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**Threats to the Independence of the Judiciary in Poland**

- 1. General overview** - As in many democratic states in Europe Poland up to 2015 has a similar threat to the Independence of the Judiciary as in other democratic states. Sometimes a politician try to apply political pressure on court decisions, sometimes they would publically criticize judgments but generally the tri-division of powers and the system of *checks and balances* system works.
- 2. Change of political and legal landscape** - After parliamentary elections in 2015 when the populist party „Law and Justice” lead by Mr. Jarosław Kaczyński won, the political and legal situation in Poland in the judiciary dramatically changed. The new ruling political party started to undermine the constitutional tridivision of powers, the system of checks and balances, and the principle of the independence of the judiciary through media, activity of the Ministry of Justice and through legislative changes.
- 3. Populism in government controlled media** - Every legislative action conducted by the parliament with regard to the judiciary was preceded by a media campaign conducted by the government held public media. The campaigns were intended to undermine the positive view of judges and the courts in the public opinion. The government controlled media present every irregularity concerning judges in a very populist fashion, in order convince the public that reforms of whole judiciary are necessary.
- 4. Ministry of Justice pressure on judges**— in 2015 the institutions of General Prosecutor and Ministrer of Justice were combined. As a result, a politician, member of the government, received direct influence over all prosecutors, and an opportunity - which was used in the past two years several times – to initiate criminal proceedings against judges before they deliver a judgment in a political or controversial case. Some judges are also criticized publicly by Ministry of Justice. What’s more, after changes in the law on the organization of courts in Poland made in July 2017, the Ministry of Justice receive the power to revoke at any time any president of any court in Poland and appoint a new one without the obligation to consult the representatives of the judges working that court. All of this creates a chilling effect among judges and is a significant limitation of their independence.
- 5. Legislative changes** – Recent changes in legislation (made possible by the paralysis of the Constitutional Tribunal) concerning the judiciary undermine the separation of powers and rule of law in Poland. The best example of how this works is the case of Constitutional Court in Poland. It no longer functions properly. The ruling party paralyzed it first by electing new judges to the Constitutional Court, for three places which were not vacant (they were occupied by judges elected by the previous parliament). The Constitutional Court itself ruled that these three new judges were in fact not judges. Ultimately however, the *faux*judzes were admitted to act as judges by the politically appointed new president of the Constitutional Court. The three real judges have not been admitted to the Constitutional Court because the President refused to accept their oath. Since November 2015, parliament adopted many legal acts

amending the Act on the Constitutional Court, which were aimed at paralyzing the Tribunal's work. At present, most of the judges (including the three *faux* judges) of the Constitutional Court are connected with ruling party and the tribunal has ceased to fulfill its role. On the rare occasions that it does actually proceed a case regarding the constitutionality of a given law, the Court does not provide any judgment in opposition to government opinions.

- 6. Stopping changes by the President** – In July 2017 the parliament try to force a speedy reform of Supreme Court and the National Council of the Judiciary (which selects and appoints Judges). One of the most of controversial changes in these laws concerned the immediate termination of the terms of office for Supreme Court judges. All amendments related to The National Council of the Judiciary were aimed to give political control when choosing judges. Changes to the Supreme Court and The National Council of the Judiciary legislation have resulted in a series of protests across Poland. As a result of these protests the President of Poland declared his veto against the laws reforming the National Judiciary Council Act and the Supreme Court Act. After that president announced that he will prepare new proposal of reforms which were recently announced: these are practically the same laws but they give power over the judiciary to the President, not the Minister of Justice. The President did not however veto the law which now allows the Minister of Justice to recall all presidents of courts and replace them with hand-picked judges. We are already seeing this happen throughout Poland.
- 7. Influence on human rights protection** - Human rights violations committed by public authorities cannot be questioned without independent courts and independent judges. Violation of the guarantee of the independence of the courts judges makes human rights but a meaningless declaration.