



AUDI. VIDE. LOQUI.

CIS-Europe Monitoring Organization  
Международная мониторинговая организация CIS-EMO

info@cis-emo.net

## **Polish Constitutional Court crisis as a threat to the democratic principles of the EU**

*Alexey Semenov, CIS-EMO Political Analyst*

Poland is experiencing a constitutional crisis in connection with the situation concerning the Constitutional Tribunal of the country.

The new law severely restricting the powers of the Tribunal has caused a considerable controversy in Poland and criticism from the opposition.

Such prominent politicians as Lech Walesa, Aleksander Kwasniewski, and Bronislaw Komorowski, in an open letter, accused the current ruling party of violation of the constitutional order, and indicated that Poland “*is moving towards authoritarianism and isolation in the world*”.

Factually, the ruling party “Law and Justice” (*Prawo i Sprawiedliwość, PiS*) effectively tries to take on the Constitutional Tribunal.

The government's actions have caused serious protest in the Polish society. Since December 2015, a lot of anti-government rallies have been held. At the beginning of May 2016 in Warsaw the biggest demonstration since 1989 took place under the slogans “*We will defend democracy*” and “*We are and will be in Europe*”. Warsaw Mayor put the number of demonstrators at 200,000. People took to the streets in protest against the government's policies, which, in their view, are a threat to Polish democracy and undermine Polish position in the EU.

Despite this, on the 1st of August President Andrzej Duda signed the controversial law, and on the 16th of August the law has come into force.

European Commission demands have been ignored. The recommendations of the Venice Commission have not been taken into account.

The new law stipulates that the decision on crucial issues can be made in presence of 11 out of 15 judges, and the review of compliance of a law with the constitution can be made by just five judges. The court in full strength will primarily consider the President's veto on the laws, the law on the constitutional court, to resolve disputes on competence between state bodies and compliance of activity of political parties to the basic law.

Polish Tribunal called certain parts of new law unconstitutional, but the government ignored it, thus violating the democratic constitutional order.

According to the amendments, now the court makes decisions by two-thirds votes instead of the usual majority, as it was previously. Although Article 190 (5) of the Polish Constitution only requires a majority of votes. Also, now the judge has to deal with cases as they arrive, and not in order of importance.

The opposition believes that these amendments will block the work of the Tribunal and in fact deprive the judges of the ability to influence the political situation in a country where all branches of government are already under the control of the ruling party.

Why does the ruling party want to capture the Tribunal? There is an opinion that the Tribunal is the main obstacle to establishing a populist electoral autocracy in Poland, as it has occurred in Hungary. The Tribunal doesn't allow adopting the laws restricting the independence of judicial system, freedom of media and civil liberties.

This is a very dangerous trend. Violation of the principles of constitutional state can result in a systemic threat to the rule of law in Poland.

According to the theory of Samuel Huntington, the spread of democracy in the world occurred in waves. However after the last wave there has occurred a democratic stagnation. Now we are witnessing a democratic recession. According to Freedom House estimates, since 2006 an average political freedom index fell more than 3%. And the events in Poland are the part of the democratic recession.

Poland was once called a successful example of democratic transition and European enlargement, but now it is in position that calls into question the very viability of the Polish democracy.

While the attention of the European observers was riveted on Brexit, the retreat from democracy in Poland turned out to be out of sight.

However, faltering democracy in Poland bears the greatest threat to the EU. If member states that were admitted to the EU a decade ago would devalue its provisions, inflicting great damage and creating serious risks, the Union is unlikely to survive.