



---

Warsaw, 21 July 2017

## **Statement of the Open Dialog Foundation on the dismantling of the rule of law in Poland**

Dear Sir or Madam,

We are a non-political, non-governmental organisation whose activity mainly concerns post-Soviet countries. We work internationally to support social activists, reformers and human rights defenders, as well as oppressed opposition politicians, sponsors of the opposition, independent journalists and people associated with them.

Until now, we have never formally spoken out on the internal situation in Poland (and, quite naively, thought we would never have to); Poland is usually a model and inspiration for our eastern neighbours and other post-Soviet states wishing to carry out transformation. Polish people have often shown them great solidarity, and our country has been a safe haven for political refugees.

Although struggling with our own problems and obligations, we cannot remain passive to the ongoing attempt to destroy the rule of law and democracy in Poland. This is not about party politics (although not only are numerous civic organisations standing on the same side of the barricade today, but so, also, are opposition politicians); this is a matter of principle. It is a matter, however grandiose it may sound, of the fundamental values and future of our country. The future of Poland as a liberal, Western democracy – as a secure, stable EU and NATO Member State.

Therefore, given the current circumstances, we would like to express our official support for the civic protests against the anti-constitutional activities of the Law and Justice government, and our support for independent courts.

We strongly encourage everyone to participate in daily protest actions and rallies. At the same time, we believe that the protests themselves may not be enough. But this does not mean that we should surrender and accept the unlawful seizure of the Supreme Court and ordinary courts by party nominees.

We therefore present to you the following article and call for broad cooperation to cease the dismantling of the rule of law. In the article, Bartosz Kramek has brought together our experiences (with the Ukrainian Revolution of Dignity 2013/2014 being one of the most powerful) and reflections; they may prove valuable in the course of resistance. We realise that we may be accused of anti-state radicalism, but we believe that this attack on the very foundations of the Third Polish Republic must not be underestimated. It is a path towards the East (even if we have only started on the path), while the place of Poland is in the West.

Poland Is Not Yet Lost!

## **Let the State Come to a Stop: Let's Shut Down the Government!**

**How can the attack of Law and Justice (PiS) on the rule of law in Poland be stopped? Protests are the foundation of social resistance, but they do not exhaust the catalogue of instruments to enhance the effectiveness of civil disobedience. Radical methods of resistance from Eastern countries are justified by the unique circumstances in the history of the Third Republic of Poland. Power that destroys public life and the political system in the Eastern style has to reckon with an adequate and analogically inspired response of the society. This study presents 16 points based on, among others, the experience gained from observation missions and support of the Ukrainian Euromaidan.**

I was born at the end of the Polish People's Republic in 1986, and that means that I was raised in a free Poland. I naively thought that the history of Poland ended with the collapse of communism and accession to NATO and the EU. In recent years, in the light of aggression in Ukraine, we anticipated a serious external threat from Putin's Russia, but never had we expected an attack against the constitution and the rule of law, carried out by the democratically elected Polish government.

My generation basically wants peace, not politics — we have other things to do and to worry about, and the growing confusion and tension is best reflected in one of the most popular statements in recent days and hours: *fucking outrage*. We don't expect our politicians to make revolutionary changes, but we want them to effectively use the EU funds, develop the infrastructure and modernise the country; go with the times and solve real problems instead of conflicts over history and symbols. We used to laugh at Donald Tusk's *bridge-building* and *hot water in the tap*, but today it is very clear that these political concepts — especially in our reality — had their own deep meaning.

Today we cannot remain passive, although many of us feel resentment towards the entire political class as such. Cynicism, opportunism, a 'chiefdom' leadership style, disgraced leaders, quasi-feudal relations, and negative selection in political parties are not the domain of a single force. There are a lot reasons to blame the previous governments, yet there are some boundaries that cannot be crossed. Responsibility for the current crisis rests with the current government. The argument of PiS referring to the offences of their predecessors (even if they are true) have nothing to do with the present situation and they cannot be used as an excuse. In the same way, the propaganda of the Polish People's Republic told us about the 'beating of blacks' in the USA. The overwhelming and constantly fuelled social polarisation becomes unbearable and raises the threat of effective provocations and outbursts of uncontrolled aggression. The never-ending trauma of the Smolensk tragedy has turned us into hostages of the ill psyche and imaginary harm caused to the tragicomic *chairperson of Poland*. The chairperson who wants to reverse the course of history and become a neo-National-Democratic Piłsudski of the twenty-first century. We will probably have to struggle with these emotions long after the PiS government goes down in history, but the priority and the order of the moment is to stop the attack on independent courts, on the foundations of the Third Polish Republic.

I never thought that I would participate in protests taking place in Poland and relating to Polish affairs — until now, Poland and Poles have been acting as spokespersons, support and safe haven

---

for the persecuted in Ukraine, Russia, and Kazakhstan. Poland was a model to follow for post-Soviet countries, a phenomenon on a global scale, and a unique success of peaceful transformation from communism to democracy and market economy. The goals and methods of PiS (including the characteristic formation of the parliamentary façade structure and pushing laws through under the

cover of night) are not new, but they are typical of post-Soviet countries, excluding modern Baltic states, and in recent years — also of Hungary and Turkey. I speak about the Polish phenomenon and common Western admiration for our country as a participant in many parliamentary hearings in the EU and US and hundreds of talks with politicians, activists and media outside our borders. At least so it was until recently. Because today, our stark disbelief regarding the development of Poland's situation is accompanied by utter astonishment and increasing irritation on the part of the West. No, Poland is not in ruins. What is being ruined is our reputation.

**With all due respect for many Ukrainian friends and their reform efforts, we are now dealing with the progressive Ukrainianisation of Polish politics.** And yet, even Ukraine, although with great effort, is currently heading towards the West and wants nothing more than full-fledged membership in the EU and NATO. On the other hand, the fixed idea and final stage of the path we have embarked on under the PiS rule is a *sovereign democracy* in Putin and Erdogan style. Is this the direction we want to go in? Did we waste the best 25 years of our history and lost our democracy by allowing Duda and PiS to win the election in 2015?

No! This fight is just beginning. Kaczyński's government will not last forever, and the more mistakes he makes and the more he stirs the public sentiment, the sooner his governance will come to an end. **However, this does not mean that we can only passively wait for the development of events. On the contrary: we must make the authorities face the consequences of their own actions. And we must make sure that the general public does not remain passive by ignoring the current events. Mere protests and appeals are not enough; extraordinary and resolute actions based on the idea of civil disobedience must be taken immediately.** Nobody wants Maidan or bloodshed in Poland, but the escalating tension makes us take almost any unimaginable scenario into account — and be prepared for it. **At the same time, the red line must be very clear for us: it's aggression, violence, and blood. Is it also a red line point for the government?** We do not know. But it is certain that any use of force — as a factor escalating further tension — will not be in their interest. It is also questionable whether the power structures would be loyal to the authorities if they try to use violence against their citizens. It is certain, however, that we must maintain the peaceful nature of the protests at all costs.

Leaving aside comparisons with Maidan (where we were present with the group of Polish parliamentarians from the early days), I cannot — paying great tribute to the victims in Ukraine — neglect the inspirations flowing from it. Let us also remember that, essentially, the Ukrainian Maidan of 2013/2014 consisted of two phases, and its first phase — the so-called Euromaidan — was based on positive characteristics and civic creativity, which combined in the form of a firm and strong, yet absolutely peaceful protest against the government.

But this is not the only source of inspiration. The mechanism forcing the President and Congress in the US to co-operate is called the *government shut-down*, and takes place when the lack of a budget law causes a forced holiday of government employees, such as the suspension of the functioning of federal offices (other than those critical for public security). **What stands in our way — as a civil society and a sovereign nation — to shut down the government? And how can we achieve that?**

---

The proposed list of actions is an attempt to answer the questions that have been reiterated in recent days: *What should we do? How should we fight? After all, they have the majority, they will vote down everything...* The list contains both obvious and occasionally repeated (and partially implemented) concepts (being, in this case, also an attempt at their logical arrangement and synthesis), and supplements — according to my knowledge — with new instruments and ideas.

At the same time, I am fully conscious of the fact that the extraordinary nature of the situation requires extraordinary actions and the willingness to bear possible consequences of taking part in the actions of the opposition. With a fully open visor. Let them see us and count us.

1. **Firstly, despite all the differences, we need close cooperation and coordination of the broadly understood opposition and civic communities**, which will create a common framework for key decision making and form an official representation. On Maidan, such a role was fulfilled partly by the Council of Maidan and the National Opposition Headquarters. In this case, it can be the *Democratic Front*, within which certain task teams can be appointed to carry out activities in the areas described below. This postulate is not new, but it does fundamentally determine the implementation of all the other ones. People need to know who is responsible for what, yet the daily routine of the protest actions is still the question of who is the organiser or who to ask questions on different issues. One possible alternative is to carry out the following activities in a spontaneous and decentralised way — by various organisations and civic groups that will be inspired by this list.
2. **Efficiency requires the mobilisation of a large section of the society, and — before this can happen — many environments, the resistance of which can paralyse the functioning of the State**. This requires talks of the opposition and leading social activists with trade union headquarters (especially the Polish Teachers' Union) and business representatives (Polish Business Roundtable, Business Centre Club, Lewiatan Confederation). The consequences of the lack of independent judiciary will affect everyone. Teachers have an additional, particular and urgent interest — the fight against the 'anti-reform' of the education system (and, consequently, the loss of many jobs). Agreement may not be easy to reach, and the environment can be divided, but history will not forgive us if we don't make any attempts to find common ground.
3. **General teachers' strike or — in the case of judges of common and administrative courts, who cannot strike in a formal way — a broad-based protest in the form of breaks at work and refraining from performing official duties**. This should bring about serious and widespread public concern which the authorities will not be able to ignore. This will not be a fight for the courts anymore — this will be a fight for Poland. Of course, the postulated protest of the judges requires a deeper analysis in order not to endanger the general public. Its broad, yet selective nature seems reasonable, as it will still be necessary to make decisions on, for example, temporary detention in order to isolate dangerous persons. What about the strike of students and university teachers?
4. It is worth considering an open and wide **temporary action which would consist in abstaining from paying taxes and other budgetary receivables**, for example, under the slogan I'm not paying for PiS. Of course, it can and should be thought over in detail. Let us remember that it is all about pressure — to force the government to repent, or change the very government in a peaceful way.
5. **Under no circumstances can the Supreme Court capitulate against legal violence. Even in the case of the apparent entry into force of unconstitutional laws, these should be officially recognised — due to their blatant contradiction with the Constitution and in light of the paralysis**

---

of the Constitutional Tribunal — as having no legal force and, therefore, not binding. The expected Supreme Court decisions in the case of Mariusz Kaminski and Julia Przyłębska must be made. Judges cannot voluntarily give the courthouse to the party's nominees. Citizens and municipal police can protect the judges against physical violence. **Common courts must apply the Constitution directly. The courts must be given special civil care as well as symbolic and, if necessary, material support; they should also be surrounded by demonstrators who will continuously stay on duty.**

6. **Social pressure in the form of protests and manifestations must be constant and high.** Tent cities, or loud and frequent protests, can be arranged and carried out not only near the Sejm and Presidential Palace, but also in front of the Chancellery of the Prime Minister and the PiS headquarters at Nowogrodzka Street, and near the house of Jarosław Kaczyński. Perhaps these buildings and institutions can be completely blocked over time, which will paralyse their work? During Maidan, temporarily blocking (with the use of barricades) of the government quarter in Kiev was possible.
7. **Caring for good organisation, image and attractiveness of the protest sites.** The protests themselves must be made more attractive and animated by the broad support of artists as well as specific cultural (concerts) and educational events (lectures and meetings devoted to the history of parliamentarism, constitution, rule of law, etc.). Civic safety services (perhaps with the support of city guards — in the case of involvement of local government) must take due care of their order and safety, which should also be combined with prohibition of smoking and drinking on site. Additionally, all provocations must be identified and prevented by removing aggressive and insane persons. Effective first-aid points and waste disposal, as well as high-speed Internet access points and toilets are essential. Maidan was also a unique place due the politeness of people, the good atmosphere and, after all, the order (guarded by volunteer Self-Defence). For many days, it was a safe place. The presence of opposition parliamentarians (protected by immunity) and their availability in the event of a need to intervene is also important to increase the level of security.
8. **The leading PiS politicians and officers must bear personal consequences; the goal of this measure is to induce social ostracism.** With methods such as protests in front of houses (don't let Kaczyński sleep while he's destroying Poland!), or ubiquitous leaflets, posters and billboards exposing their hypocrisy and inferiority complex (including Kaczyński's statements of *treacherous muzzles* and *scoundrels*) reaching their families and neighbours on a daily basis. Perhaps one could place big posters with Lech Kaczyński's words about the need to respect the Constitution and judgements of the Constitutional Tribunal in front of Mr. Kaczyński's house in Żoliborz. The majority in PiS is insignificant, and strong pressure and discomfort in its parliamentarians' daily lives may cause them to *break* and cross over to the citizens' side. Individual MPs were leaving Yanukovich's Party of Regions practically from the beginning of Maidan, and the final decision made by many of them to change the front has sealed the victory of the revolution.
9. **It is absolutely necessary to have good relations with the police and other law enforcement agencies.** We should thank the police for their hard work and protection, remind and stress the peaceful nature of the protests, offer them water and hot beverages — at the same time paying attention to their duty of loyalty to the Constitution and law, and the need to refuse to carry out orders that would go against it. We do not have and do not want any conflicts with the police. They are not ZOMO or Berkut.



- 
10. **A broad-based educational campaign is necessary.** Trained volunteer activists should be present at tube stations and the corners of all the larger streets with sets of appropriate petitions, information on upcoming protests, leaflets and guidebooks explaining the changes taking place and dispelling the myths about the alleged decommunisation of the judiciary; perhaps also with gadgets that would ridicule the sultan *Kaczoglu* and *Liliputin* along with his acolytes (as laughter and jokes also have their power!). Copies of the Constitution must be distributed, and meetings should also be organised in smaller towns. Funds from political parties can (and should) be used for this purpose. What's very important: media (including social) must reasonably explain the reasons for the protests and the inconvenience caused to citizens. At Maidan, this line of thinking was expressed by a banner located on the barricade that said: *Змінюємо країну, перепрошуємо за незручності* (*We are changing the state, we apologise for the inconvenience*).
  11. **We cannot give up the talks and negotiations with a potentially constructive part of the current ruling elite.** In particular, this might include (although hope is decreasing) Gowin's faction, but single members and groups frightened by the development of the situation can also emerge. Once again: the majority in PiS is fragile, and Kukiz won't sell himself to Kaczyński so easily and cheap. Yet their bargaining can buy us some time.
  12. **Local governments are the power of Poland, and the local government of Warsaw should play a special role in this endeavour.** The City Council should adopt a resolution on the unconstitutionality of PiS's activities and broadly support the manifestation. City services should protect the protest sites, support the people sleeping near the Sejm (and possibly other state buildings) in providing adequate sanitation facilities, water and food, etc. Cities and communes supporting the protest should join the possible strike actions of local government agencies and support their nature. If a broad social protest can shut down the state, then can't a city shut down the Sejm and Senate, the Ministry of Justice, and the Chancelleries of the Prime Minister and President? Can't the lights go off at the PiS headquarters under the pretext of an overhaul? Today, young people call this *trolling*, but aren't we entitled to do the same in the light of the apparent lawlessness of the rulers?
  13. **Local legal authorities can and should set up special task teams** that would use all the possible instruments of civil, criminal and administrative laws to sabotage the unlawful conduct of the government and bring consequences to those responsible (including officials performing the unlawful, unconstitutional orders of their superiors). It is important to support those who try to use parliamentary obstruction of MPs and senators, even in the production of an infinite number of amendments. We must also use all the pressure instruments given to us by international law. If we can prosecute the Polish authorities using international tribunals — let's do this to the greatest extent possible. **Persons potentially persecuted by PiS should be guaranteed free legal aid.**
  14. **Europe and the world.** Close cooperation with other countries (including the organisation of observation missions to Poland and hearings on Poland's situation in the European Parliament and the Council of Europe, as well as in national parliaments of the most important and interested States) is also necessary. EU parliamentarians, US congressmen, and journalists from all over the world must visit Poland. They should be encouraged to do so and supported organisationally. Chairperson Kaczyński, Prime Minister Szydło, President Duda, and Marshals of the Sejm and Senate should be flooded not only with firm written statements but also with requests for urgent meetings by key EU politicians and ambassadors of the most important States. Also, Polish ambassadors abroad should be summoned to report to local MIA ministries and heads of governments. This can be done provided that the communication with them is

---

efficient and reliable, and is based on well-documented reports on the developments in Poland. Representatives of embassies and international organisations must meet with protesters. **International sanctions should be an option in the game; perhaps it would be possible to use or create a mechanism of personal sanctions against political decision-makers and officials who breach the law.** What if Orban vetoes? There are no obstacles to start, within the framework of the mechanism of the protection of the rule of law, a sanctions procedure simultaneously against Poland and Hungary, thus depriving both governments of the right to vote. Obviously, sanctions (or even a mere threat of them) will be used by the ruling forces as an argument proving treason similar to that in the Targowica historical developments, and the PiS media will begin to attack the EU even more fiercely (a protest movement must be prepared along with an appropriate information campaign). Nevertheless, Polish people love EU subsidies, new roads and open borders much more than they love Mr. Kaczyński. Sanctions should not punish Poles as an entire nation, but they should — temporarily — thwart the policy and complicate government spending as well as strike the support for the government. And potential personal sanctions will only strike hard on PiS politicians.

15. **The Internet and social media:** their potential must be used to the fullest. These are tools whose meaning is hard to overestimate today, but, generally, the same goal must be achieved: visibility, also in foreign languages; reaching the unconvinced and passive; combating harmful myths, fake news and media propaganda at the service of PiS; obtaining support, including financial, through fund-raising; discrediting PiS officers in a polite manner. We must monitor social media and use analytical tools, which have proven so efficient in the recent presidential campaign in the US and the Brexit campaign in the United Kingdom. Currently, they make it possible to reach, in an intelligent manner, with our message, groups and organisations which are especially sensitive to it, as well as to various discussions led online.
16. Engaged environments, in particular, business, local governments, but also the general group of protesters, should make contributions to a **special civil society fund**, serving to finance the aforementioned activities. This is the key! Having appropriate resources, we can do almost anything. At the same time, it is necessary to ensure transparency and avoid irregularities which undermined the reputation of KOD.

**The slogan: *'Ulica i zagranica'* [*The Street and Foreign Countries*] does not constitute a calling for treason or a coup. It makes perfect sense in the reality of a parliament dominated by anti-constitutional majority. PiS's activities are a genuine putsch in the form of parliament's attack against the system of justice.** I am deeply convinced that they legitimise the aforementioned spectrum of activity. As citizens, we not only have the right, but also obligation to actively oppose unlawfulness and attacks against the foundations of our State. An extensive campaign is possible! It requires clear and widely-known goals and strategies, a team of engaged people, the division of tasks, and determination.

This fight is just beginning. We don't know how long it is going to last, but we must not give in. Perhaps, the decisiveness of the activities taken will force PiS to withdraw from its plans; perhaps, the end of the crisis will be achieved as a result of negotiations with the government or with a group of renegades from PiS. Perhaps, the Sejm will dissolve itself and we will see early parliamentary elections. We do not question PiS's right to govern the country. Mr. Kaczyński won the elections and he has the right to adopt laws, but the democratic mandate of PiS does not grant him absolute power. He can perceive it as the famous 'impossibilism' ['lack of ability to act' – a neologism coined by Marek Jurek –TN] but that is what the rule of law is all about; without it, we would not be part of the EU.

---

Jarosław Kaczyński's recent outburst of anger in the Sejm is our success — it does not only expose his true motives, but it also undermines his reputation in his own environment; impulsive behaviour can lead to the further loss of control not only over himself, but also towards his co-workers, which, in turn, may bring about an increase in the likelihood of further mistakes made by him. And once PiS loses the strong leadership of Mr. Kaczyński, it will divide into several factions, fighting one another.

Kaczyński's destruction tool is hatred; let's offer him our compassion; let's allow his anger at imaginary wrongdoings of others to turn against himself. And, above all, let's cooperate, acting in a systemic and consistent manner, as it would be a pity to lose what Poland has achieved.

*Bartosz Kramek, Head of the Foundation Board of the Open Dialog Foundation*

---

Since 2010, the Open Dialog Foundation has been a non-governmental and apolitical organisation engaged in the defence of human rights, rule of law and democracy in post-Soviet countries. In 2013, the Foundation launched an international campaign to reform Interpol — misused by non-democratic States in order to prosecute political refugees. At the turn of 2013 and 2014, the Foundation organised a Polish mission to observe and support the Maidan civic protests, and then organised humanitarian aid for displaced persons, as well as support for soldiers who opposed Russian aggression. In the years 2014–2016, we ran the 'Ukrainian World' centre in Warsaw in order to help Ukrainian citizens in Poland.