innocence) was violated by the Minister of Justice.

[26] During the proceeding judges of the Constitutional Tribunal had been falsely accused of collaborating with the former communist regime by the member (PiS) of the Parliament representing government.

concerning the alleged cooperation of several political opponents and other public officials with the former regime and secret services.

The last issue to be presented, is the process of "repossessing" free private media, as – together with the Constitutional Tribunal – the media presented the greatest threat to a political and social changes aimed against the foundations of the free and democratic society. With a tight hold on the public media and a strong support from the catholic media it was still necessary to take control over the private ones that in 2005–2007 would criticise the government. This time, it was impossible to "repossess" them by staff policies or by statutory changes, so one of the most effective tools: controlled leaks and semi-criminal accusations were again resorted to. These measures were successful at least in one case, when the anchor of a private TV station was dismissed, officially for financial reasons, but unofficially due to his critical position towards the government's policy. Luckily, the process of "repossessing the state" discontinued after the collapse of the governing coalition and parliamentary elections of October 2007.

Afterword

The new government (PO-PSL)[27], whose success in the election was based mostly on opposition and disagreement to political standards of the former one, initiated several institutional and procedural changes in 2008.

The most important one is connected to the idea of separating the Ministry of Justice from the Office of General Prosecutor. The later, according to the new statutory law, is to be elected for a long term from among prosecutors or judges with significant independence guarantees. No wonder that such an idea met with strong opposition from the former populist coalition. Putting it into force will take away a very useful and oppressing instrument, which might otherwise be used against those who oppose the government, from politicians. Undoubtedly, the government has a right and power to create and control criminal law policy, but the only democratic procedure to do that is by presenting new statutory provisions instead of forcing prosecutors to accuse for political reasons without legal grounds.

The second change concerns the idea of disbanding the National Broadcasting Council (NBC) and conveying its powers to the Office of Electronic Communications (OEC). This move seems to follow the era of repossessing the NBC when none of the opposition parties were represented in its structures. On the other hand, such a solution gives no guarantee that other politicians will try to take over the OEC in future to try to suppress the freedom of the media.

Thirdly, special parliamentary inquires were initiated to expose any illegal actions of the former government as well as prosecution proceedings concerning breaches of law by former officials (e.g. cases of secret services resorting to illegal

[27] PO is the Civic Platform, and PSL is the Polish People's (Peasants') Party.

tapping, and revealing secret procedures and data). Let us hope that if any of such illegal acts actually took place, those responsible for them will suffer legal consequences.

In my opinion, policy and acts of the former populist coalition of 2005–2007 definitely posed a real and imminent threat, not only to democracy itself, but also to the standards and the so-called "spirit of democracy". This statement is based on the fact that the former coalition did not hesitate to undermine two stages of democratic transition and – by placing several incompetent and politically dependable persons in all constitutional institutions – bluntly violated or halted the third stage: the democratic consolidation. What is, however, more important and worth highlighting is the fact that by suppressing the judicial branch, the government violated the basic fundament of democracy, namely, the separation of powers, being a part of a second stage: democratic institutional transition. In the light of the facts presented in the article, the former government temporary stopped and then reversed the process of transition. The above entitles me to claim that thus it really posed an imminent and realistic threat to democracy itself.

The new government (PO-PSL) prepared several initiatives aimed at restoration of democratic standards. Yet are these institutional and procedural changes about to make standards of democracy in Poland more invulnerable from any other attacks in future? Such a conclusion was proved ungrounded in Poland in 2005–2007. What should be done then? It is necessary to say that without educating society about fundamental values of democracy, accepted and cherished nowadays by only 24% citizens, such a possibility cannot be excluded in future. All the best institutional guarantees cannot stand against those who do not have even a basic respect for democratic standards.

A greater reason to worry is the fact that most Poles have very little knowledge of constitutional rules. Consequently, it should be responsibility of the new and all the future governments to improve popular awareness of democratic standards. Unfortunately, such a plan of action has not been presented yet.

Foundations of democracy consist of freedom of association, freedom of expression, prohibition of censorship, free elections, procedures of checks and balances preventing from gathering all powers in the hands of a small group of people. If these conditions are fulfilled, then a house, which a democratic state is, has its floor, walls, ceiling and roof. All the rest remains with the society. Which means that it is only up to us how we are going to arrange our home.[28]

[28] Quotation after R. Krasnodębski, *Rozważania o demokracji*, Wrocław 1994, p. 20.