



Weekly Briefing

**Poland political briefing:
Protests after the judgment of the Constitutional Tribunal - political
implications**

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Protests after the judgment of the Constitutional Tribunal - political implications

On October 22, 2020, the Constitutional Tribunal ruled that abortion in the case of a severe and irreversible handicap of the fetus or its life-threatening incurable disease is inconsistent with the Polish Constitution. The Tribunal's decision triggered mass protests in Poland, which may bring about significant changes in Polish politics.

Judgment of the Constitutional Tribunal on the legality of abortion

At the request of the deputies of the ruling Law and Justice party (Prawo i Sprawiedliwość, PiS), the Constitutional Tribunal analyzed the issue of the constitutionality of the abortion law, which has been in force in Poland since 1993. The Tribunal analyzed the provisions of the Act on Family Planning, Protection of the Human Fetus and Conditions Permitting Termination of Pregnancy. They assume the possibility of termination of pregnancy when:

- pregnancy poses a threat to the life or health of a pregnant woman;
- prenatal tests or other medical indications show a high probability of severe and irreversible fetal impairment or an incurable life-threatening disease;
- there is a justified suspicion that the pregnancy was a result of a prohibited act (abortion allowed up to the 12th week of pregnancy).

On October 22, 2020, sitting as a full bench, the Constitutional Tribunal decided that the abovementioned embryopathological premise of termination of pregnancy (called "abortion compromise" for short, because it was developed between political and Catholic Church circles in the early 1990s) is inconsistent with the Polish Constitution. The Tribunal found that legalization of the abortion procedure has no constitutional justification.

While discussing the effects of the ruling, the Tribunal stated that the legislator has the right and the obligation to adjust the legal status to the ruling, including analyzing whether the applicable legal solutions within the scope of Art. 71 of the Constitution, the mother's rights before and after childbirth to special assistance by public authorities, are sufficient if the

embryopathological condition is eliminated from the legal system. The judges adjudicated however, that the legislator cannot shift the burden of bringing up a severely and irreversibly handicapped or terminally ill child only to the mother, because it is mainly the public authorities that have to take care of people in the most difficult situations.

Yet, the practice of the functioning of social assistance in Poland so far shows that the state covers only a small part of the expenses and care for a disabled child/adult and his/her family. And it was this systemic lack of support that caused enormous mass protests - the judgment of the Constitutional Tribunal was just a drop that filled the cup of bitterness.

The ruling of the Constitutional Tribunal caused therefore a collapse of the "abortion compromise", and in consequence leads to an almost complete ban on abortion in Poland. According to Polish law, the ruling should be published within 10 days of the sentence, but due to a huge wave of social protests, it was not done until November 6. As soon as the judgment is published in the Journal of Laws, the premise for legal abortion related to damage of the fetus will officially disappear from the Polish legal system.

The problem of access to legal abortion and its practically total ban is an extremely important social problem, the effects of which are already felt today (existence of "abortion underground"), and in the future may completely change the perception of the role of woman in Polish society and her ability to decide freely about her body. However - without going into the details of these problems and the mass protests that spilled into the streets in the following days, which will be the subject of a separate study in these Weekly Briefings - the emphasis should be put on the political repercussions that this ruling has already brought and what other consequences it may bring.

Political responses to protests

The reaction to the protests that spread throughout the country, and which involved hundreds of thousands of people, at first did not arouse much interest in the ruling camp. Prime Minister Mateusz Morawiecki called to stay at home due to the coronavirus pandemic and asked for peace. In public appearances, he called for the restriction to be upheld and demanded that the discussion on abortion spreads from the streets to the Internet. However, after a few days, the situation got very hot - especially when the military was put in to help the police protect the protesters. It evoked images from the period of the introduction of martial law in Poland in December 1981.

A similar association was also caused by the speech made by the head of Law and Justice party, and (from October 6, 2020) the Deputy Prime Minister supervising all power ministries, Jarosław Kaczyński. In his exposé from October 27, Kaczyński referred to the protests, stating, inter alia, that "the judgment of the Tribunal is fully consistent with the Constitution" and that "the authorities have the full right to oppose these protests" and called "all PiS members and our supporters to defend churches", stressing "to defend them at all costs". Kaczyński also referred to the situation related to the COVID-19, stating that "these demonstrations will certainly cost many people's lives", and recalled that, by order of the Prime Minister, any kind of gathering of more than five people is prohibited.

The speech of the PiS president triggered numerous comments. Similarities with the speech of General Wojciech Jaruzelski on December 13, 1981, when informing the society about the introduction of martial law, were emphasized. There were numerous comments indicating that Jarosław Kaczyński thus "called for a civil war" and "declared war on society", putting the good of the Church above the good of women.

Day later President Andrzej Duda spoke about the protests and the judgment of the Constitutional Tribunal. In a television interview, he stated that he understood the protesting women and that he would come up with the initiative to amend the law so that abortion in the case of lethal defects would be allowed, but prohibited in a fetus diagnosed with Down syndrome. These words were supported by the president's wife, also participating in the interview. This complaint, however, seemed visibly delayed and did not mitigate the judgment of the Tribunal's ruling at all.

The whole matter contributed moreover to a serious political crisis, repercussions of which could be far-reaching for the Polish political scene.

Political consequences of the ruling and mass protests

On the day when Jarosław Kaczyński delivered his controversial speech, the All-Poland Women's Strike, as the entity responsible for coordinating the protests, presented the first postulates of this movement. The postulates cover inter alia:

- immediate resignation of the government,
- change in the legal situation of the Constitutional Tribunal and the Supreme Court,
- the right to abortion on demand,

- secularization of the state and cessation of financing the Catholic Church from the state budget.

All-Poland Women's Strike demanded a complete political and social revolution, foremost the resignation of the government. It obviously did not take place, especially since the ruling camp is now struggling not only with depressing ratings (current support hovers around 26%), but also with a serious internal crisis. Voluntary resignation would therefore risk complete disintegration and political marginalization.

However, this and other demands can expand into some interesting scenarios of how the political situation in Poland develops:

1. The first scenario is the collapse of the ruling coalition and early elections forced by the loss of the parliamentary majority. In this situation, PiS will do everything possible to maintain unity in its ranks and to extinguish internal disputes. In view of the sharp conflict between Prime Minister Morawiecki and Minister of Justice Zbigniew Ziobro, maintaining unity will require intensive talks and harnessing the entire authority of PiS leader Kaczyński. In fact everyone in the ruling camp, regardless of ideological differences or political visions, has a lot to lose in the event of early elections.
2. The second scenario provides for protests that will continue for several weeks, while the opposition will prepare the ground for a constructive vote of no confidence. In such a variant, the opposition parties will not only hold talks on creating a broad coalition from moderate right to left, but will try to convince less radical, pro-state and pro-democratic MPs from the ruling camp to this idea. Still, the implementation of the constructive vote of no confidence in itself requires a profound political change. Its essence is to: i) overcome the long-lasting distrust between the left wing and the moderately conservative center; ii) as well as defeat the fresh mistrust, the source of which lies in the disappointment in the institutions of representative democracy among citizens.
3. The third scenario envisages the persistence of great political and social chaos until the parliamentary elections scheduled for 2023. If PiS and its government will not submit to the pressure of the strikers and the opposition in parliament to step down, Poland will remain in turmoil - unless the government decides to use a forceful solution (police and army) against citizens, and will extort peace by force. This is the worst scenario,

although possible to imagine, because the PiS leader is known for his adoration of power, which he certainly will not give up easily.

Today, all three scenarios are in play, and the implementation of one of them remains a question for the near future.