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Review

Agnieszka Bień-Kacała, *Konstytucjonalizm nieliberalny w Polsce po 2015 roku* (Illiberal Constitutionalism in Poland after 2015), Warsaw 2024, pp. 236

Agnieszka Bień-Kacała's book *Konstytucjonalizm nieliberalny w Polsce po 2015 roku* (Illiberal Constitutionalism in Poland after 2015) addresses key issues of Poland's systemic transformation, analysing the phenomena of illiberal democracy, populist systemic correction, the hierarchisation of public-legal relations, the role of the judiciary, informal constitutional change, reinterpretation of constitutional provisions, and the functioning of the Constitutional Tribunal as a tool in the hands of the executive. The book is based on sound theoretical foundations and empirical data, making it an essential voice in discussing contemporary challenges facing the Polish legal system and democratic institutions.

The analysis conducted by the author is clearly critical in nature. In the subsequent parts of the study Bień-Kacała points out numerous irregularities in the systemic phenomena under discussion. First, she formulates accusations against illiberal democracy, claiming that it leads to the erosion of the rule of law. The author is also critical of the hierarchisation of public-private relations, pointing to the strengthening of the executive at the expense of other branches of power, violating the principle of the tripartite separation of powers. The politicisation of public institutions makes them tools in the hands of those in power, undermining their independence and authority. The author emphasises that in the case of institutions such as the Constitutional Tribunal and the National Council of the Judiciary, decisions are often taken based on political interests rather than objective legal criteria. As a result of these processes, the independence of the judiciary is seriously jeopardised, which leads to decrease in citizens' trust in the judiciary. Another serious allegation is that international standards for the protection of human rights and democratic principles are ignored, leading to the rejection of recommendations by European institutions and the marginalisation of democratic values. Bień-Kacała also draws attention to the manipulation of legal provisions and legislative procedures in order to legitimise the government's actions,

which is contrary to democratic principles and violates citizens' rights. It is difficult to disagree with this, especially considering the events that took place in Poland after 2015. The phenomena described by the author not only have a theoretical dimension, but also translate into political and social practice, which to a large extent shapes the contemporary life of citizens.

In her study, Bień-Kacała also formulates critical comments on the populist correction of the political system in Poland. The author observes that those in power use a populist narrative to legitimise their actions, presenting themselves as defenders of 'ordinary people' in opposition to elites. This type of rhetoric is aimed at social mobilisation and to divert attention from the real threats to the rule of law. Bień-Kacała also points to the consequences of populist reforms that lead to the curtailment of civil rights and fundamental freedoms. New regulations on public assemblies and restrictions on non-governmental organisations can have the effect of undermining civic activism and limiting freedom of expression.

The author also formulates serious objections to changes in the functioning of the judiciary. She criticises the processes leading to the loss of judicial independence, which resulted from legislative and personnel changes. These changes allowed politicians to gain significant control over judicial appointments and also to influence the composition of the Constitutional Court and the National Council of the Judiciary. Bień-Kacała argues that such actions were aimed at subordinating the judiciary to the executive, constituting a serious violation of the principle of the tripartite separation of powers. Furthermore, the author is critical of the politicisation of the jurisprudence of the Constitutional Tribunal, which, in her view, has become a tool for legitimising governmental actions, instead of fulfilling its fundamental role as a defender of the rule of law and individual rights. In the context of this politicisation, Bień-Kacała also draws attention to serious problems related to the non-publication of judgments of the Tribunal and the limitation of access to information on its activities, which has contributed to the weakening of transparency in this area.

Bień-Kacała also devotes attention to the phenomenon of informal change of the constitution in Poland, defining this as a process which occurs without a formal change to the text of the constitution, but through a reinterpretation of its provisions and a modification of legislative and judicial practice. The author points to the key problem of the reinterpretation of constitutional provisions by state bodies, which leads to the application of legal norms in a manner that deviates from the original intentions of the system's legislator. She argues that those in power use such an approach to legitimise actions contrary to the foundations of democracy. In particular, she stresses that the changes in the composition of the National Judicial Council and the Constitutional Tribunal have led to a weakening of their independence, which poses a serious threat to the rule of law in Poland.

Analysing the changes concerning the National Council of the Judiciary, which contributed to its politicisation and loss of independence, the author points out that the new regulations enabled politicians to exercise considerable control over the composition of the Council, which directly affected courts' independence.

Bień-Kacała assesses these regulations critically, pointing to a violation of the principle of the independence of the judiciary and an attempt to subordinate judges to the political interests of those in power. In the context of the Constitutional Court, she draws attention to the dismissal of judges before the end of their terms of office, which violates the principle of stability and continuity of judicial institutions. Such actions can be seen as a form of political pressure to gain control over the Court's jurisprudence. The author also sees a serious problem in the practice of non-publication of judgments of the Constitutional Tribunal, which leads to a limitation of the transparency of its activities. Additionally, Bień-Kacała points to the use of extra-constitutional states of emergency as a method of restricting civil rights under the pretext of protecting national security or public health.

In the context of constitutional reinterpretation, the author analyses the processes that took place after 2015 aimed at changing the meaning of key constitutional provisions. One of the main criticisms of these has been that state bodies have been adapting the interpretation of constitutional provisions to the current political needs of those in power, which destabilises the legal system and undermines the foundations of democracy. The author notes that values enshrined in the constitution, such as the rule of law or the protection of human rights, are being reinterpreted, favouring illiberal tendencies, leading to their marginalisation in the face of dominant political narratives.

An essential element of the study is the chapter devoted to the role of the Constitutional Court in the political system in the context of its functioning 'in the service of the system'. In addition to her attention to the importance of the Constitutional Court in the process of shaping and protecting the illiberal system (although perhaps this should have been given a little more prominence), Bień-Kacała also refers to the distinctive features of the illiberal constitutional court as a key element of the problem at hand. She points to several characteristic features of the illiberal model of the functioning of the Constitutional Court. First, she points to the political control over the composition of the Court by the executive and parliament, which leads to a lack of objectivity and independence of its judges. Second, she highlights that the illiberal constitutional court often plays a legitimising role for government actions instead of upholding the rule of law and protecting individual rights. Third, she points out that complicated procedures and the lack of publication of judgments can hinder citizens' access to justice. Fourth, she notes the disappearance of the role of the Constitutional Court as a guardian of the constitution; instead, it starts to act according to the political interests of the current ruling group.

Bień-Kacała also discusses lawmaking in the context of illiberal constitutionalism, pointing out several key problems related to this process. She points out that under an illiberal democracy, there is a reduction in the participation of civil society in the law-making process. Decisions made by the executive often take place without adequate public consultation or dialogue with citizens. Bień-Kacała also highlights the manipulation of legislative procedures by those in power, which leads to laws being passed in a manner inconsistent with basic democratic standards. Examples of

such actions include fast-tracking legislative procedures and passing important laws without proper consideration by parliamentary committees. The author considers the fact that the lawmaking process is becoming less and less transparent, which is one of the central characteristics of legislation in an illiberal system. Restricted access to information about legislative work and the lack of adequate publications make it difficult for citizens to monitor the government's actions and influence the shape of the law. Furthermore, Bień-Kacała points out that legislation in this system becomes a political tool, used in the interests of the ruling party, instead of serving as an instrument for the protection of citizens' rights and the realisation of democratic values.

Bień-Kacała also draws attention to the role of Poland's relations with the European Union in the context of illiberalism and the erosion of democracy. She stresses that the Polish government's actions aimed at weakening the independence of democratic institutions have been criticised by European institutions and international human rights organisations. She recalls that Poland has been subject to proceedings by the European Commission for violating the rule of law and for judicial reforms deemed to be contrary to European values. The author notes that such actions may lead to Poland's isolation in the international arena and negatively affect the legal situation of its citizens. She also aptly diagnoses the conflict between the values promoted by the EU and the actions of the Polish government, which often ignore the principles of democracy and the rule of law. These tensions may deepen the democratic crisis and erode social trust, both within the country and abroad.

The author's detailed analysis of the key problems associated with illiberal constitutionalism is particularly valuable in the context of concerns about the state of democracy in Poland. This monograph brings an innovative perspective on the phenomenon of illiberalism, combining theory and practice. Bień-Kacała not only defines illiberal constitutionalism but also analyses its concrete manifestations in the Polish context, making this book a unique contribution to the literature on the subject. The author relies on an extensive bibliography, including both Polish and foreign sources, including works by renowned scholars and international documents, which increases the academic value of the publication. At the same time, it should be noted that the author assumes a specific initial knowledge of the issues by her readers, often referring to theoretical findings previously made in the legal studies.

One wonders, however, about the issue of a limited comparative perspective. Although the author refers to international contexts, some analyses could gain depth through broader comparisons with other countries experiencing similar processes. Applying a broader perspective could enrich the argumentation by showing the differences as well as similarities between Poland and other countries. However, it is difficult to formulate a serious accusation out of this, as this scope of research and not any other is a result of the author's methodological assumptions. Attention may also be drawn to the eminently academic style of the discussion. The language of the study is typical of academic works and may be difficult to assimilate for those outside an academic environment. Although it is standard for this type of publication, greater

accessibility could have attracted a wider audience. Some insufficiency may also be felt in terms of practical recommendations. Although the book provides a comprehensive theoretical analysis, it lacks recommendations for reform or remedial action in the face of the rule of law crisis. Pointing out concrete solutions could have added practical value to the theoretical analysis. Nevertheless, this leaves an open space for further research on illiberal democracy.

In conclusion, it should be pointed out that *Konstytucjonalizm nieliberalny w Polsce po 2015 roku* (Illiberal Constitutionalism in Poland after 2015) by Agnieszka Bień-Kacała is a vital publication combining in-depth analysis with a discussion of current legal and political issues. Thanks to its wide range of research and analysis of governmental practices, the book provides valuable information for both legal scholars and those interested in the state of democracy and the rule of law in Poland. The study will prompt further research on illiberal constitutionalism and its impact on democracy in Poland. The author exhaustively discusses the issue in the book's title and its consequences for individual rights and the functioning of democratic institutions. The author's charges concerning illiberal democracy, populist correction of the system, hierarchisation of public-legal relations, erosion of judicial power, and informal amendment of the constitution point to serious threats to the democratic system and the rule of law. The analysis is based on solid theoretical and empirical foundations, which makes this book an essential reference for future research and discussion on the state of democracy in Poland.