



# SUPREME COURT

of the Republic of Poland

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First President of the Supreme Court

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## Speech

of the First President of the Supreme Court of the Republic of Poland  
on the occasion of the award of the Bonn International Democracy Award

(Der Internationale Demokratiepreis Bonn)

Petersberg near Bonn, 8–9 November 2019

*Ladies and Gentlemen,*

*[titles to match the circumstances]*

First of all, let me begin by thanking you for granting me the Bonn International Democracy Award (*Der Internationale Demokratiepreis Bonn*). It is both a sign of distinction and an honour for me to be here with you today. Looking at the history of your association and the history of the award, one can see many exceptional, outstanding figures who greatly contributed to the struggle for democracy and human rights. Vaclav Havel, Shirin Ebadi, Yadh Ben Achour, Federica Mogherini or Leymah Roberta Gbowee, to name just a few. Their deeds in quest for peace and human rights were truly remarkable.

Today, my role is to receive the award from you, and I accept it not as much on my behalf, but on behalf of the Polish society and all the judges in Poland who, despite hate speech, restrictions on their rights, unconstitutional changes in the justice system, including their disciplinary liability, have tirelessly upheld the rule of law and protected human rights. I am speaking of this in a situation where Poland has witnessed very significant interference with its existing judiciary system over the last four years. One should note that these changes have involved, in particular, the following:

- 1) marginalising the role of the Constitutional Court, which has completely lost its authority and legitimacy after the appointment of individuals either connected to, or dependent on, the current parliamentary majority in the country; moreover, some of these

appointments were made to positions already occupied as a result of appointments made by the previous parliament;

- 2) politicising the constitutional body responsible for defending the independence and autonomy of judges and courts, i.e. the National Council of the Judiciary, by amending the appointment rules regarding its members;
- 3) amending the rules of disciplinary decisions concerning judges and members of other legal professions to be issued by the new chamber of the Supreme Court; by this I am referring to the newly created Disciplinary Chamber, which, in fact, is an exceptional court, placed above all courts in Poland, including the Supreme Court; this Disciplinary Chamber is composed of individuals many of whom were closely linked to the Minister of Justice in the past and were elected with the involvement of the flawed National Council of the Judiciary;
- 4) establishing the new Extraordinary Audit and Public Affairs Chamber, empowered to hear cases from the last 22 years, filled with the involvement of the flawed National Council of the Judiciary;
- 5) combining the posts of the Minister of Justice and the Prosecutor General, who has been granted the right to interfere in specific court cases, making the prosecution directly subordinate to the executive branch of power.

Undoubtedly, the changes that have taken place undermine the rule of law. I am saying this not because I would like to draw your attention to the situation of judges in Poland, even though this is also very important. What is far more important is the need to protect the rights and freedoms of individuals by guaranteeing their right to an independent, impartial and autonomous judiciary. Quite obviously, such a significant interference in the justice system poses a great risk of human rights violations. When statutory judges are deprived of the guarantee of autonomy and when courts are deprived of independence, the protection of individual rights may become ostensible. In turn, when the protection of individual rights becomes ostensible, the rule of law becomes an illusion.

Therefore, I would like to stress that both my opposition and the opposition demonstrated by many of my colleagues is not directed against the politically shaped authorities, but against their creation of a system which is formally based on the existing law but effectively leads to a judicial system where the fundamental principle of the rule of law, not challenged for years, is

being evidently violated. One can get the impression that over the last four years Poles have been living in a system that can be described as “electoral authoritarianism”: the facade of free elections hides the rule *by* law, not the rule *of* law.

I do not need to explain, especially to you, here in Germany, the kind of systemic consequences that may be entailed by such an instrumental view of the law and elections. We have learnt a lot from the experience of the 1930s. The question that arises today is whether or not we are able to draw conclusions from the past. Therefore, let us consider the relationship between democracy, the rule of law, the principle of separation of powers and the position of the power that I represent: the judiciary.

The word “democracy” was introduced in antiquity, probably by Greek sophists, and then promoted by Democritus of Abdera, and further by the critics of Athenian democracy: Plato and Aristotle. Literally, “democracy” means “the power of the people, rule by people” and derives from the Greek words *dēmos* – people and *kratos* – power. At present, the term “democracy” is used in four meanings, namely: 1) the power of the people, nation and society, 2) a form of political system in countries where the will of the majority of citizens is recognised as the source of power and where citizens are granted political rights and freedoms that guarantee the exercise of power, 3) a synonym of political rights and freedoms as such, based on the equality of citizens before the law and on equal opportunities, and 4) a social and economic system.

Undoubtedly, each of these meanings is extremely important today. Although in a democratic country power is exercised by the people, the people as a collective are not capable of performing any state-level function or of governing the country, outside the elections. Therefore, the people are not direct rulers. In the context of the elections and the exercise of power by elected representatives, there is always the temptation to believe that every decision made by those representatives epitomises the will of the people. As history teaches us, this is very close to the idea that the elected representatives of the people are not accountable to anyone. This, in turn, leads to abuses that distort both the nature and the essence of democracy. This kind of narrative was visible in Poland after the 2015 parliamentary elections. This is when the legislature and the executive started to blatantly demonstrate their aversion towards the judiciary. If we look at this phenomenon more broadly, in the historical context, we will find it hardly surprising. In fact, it is very well known. No state authority loves

autonomous judges or independent judiciary. In addition, often after winning the elections, the authorities also take steps to subjugate the state apparatus, its employees and civil servants. These aspirations even received a name in American terminology: they are known as “the spoils system.” And things were no different in Poland in 2015. And it was not the first time it happened. However, we witnessed a kind of novel element, that is an unprecedented, government-financed smear campaign against judges, unparalleled around the globe. The campaign aimed to convince the public that the judiciary was a bunch of thieves and a privileged “caste.” We must not fail to mention the attempt to statutorily remove the oldest judges from the Supreme Court, who were presented as “communist oppressors” without any supporting evidence. Such slogans were repeated by people holding the highest positions in the executive power, often based on insinuations and ambiguous propaganda slogans. This was supposed to convince the public abroad about the legitimacy of the changes undertaken in the Polish justice system. Whenever international organisations voiced doubts as to the direction of changes, they were hushed up with claims that the Polish State is sovereign, the authorities enjoy the social mandate and are fully empowered to reform its institutions. Soon, the act on the National Council of the Judiciary was passed, changing its composition from a representative council of judges to a collection of former Ministry of Justice officials and judges newly promoted by the Minister of Justice as presidents of courts, elected to the “new” council by votes from members of the ruling party. The last four years have witnessed a systematic destruction of the authority of the justice system in Poland as well as the respect for this system.

In countries with long-standing democratic traditions, strong democratic institutions upholding fundamental values and a civil society, the propensity to undertake such actions is much weaker although it sometimes *does* exist. This has an overall impact on the culture of governance, the culture of law and the culture of democracy.

Thus, what becomes a value in itself is a strong constitutional legitimacy of the state apparatus, including the most important authorities, and especially the judiciary, which is not subject to electoral mechanisms. In nearly all countries, this role is played by the Constitution, an instrument with the highest legal force among the sources of law. It is the Constitution that sets out the fundamental rules of governance that are very difficult to change. What plays an important role from the perspective of common good are values such as independence,

sovereignty, as well as the rule of law and respect for fundamental human rights and freedoms, including, in particular, the inalienable and inherent dignity of the human being. From this perspective, it is absolutely crucial that no authority can act fully freely, without any restrictions. On the other hand, it is also important that individuals have the right to unambiguous and stable legislation that does not change with the arrival of a new ruling party that might amend it at will. It is important that individuals have the right to efficient and independent judiciary, where cases are dealt with by independent judges. These principles can be directly derived also from the Polish Constitution. Unfortunately, since the Constitutional Court has been delegitimised following doubts as to its staffing and has, in fact, ceased to fulfil its systemic functions, the parliamentary majority in Poland has put the implementation of its political objectives above the constitutional legal framework, aiming first and foremost at making the judiciary fully subordinate to the other branches of power.

The changes introduced in Poland were analysed by the Venice Commission, which prepared an extensive report. The report states unequivocally that these changes in Poland undermine democracy and the rule of law, and may lead to violations of human rights. Under the current Polish legislation, the right to a fair and public hearing by an independent and impartial court within a reasonable time is not undisputed, either. The possibility to obtain protection in the event of adjudication in disputes concerning other human rights, whether in civil or criminal matters, is also debatable.

The violation of the rule of law was also noted by the European Commission, which initiated the second proceedings against Poland on the basis of its complaint. There are also several questions for a preliminary ruling from the Polish courts, pending before the Court of Justice of the European Union. The European Commission believes that restoring the rule of law in Poland is not a difficult task. According to the recommendations presented, the actions to be taken to eliminate the existing infringements should primarily consist in the following:

- 1) restoring the independence of the Constitutional Court, executing its judgments and ensuring that the three Constitutional Court judges selected by the parliament of the 7th term of office can assume their offices;
- 2) ensuring that legislation on the Supreme Court, the common court system and the National Council of the Judiciary is amended to restore the previous guarantees of

compliance with the requirements related to judicial independence, separation of powers and legal certainty; and

- 3) refraining from actions and public statements that undermine the legitimacy of the Supreme Court, common courts, judges (both individuals and this professional group) and the judiciary.

These actions do not require any particular courage on the part of the parliamentary majority. The majority may be forced to undertake them following the decisions of the CJEU. The legal community in Poland is certainly waiting for those decisions. We know that the independence of the judiciary and the establishment of courts in the Constitution represent the fundamental features of the judicial branch in country following the rule of law within the Western legal culture. Only in such a country can human rights, fundamental freedoms and constitutional rights be protected.

Therefore, as I receive this award today, I also receive it on behalf of the Polish society, where values such as freedom, independence and human rights have always been held dear. I receive this award on behalf of the Polish society, which has earned a permanent place in the history of Europe and the world, especially in the context of transformations and events that took place in late 1980s and early 1990s, such as the end of the Cold War, the fall of the Berlin Wall, political transformations in Poland, the reunification of Germany, or the collapse of the Soviet Union. Poland and the Polish people played and still play a significant role in the world order that emerged in those years.

As a member of the Council of Europe and the European Union, Poland continues to enjoy a strong international position, which allows us to look into the future with hope. As long as we are a member of the European and international community, the legal order in Poland will be based on the foundations of Western European legal culture. Like never before, the European Union is becoming not only an economic organisation, but also a community of values, which, incidentally, is in line with the intentions of its founding fathers.

The recent developments in the Polish judicial system should be viewed as a warning that shows the consequences of democracy reduced only to the rule of the majority. In my opinion, we can, and we must, learn a lesson from this warning, both in Poland and in Europe. We are witnessing a particular moment in history. The European Union and its individual Member

States are facing new challenges. In this context, we must mention migration, Brexit, the yellow vests movement, political radicalisation and the growing tendency of societies to follow extreme views and populist slogans. The results of the most recent elections in the eastern federal states of Brandenburg, Saxony and Thuringia provide a telling example.

I have not the slightest doubt that the achievements of European civilisation and Europe's greatest achievements would not have been possible without democracy and the rule of law. Only these values guarantee peace, social order and unwavering understanding among nations. Only the rule of law in a democratic system can protect citizens as well as their fundamental rights and freedoms. That is why it is always so important to defend these values, both when there are no threats and when such threats have already emerged. This is how I see my role as the First President of the Supreme Court: a symbolic representative of the judicial branch in Poland, tasked with the protection of human rights. Protecting the rule of law is the utmost duty of every judge. Only by assuming this kind of stance can we guarantee a sense of security and the rule of law to citizens.

With all these reasons and considerations in mind, let me again extend my thanks for the award and for the invitation to today's ceremony.