

Your Excellencies,

It is a great honour and a pleasure for me to be here with you today. Let me admit, however, that my first reaction to this kind invitation was a strong desire to escape it.

Condition of Polish democracy, not to mention the evaluation of current political situation, interesting as it is, belongs to the domain of difficult subjects that the Polish Ombudsman tries to avoid at any price.

Being a party to current political debate could lead to jeopardizing of my constitutional duties and to playing the role I would not find appropriate for myself.

For these reasons I have decided to share with you my reflections, on the one hand, on historical conditions of today's political situation, and on the other hand, on some problems relating to political system of Poland, and on the peculiarity of my mission.

It is commonly said that the current government of my country pays more attention to the history, or to the past, than to the future. The so called historical politics, aimed at restoring the memory of important facts and characters of our past, is often criticized. Therefore let me begin with a very basic assumption that today's situation in Poland – whether political, social or economic – cannot be analyzed in a void.

All the problems this country is dealing with are rooted in Poland's complicated history, especially recent one. It is impossible to describe my country as if it were located in Western Europe or in some hot islands of the South. (Although considering this summer's weather I wish it was).

I would like to remind you that only 18 years ago Poland was a communist country, and as recent as 16 years ago Soviet troops left our territory.

The Second World War has radically changed the face of Poland, depriving the country of thousands of square kilometres in the East, diminishing the population by

one third. The destroyed country was occupied by the Red Army, bringing about new misfortunes.

The communism was based not only on external, geopolitical forces, but also on a complicated internal system of repression. The country was ruled by a Communist monopoly, having control over everything and everyone by the means of secret police.

Only 18 years ago thousands of agents were still working for them.

I am a lawyer, not a historian, so please do not expect an academic lecture. But I have lived long enough to be eye witness to the facts I am going to tell you about.

What has been happening in Poland in last 18 years came as a result of both difficult history, but also of decisions made in the first months after the fall of communism. It was then that the decision not to perform verification, or lustration, or decommunization was made. Members of communist party and agents of secret services have been granted the same status as those who had fought against communism.

This course of action was based on the dominant convictions of anti-communist leaders, who are rightly addressed as the founding fathers of Polish democracy.

Tadeusz Mazowiecki, the first non-communist prime minister said in his expose that Poland should be built upon understanding and cooperation, and not on carrying out settlements: „the past is being cut away with a thick line”.

The famous “thick line” became a symbol of abolition for communist criminals.

It must be added that Mazowiecki himself was not clearly against rendering justice to the past, and claimed he was misunderstood, but the actions of his cabinet seemed to suggest something opposite.

Another influential member of the opposition, and a hero of the Polish underground who had spent nearly a decade in communist prison, was Adam Michnik, later editor-in-chief of „Gazeta Wyborcza” daily.

As a head of the only independent daily in early nineties he became famous by calling general Czesław Kiszczak – who was in charge of the infamous Ministry of Internal Affairs in the 80’s – a „man of honour”.

It was also Adam Michnik who told some journalists in a television debate about general Jaruzelski – the author of martial law responsible for death of dozens of people in its first days – to „leave the general in peace”, although in a more colloquial way which should not be quoted before this fine company.

This vulgar statement became an abolition slogan not only for low-rank aparatchiks, but also for leaders of communist Poland. It is also important to remind the position taken by legendary Solidarity leader Lech Wałęsa, President of Poland from 1990 to 95, who at the beginning of his term wanted to accelerate the changes, very soon started attracting „specialists” trained in a former regime, and began, according to his words, to “strengthen the left foot”. All of this led to leaving the television, the army and the administration not purged.

Those who opposed to carry out settlements with the past, which was a condition of giving up the communist heritage, quickly managed to introduce a comfortable juxtaposition into the public debate.

Those in favour of the “thick line” were labelled educated, future-oriented, progressive, pro-European and concerned about the welfare. The second group was allegedly composed of people full of hatred and revenge, regressive, rightist, thinking of the past rather than of the future. Such stereotypes are still echoing today in our political debate

The „thick line” appearing as a lofty moral aspiration, has brought about bad consequences. It is difficult to build up democracy in a country where former structures of communist party and secret service, formally deprived of power, have

removed their informal influence into business, media, politics, and often criminal activity. Polish democracy was slowly turning into oligarchy.

The turning point for Poles to understand the price for not settling the bills with the past was the so-called Rywin gate. On May 22nd, 2002 Lech Rywin, well established in post-communist elites millionaire and a film producer, but also agent of communist intelligence, paid visit to Adam Michnik.

Rywin offered to Michnik a favourable provision in new media law. The provision would exempt Agora, the owner of „Gazeta Wyborcza” from the provisions concerning the limitation of media concentration.

In return Rywin demanded a bribe of 17.5 million US dollars. It took Adam Michnik six months to reveal the content of the recording of that conversation. The result of the acting of parliamentary special investigating committee was exposing a corrupted system of post-communist influence on the state and its institutions.

It was also then that to millions of Poles occurred how superficial Polish democracy was. Having attained external aims, such as joining the NATO and the European Union, Poles started paying closer attention to the true condition of democracy in Poland.

Excellencies,

For the reasons I have just given the election of 2005 was extremely important. More than half of the nation voted for profound changes, and gave their support to „Prawo i Sprawiedliwość” (Law and Justice) and “Platforma Obywatelska” (Civic Platform). The changes have been referred to in a symbolic language as building up the Fourth Republic. As you may remember, at the turn of 1989 and 1990 the Third Republic was proclaimed to replace the communist People’s Republic of Poland.

Unfortunately, violent election and presidential campaign, where leaders of both parties fought against each other, ruined the hopes of Poles. As result, Law and

Justice entered a risky coalition with two populist parties, that broke down two months ago.

Law and Justice managed to accomplish some of their objectives, but when it comes to profound reforms – political, institutional, budgetary ones – we still seem to be standing where we were in 2005. Early election – irrespective of political rhetoric – makes Poland face challenges not much different from those of two years ago.

No doubt, Polish politics remains in a state of crisis. But can it be said that our democracy is jeopardised?

I have to resist the temptation of giving this or that answer to the question, because doing so I would involve myself in political debate: I would have to support either party in the argument.

However, my ombudsman credo is to approach each side of the conflict with equal distance. Ombudsman is somebody who has to be not only accessible for everyone engaged in political debate, but also to be thus perceived. I am a spokesman of everyone beyond political differences.

Once I am asked the question about Polish democracy being jeopardised, I say that my answer can be found in what I do – and what I do not do – because my actions (or lack of them) show whether I see violations of democracy and human rights.

The measure of this jeopardy is number and character of complaints lodged in my Office. I can say that for the last two years, neither have there been more complaints lodged, nor has their character changed.

I am going to give you a representative example. The current government is often accused of homophobia. My office collaborates with gay organisations, however – apart from more heated than ever character of debate – even homosexual circles are unable to produce evidence for supposed increased discrimination of homosexuals on grounds of their sexual orientation.

As far as words are concerned, there have been instances of regrettable statements on the part of former minister and vice-minister of education. Their attitude called for my intervention and I did intervene.

But as far as facts go, there has been no increase in tendencies of violating homosexual minorities' rights. For example, this year three complaints were lodged: two from a homosexual couple expressing their general dissatisfaction with the position of homosexuals in Polish society, one from somebody who felt unhappy about not receiving a grant.

The example of homosexuals in Poland is very interesting in that respect that it reflects a characteristic feature of current disputes. Polish situation – its internal conflict – is being completely misinterpreted in Western Europe. Arguing that Poland has authentic pluralism of opinions is almost humiliating, because it is ridiculous to deny it.

We have both leftist and rightist newspapers, we have centre and catholic media, liberal and nationalist radio and television. Thanks to this pluralism, our public debate – though not as civilized as one would wish – comprises all possible opinions and standpoints. No one feels embarrassed to praise the prime minister Jarosław Kaczyński, nor is anyone prevented from choosing easier way: to criticise him.

Former secret police agents can be condemned or justified – depending on what position you take in the dispute about lustration. What we have to bear in mind is the fact that this pluralism is accompanied by a conflict. Since we can express our opinions freely and – what follows – put more stress on differences in opinions, the divisions are more and more deepened.

This escalation of internal conflict is something negative, something I have to mitigate. The obvious conclusion, however, is that this phenomenon by no means poses any threat to democracy; quite the opposite: it is the very consequence of political pluralism.

Sadly, internal pluralism does not translate into Poland's external position. Foreign media have not bothered to understand Polish situation and – strangely enough – asked for comments only these Poles who detest current administration in Poland.

Numerous authorities who no longer monopolise Polish public debate, decided to criticise their own country... abroad. Therefore we have heard such astonishing statements as that given by Vaclav Havel who suggested that independent observers be invited to monitor election in Poland this autumn.

I am sorry to admit that attempts to solve internal conflicts through external influences appear to be deeply rooted in Polish history throughout last few centuries.

Given the complexity of Polish situation I feel increasing responsibility of my office. Ombudsman is an integral part of Polish political system. Its existence and most of its prerogatives are regulated by Polish constitution and Law concerning Ombudsman office. I can prosecute against legal acts in the Constitutional Tribunal or impose an obligation on each institution to give the Ombudsman answers or justifications of the actions that might violate civil rights.

On the other hand, the Ombudsman office is endowed with the competences of not only reacting to complaints lodged, but also of undertaking its own initiatives.

It is precisely because of Ombudsman prerogatives, not mentioning social confidence my office has gained, that my impartiality concerning current political events, remains my priority.

My ambition to make the institution of Ombudsman – the institution set up to protect rights of everyone in the Republic of Poland – an objective and impartial forum for intellectual reflection upon the most fundamental concepts of state, political system, philosophy of state and law.

We are living in times when human rights tend to be more and more instrumentalized, and thus focus on possibly fullest realization of human rights, namely on limiting their scope.

In my opinion all human rights can be derived from three fundamental rights, which are the basis of Western philosophical, political and legal philosophy. I mean a right to freedom, a right to truth, and a right to justice.

The same approach can be applied to the functioning of state: it has to be efficient and strong, but at the same time its power has to be limited. Only a strong state can protect the most crucial human rights, including this which I find the most important one – the right to freedom – the right which guarantees that each person can develop and that each society can make grow and enjoy progress.

State endowed with too many competences is unable to protect the rights of its citizens. A legal system which is too complex and extended, in other words, too bureaucratic, may put at risk authentic protection of human rights.

The case of human rights' protection is better served by effective courts and secure social environment than by more and more new institutions established to protect selected rights of individuals.

Being faithful to this idea I initiate lots of actions aimed at institutional and systemic, rather than political solutions of problems that Poles are facing. Working groups at the Ombudsman's Office gather the best experts in a number of fields, including constitutional reform, reforms of legislative process, health care system, education, situation of disabled persons and age discrimination.

My widespread activities sometimes provoke accusations of going beyond the scope of my mandate. But when institutions in charge are overpoliticized or simply blocked by inertia, I am trying to come forward with reasonable solutions or advocate for necessary actions.

This was the case with Polish citizens working in EU countries, where my determination led to more active approach from the government, and Ministry of Foreign Affairs in particular, to protect rights of our workers in the common market.

Gentlemen,

I have presented my most general diagnosis of the situation in Poland in late summer 2007, and my vision of the role of the Ombudsman within this framework. I shall be very happy to answer your questions.