



Weekly Briefing

Poland political briefing:
Political war over media, courts and institutions
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Summary

Since the change of government in Poland in December 2023, the key socio-political developments in the country should be described in the context of the institutional revolution that follows the seizure of power by Donald Tusk's government after 8 years of rule by the United Right. In particular, this revolution involves the Polish judiciary, public media and State Treasury Companies. The new government is trying to assume full control and influence in these institutions after many years of rule by its predecessors, who introduced a series of legal changes that conserved their own influence. It is particularly concerned with the public media, the Constitutional Court, the courts, the Public Prosecutor's Office. In the courts, new government wants to restore the power of the self-governing judiciary. The new government is also focusing on the accountability of the governments of its predecessors, announced in the campaign, which is to be served by the parliamentary investigative committees that have been set up. Also on the government's radar is National Bank of Poland Chairman Adam Glapinski, who is accused of politicizing his institution and whom the new government wants to put before the State Tribunal. An exceptionally high-profile and significant event in Poland was the arrest of the former heads of the Central Anti-Corruption Bureau and the Ministry of Internal Affairs and Administration under the United Right government - Mariusz Kaminski and Maciej Wąsik. The political war in Poland focuses on several levels. At the level of government - opposition, but also government - president. President Andrzej Duda is trying to more actively show his role in the Polish system of government, which is a parliamentary system, but with a significant role for the president. The opposition Law and Justice Party (PiS), on the other hand, has adopted a position of total opposition to block any government action in cooperation with the president, which forces the government to act often on the edge of the law to carry out its announcements.

Introduction

The first actions of the new government after taking power were to remove the previous authorities from influence in the public media. To this end, Minister of Culture and National Heritage Bartłomiej Sienkiewicz dismissed the previous authorities of the public media - Polish

Television, Polish Radio and the Polish Press Agency, which were heavily politicized and linked to the previous government - and appointed new authorities of the Polish public media. In the face of resistance from many courts to recognize the new public media authorities, the minister decided to put the Polish public media into liquidation, which, according to Polish law, can facilitate changes in the Polish public media.

Media revolution on the edge of the law

The decision to begin the process of dismantling Poland's public media, including by part of supporters of the current government and many lawyers, is considered a borderline and even outside the law. However, according to the current government, there are currently no other legal tools to limit the influence of the previous government in the politicized public media before the end of their legal term. At the same time, the previous public media authorities, associated with the United Right government, have established their authorities over the public media. However, realistically, the public media and its broadcasting are under the control of the current government. The changes in the public media were accompanied by protests by opposition politicians over the occupation of media headquarters with the participation of Law and Justice deputies including Law and Justice Chairman Jaroslaw Kaczynski. The opposition Law and Justice Party now accuses the current government of restricting democracy, the rule of law and media freedom, something the current ruling parties had previously accused the PiS of doing.

Bipartisanship in the judiciary

We are dealing with similar processes as the public media in the Polish judiciary. The previous government of the United Right carried out a thorough reform of the justice system, increasing the authority of the government and parliament over the Polish judiciary, reducing the role of the self-governing judiciary. This involved increasing the role of politically appointed judges, elected by parliament in the Constitutional Court, the Prosecutor's Office, the Supreme Court and the National Judicial Council, which nominates Polish judges. Appointment decisions are approved by the president. As a result of these processes, dualism has emerged in the Polish legal system - a division between judges elected before Law and Justice came to

power in 2015 and judges and heads of courts appointed during the party's rule. This leads to permanent conflicts and tensions in the Polish judiciary.

The current government is generally trying to restore legal order in the pre-2015 judicial system, but this is causing enormous tensions and the need to take action on the borderline of the law as well. This applies to all levels and bodies of the judiciary. Work is currently underway to legislate these issues, but it is a major challenge for the government because of the attitude of President Andrzej Duda, who has announced he will block these proposals, disagreeing with the downgrading of judges appointed by him. In Poland, the president has a veto right over laws passed by parliament, which can be rejected by a majority of 3/5 of the number of deputies. However, the government does not have such a majority, which triggers the need for the government to act with non-statutory tools that cannot be blocked by the president. Thus, the situation is extremely stalemated and conflicting. It results in the creation of a kind of legal dualism in Poland, which may impede the efficient functioning of the judiciary, some court verdicts may be considered defective due to the participation in the process of judges who may be considered illegally appointed judges. President Andrzej Duda's term ends in the fall of 2025. , and by far the candidates close to the government have a better chance of taking office. Until then, the current situation is likely to continue.

The case of Kamiński and Wąsik

The case of Maciej Wąsik and Mariusz Kaminski - two former heads of the Central Anti-Corruption Bureau and ministers of internal affairs and administration under the United Right government - has reverberated in Polish politics. Ministers Kaminski and Wąsik are regarded by the opposition and much of the public as symbols of the Law and Justice government's abuse of power. They were convicted again by a court in January for abusing their powers and falsifying documents between 2005 and 2007, when they were in office during the first Law and Justice governments. They were first convicted in 2015 under the Civic Platform (PO) government, and subsequently pardoned by President Andrzej Duda. However, according to most Polish lawyers, the pardon was in violation of the law, as it was carried out by the president before the final verdict.

Thus, in January 2024, Kaminski and Wasik were again convicted of the same crime by the court and again pardoned by President Andrzej Duda. This time, however, the pardon was widely regarded as legitimate. However, the arrest and trial of Kaminski and Mensik were accompanied by a number of incidents. The arrest of the two former ministers took place on the premises of Polish President Andrzej Duda's Chancellery, of which they were guests. It took place when the president was not at the Palace at the time. The convicts spent about two weeks in detention, pending a pardon from President Andrzej Duda. At the time, there were opposition accusations against the government that the men had been mistreated. Mariusz Kaminski declared a hunger strike in detention and accused those in power of mistreating him by force-feeding him in inappropriate ways. The opposition Law and Justice party tried to portray the two men as "political victims of the Donald Tusk regime" and the "first political prisoners" of the new government.

Expiration of parliamentary seats of Kamiński and Wąsik

The conviction of Kaminski and Wąsik by a final verdict resulted in the extinguishment of their parliamentary seats by the Supreme Court (one of the Chambers - the Labor Chamber). This is because, according to Polish law, a person convicted by a final court verdict cannot hold an MP's mandate. However, another chamber of the Supreme Court (the Disciplinary Chamber, established during the Law and Justice government), ruled that they did not lose their seats. However, the Speaker of the Sejm, Szymon Hołownia, decided to extinguish the mandates of the two politicians. The situation caused a huge uproar and political conflict. Among other things, Mr. Wasik and Mr. Kaminski attempted to enter the Sejm and attend sittings in the company of their Law and Justice (PiS) colleagues, which triggered pushback in front of the Sejm. The opposition Law and Justice Party, is trying to use the situation around Kaminski and Mensik to escalate the political dispute. The government, on the other hand, remains uncompromising on this symbolic issue for it. The government wants to be consistent and bring about the removal from public life of Kaminski and Wasik, who are for the government a symbol of the PiS's political abuses against political opponents. In response to the arrest of Wąsik and Kaminski, the Law and Justice Party organized a demonstration in defense of the detainees, dubbed the "Free Poles Protest." About 100,000 people took part. A smaller demonstration was also held outside the Constitutional Court.

PiS points out that the Speaker of the Sejm's action to extinguish the mandates of Waśik and Kaminski is unlawful, which could lead, in the extreme, to the opposition challenging the results of the Sejm's votes without the participation of these politicians, since, in their view, passing a law without the participation of the full membership of the Sejm could be flawed. The first step toward this interpretation was President Andrzej Duda's referral of the budget law to the Constitutional Court (which does not block its validity), justified by his doubts about the legality of its adoption. A similar pattern of opposition action may also emerge with regard to other future laws.

Personnel changes in Treasury Companies

The revolution in Poland's courts and media is accompanied by a personnel revolution in strategic state-owned companies whose appointments of authorities are influenced by the government. The biggest controversy concerns ORLEN, the largest fuel company in Central and Eastern Europe, whose CEO Daniel Obajtek has been dismissed. ORLEN in recent years has become a non-fuel mega-corporation, generating large profits, and its chairman has gained an extremely powerful political position. ORLEN has acquired the press distributor Ruch, the regional publishing group Polska Presse, the fuel group Lotos and the Polish Oil and Gas Group (PGNiG). Orlen's chairman, Daniel Obajtek, is a symbol for the current government, of PiS's appropriation of the state and the domination of political thinking over economic thinking.

The most controversial issue is the merger of Orlen with another large Polish fuel group, Lotos. The European Commission gave its approval for the merger, but on the condition that some of Lotos' shares and the company's stations be sold to other parties. The government decided to sell shares to Saudi Aramco, a Saudi company, and part of the stations to Hungarian conglomerate MOL. The decision is criticized by the current government as well as some experts because of the low price of the Lotos sale, but also because of Saudi Aramco's cooperation with Russia, which could threaten Polish energy security. The decision to sell Lotos shares to the Saudis was also criticized by Poland's Supreme Chamber of Control (NIK) in its report. The previous government justifies the decision to sell by the requirements of the European Commission and the benefits of cooperation with the Saudis. The decision on the merger is currently being investigated by the Polish Public Prosecutor's Office. The ORLEN company Synthos Green Energy, headed by Obajtek and aimed at building small nuclear

reactors, is also causing controversy. The company was created in cooperation with private Polish billionaire Michal Solowow. Threats to state security related to the company's operation were reported to the previous government by Polish services. However, the government decided to proceed with the project.

Investigative committees in parliament to hold predecessors accountable

As announced during the election campaign, the government intends to hold its predecessors accountable for their actions. This is to be served by the established investigative committees in parliament. Two of them have already begun operating: one on the so-called "envelope elections" and another on the use of the Pegasus spying program against political opponents. Other investigations are also planned, including one on the high-profile scandal involving the sale of Polish visas to citizens of African and Asian countries, and possibly one on the illegal influx of Ukrainian grain into Poland. A special team has also been set up in parliament to "investigate abuses" during the PiS government.

The case of the so-called "envelope elections" concerns plans to organize presidential elections by mail through the Polish Post Office during the pandemic. The organization of these elections cost about 14 million euros, but in the end they did not take place due to disagreements within the ruling coalition itself. They were held in the traditional direct form in 2020. The commission is investigating the decision-making process on the issue. The envelope election issue led to a weakening of the United Right's government majority.

The Commission on the use of the Pegasus Program for surveillance concerns the alleged illegal use of the program by Polish services against political opponents during, among other things, the election campaign, as well as against persons unfavorable to the government from the legal community. The commission is investigating details of the purchase and use of the program. Media reports also claim that Polish services under the Law and Justice government also used the program for surveillance of people close to the government.

Cabinet Council chaired by the President on investments

The Cabinet Council, which was convened by President Andrzej Duda, met in February. It is a forum in which the government, with the participation of the prime minister, deliberates under the chairmanship of the president. It has no formal powers, however, and is merely a consultative tool. President Andrzej Duda convened the council to obtain information on the continuation of strategic investments started by the Law and Justice government, such as the construction of the Central Transportation Port or nuclear power plants and the modernization of the Polish army. During the meeting, Prime Minister Donald Tusk told the president that he had obliged the justice minister to hand over to the president a set of documents that confirm "one hundred percent of the purchase and use in a legal and illegal manner of Pegasus" (surveillance software - KR).ⁱ

The Prime Minister, Donald Tusk, raised the issue of the Central Communication Port, pointing out that some 627 million euros have been spent on the project so far, and there is no progress in construction, according to him. He declared that the government will "show the best will" and together with President Andrzej Duda will "continue to monitor" the issue of the Central Communication Port "not to block or stop it.". The Prime Minister Tusk also spoke about the controversy surrounding the construction of small nuclear reactors and announced that he would hand over all materials on the matter to the President. - I have absolute conviction that the President had no knowledge, no awareness, when it comes to the events surrounding this nuclear power project, which is small reactors," Donald Tusk said. - I was able to clarify what the negative opinion of our special services was. The services repeatedly pointed out that the company, which was established and which is to carry out a very ambitious program of so-called small reactors, was constructed to the detriment of the interests of the Polish state," Tusk pointed out.

The president referred to Prime Minister Donald Tusk's words about the expenses already incurred for the Central Transportation Port. - The question of whether the money has been optimally spent, I have no objection to you studying this issue. However, let's also be aware, let's not fall into such populism to say that some money was spent. It was spent because it had to be spent, it was simply impossible to do otherwise," the president said. He argued that "it is the case that with such huge investments as CPK, or nuclear power plants, where billions (of zlotys) are indeed at stake, the preparation process itself - before you even apply for construction permits or before you even apply for localization or environmental decisions - these are already huge costs."

Government: the President of the National Bank of Poland before the State Tribunal

The government also announces that it will implement its demand by putting National Bank of Poland (NBP) Chairman Adam Glapinski before the State Tribunal. It accuses him of violating the independence of the Central Bank and succumbing to political pressure from the previous government, as well as illegal operations in the banking market. However, the position of the NBP president is firmly established constitutionally, and his dismissal is possible only under certain conditions. The term of office of the NBP president does not expire until 2028, and the only reason for his dismissal can be a State Tribunal or court ruling in specific cases. Decisions on Adam Glapinski's further fate as head of the National Bank of Poland (NBP) will be made "as soon as possible," - Prime Minister Donald Tusk said in February. - We will make a decision when we are 100 percent sure that this will not violate Polish interests, especially in the eyes of the outside world, he added.ⁱⁱ

Conclusion

The first months after Donald Tusk's government took power have been a time of unusually fierce political strife, especially in the areas of the media, the judiciary and influence in Treasury Companies. It is a time of accountability of the previous government by the government of Donald Tusk, a political war on many fronts between the new government and Law and Justice. The conflict is total, as a process of institutional revolution is underway to return Poland to the institutional times of pre-2015, i.e., before the PiS government. No significant easing of this confrontation should be expected by the end of 2025, when President Andrzej Duda's term ends. It will be exacerbated by this year's local and European Parliament elections.

i The Portal of TV TVN24 <https://tvn24.pl/polska/rada-gabinetowa-posiedzenie-rzadu-z-udzialem-prezydenta-andrzej-dudy-czego-dotyczawtorkowe-obrady-st7770223>

ii The informational Portal Interia.pl <https://biznes.interia.pl/gospodarka/news-odwolanie-prezesa-nbp-media-kluczowe-moga-byc-zeznania-pawla,nld,7248576>