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Democracy under threat: Undermining the rights of the opposition in the Polish Parliament

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There is an ongoing dispute around the Constitutional Tribunal (CT) in Poland, sparking mass protests in the country and straining its relationships with the European Commission. PADEMIA member Agnieszka Grzelak analyses the latest law on the CT of 22 July 2016, and argues that the parliamentary democracy in Poland is under threat – while the rules of the procedure are still applied, in practice the rights of the opposition are being more and more limited.

Parliaments, as key democratic institutions, ought to both reflect and represent the diversity of political opinions in society. This democratic mandate to represent all citizens, and thus also opposition or minority interests, emphasises the importance of the parliamentary opposition and its rights within parliament. Analysing the adoption of [the new law on the Constitutional Tribunal \(CT\)](#) in Poland as an example, my research shows that the right of the opposition in the Polish *Sejm* is, in fact, rather limited in political practice. This is part of a broader research on the application of the rule of law in Poland, based mostly on the analysis of documents, especially adopted laws and jurisprudence of the CT in Poland, as well as documents of international organizations and parliamentary minutes.



Compliance with the rules of procedures does not guarantee the rights of the opposition in the parliament



In recent months, much concern about democracy in Poland being under threat has been voiced. At the European Union level it is most fully expressed in the [latest Commission Recommendation](#), but [the Venice Commission](#)

[of the Council of Europe](#) in its opinion in March 2016 on amendments to [the Act of 25 June 2015 on the Constitutional Tribunal of Poland](#) also expressed its concerns. The fundamental problem at issue is the functioning of the Constitutional Tribunal, the highest judicial body in Poland, primarily responsible for determining the constitutionality of laws adopted by the parliament. However, concerns are not only expressed regarding the composition and functioning of the Constitutional Tribunal in Poland, but also the legislative process in the parliament. Recently, the Polish parliament adopted several laws, which raise doubts regarding their constitutionality (see for example [the Act of 15.1.2016 amending the Police Act](#)). Clearly, the proper functioning of the CT is essential in order to challenge those laws in the judicial procedure. This is also considered as a basic right of the opposition – according to [Article 191.1 of the Polish Constitution](#), the application to the CT on the conformity of laws to the Constitution can be made inter alia by 50 deputies in the *Sejm* or 30 senators. Therefore, adopting laws which, in fact, are aimed at blocking the proper functioning of the CT, are to be considered as infringing upon rights of the opposition in *legal* terms.

At the same time, however, the *parliamentary* rights of the opposition have also been severely infringed upon in practice, and it is important to highlight these once again using examples from the most recently adopted [law from 22 July 2016 on the Constitutional Tribunal](#). In this context, it is important to keep in mind that the rule of law principles include the principle of legality – meaning a transparent, accountable, democratic and pluralistic process for enacting laws. As I will show in the following, these principles were clearly not fully adhered to.

This law was initiated as an answer to allegations from the opposition as well as international organizations, that the governing party was breaching the rule of law through their adoption of laws blocking the proper functioning of the Tribunal (in addition to the non-implementation of previous judgments from the CT [on 3 and 9 December 2015](#) and [9 March 2016](#)).

Yet on [11 August 2016](#) the CT found some of the provisions of the 22.07.2016 law also unconstitutional. More importantly in this context, there are also a number of concerns, which also raise questions regarding the rights of the opposition in the *Sejm*. These include the pace at which the act was adopted, as well as the procedure itself: First, it should be mentioned that there were five drafts presented by various political actors, including three presented by opposition parties, one by the governing party, and one by [a non-partisan civic movement](#). To give the impression that all of them were fully taken into account, all of them underwent a first reading in the plenary. Yet soon after, based on the rules of the Standing Orders of the *Sejm*, the Committee on Justice and Human Rights adopted a resolution in which it decided to consider them jointly. Although this seems to be perfectly in line with the formal rules of procedure, one ought to remember that the majority of votes in the Committee belong to the governing party and, therefore, the

particular bill presented by the governing party was considered to be a 'base project' in the course of further work. The last of three readings was completed on the 7 July. Although this was a significantly longer period than the previous acts on the CT (cf. [bill](#) filed on 13.11.2015 and adopted and published only a week later on 20.11.2015), one month remains a short period for public debate of a contentious law.

Moreover, during the first reading debate no amendments from the opposition were accepted. The *Sejm* considered amendments of the Senate on the same day at midnight, thus not allowing for any deeper analysis of the proposed amendments. During the second reading, no questions from the opposition were allowed by the Speaker, and those opposition MPs that tried to ask questions were threatened with financial sanctions. As a result, the freedom of expression and information – one of the most fundamental rights of the members of parliament, and especially of those who belong to the opposition – was severely violated.

This short reflection on the parliamentary procedure in practice shows that although the essential rights of the opposition are still enshrined in national law, in practice they are not respected or fully applied. It is vital to recognize that the opposition in the parliament is a necessary and indispensable component of democracy. For government and society to be effective, a majority must always respect the essential principles of parliamentary democracy. The ability of the opposition to participate in the parliamentary procedure prevents tyranny by the majority by protecting the voice of the minority. Participation of the opposition in the parliamentary procedure contributes to the promotion and defence of human rights and fundamental freedoms, thus helping to ensure that democracy functions properly. Unfortunately, this is currently not always the case in Poland.

This post represents the views of the author and not those of PADEMIA or the institutions that the author is affiliated with.



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