

POLAND AFTER NOVEMBER 2015: THE END OF THE RULE OF LAW OR A PHASE OF "RADICAL DEMOCRACY"?

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"As your friends and ally we've urged all parties to work together to sustain Poland's democratic institutions. That's what makes us democracies – not just by the words written in constitutions or in the fact that we vote in elections – but the institutions we depend on every day, such as rule of law, independent judiciaries, and a free press."¹ With this remark, made during the NATO Summit in Warsaw in July 2016, President Barack Obama fuelled the debate on the condition of Polish democracy. Legal reforms implemented by the Law and Justice (PiS) party government elected in November 2015 have spurred a lot of controversy and attracted unprecedented – in the last 20 years – attention from international organisations, particularly within the EU and the institutions in Brussels.

Over the past two years, the European Commission has expressed its concerns regarding the legal and political battle around the functioning of the Constitutional Tribunal. On June 1st 2016, the European Commission adopted an Opinion on the rule of law in Poland, which may lead to the issuing of a Rule of Law Recommendation – a much stronger instrument that sets fixed time limits for solving the problems identified by the Commission. In its press release the Commission made it very clear that it will not stop the rule of law mechanism until Poland's Constitutional Tribunal is able to "ensure an effective constitutional review of legislative acts".² It is hardly a surprising requirement for a state with a 25-year history of building democratic institutions. Therefore, the battle started by PiS is not so much about the formal functioning of the Polish democracy but about its quality and the direction in which the state is heading. Should Poland build a strong, strategic relationship with the EU or – in strong coalition with V4 countries – work harder to question the very idea of European integration? Are "checks and balances" in the political system – such as a clear separation of executive and legislative powers and independence of the courts – really necessary? What should be the role of the Constitutional Tribunal? In the conflict between the "rule of law" and the will of the political majority, which should prevail?

1. The White House, Remarks by President Obama and President Duda of Poland After Bilateral Meeting.(on-line) [Date accessed 10.09.2016] <https://www.whitehouse.gov/the-press-office/2016/07/08/remarks-president-obama-and-president-duda-poland-after-bilateral>
2. European Commission, Press release "Rule of Law: Commission issues recommendation to Poland". (on-line) [Date accessed 15.09.2016] http://europa.eu/rapid/press-release_IP-16-2643_en.htm

Such questions shape current debate on public matters in Poland, engaging lawyers, politicians, human rights defenders and media people alike. Looking back over 25 years, the public has never been so divided. One part of society seems to believe that PiS started asking the right questions, because the very fundamentals of Polish democracy – including the role and structure of the key institutions – need to be revised. These citizens follow Jarosław Kaczyński conspiracy theory, according to which Poland is yet to regain its independence – from the oppressive EU regime and its own corrupted elites that have kept power for the last eight years. The other part of Polish society believes exactly the opposite: by taking over key political institutions and removing “checks and balances” from the legal system, PiS is about to destroy Polish democracy and install a new form of authoritarian regime.

It is in this context that the Venice Commission – the advisory body of the Council of Europe composed of independent experts who advise countries on constitutional matters – got involved in the Polish battle of interpretations. So far neither the rule of law mechanism nor the opinions expressed by independent experts, or even the “encouragement” that came from President Obama has had any visible influence on decisions taken by Prime Minister Beata Szydło, who follows only the PiS leader and founder, Jarosław Kaczyński, who served as prime minister from 2006-2007.

Over the last 11 months the Polish legal landscape has been changing so fast that even internal opposition, media and watchdog organisations have struggled to catch up. In which direction does Poland seem to be heading as a result of this process? What may be the impact of these legal changes on people, media, non-governmental organisations and political opposition? In my analysis I will try to answer these questions by looking at key battlefields opened up by PiS. I will also offer my interpretations as to why the government adopted this strategy and what future scenarios for Poland are possible, and how these tensions threaten the relationship and co-existence with the EU.

Main battlefields

From the human rights perspective, the legislative and institutional changes that we have been witnessing in Poland since November 2015 have led to the dismantling of some of the legal safeguards that were supposed to protect people from state oppression. Undermining the legitimacy and paralysing the functioning of the Constitutional Tribunal, increasing political control over key public institutions, introducing new surveillance powers without any independent oversight – the government seems to be removing “checks and balances” from the legal system. The mere fact that PiS has managed to do so much damage in such a short time proves that – being focused on economic and cultural transformation – in the last 25 years Polish society has not managed to strengthen democratic institutions to the point where they can resist political attacks. In this part of the analysis I will look at the main battlefields, summarising what has changed in the law or in the public institutions, and what impact it may have on the protection of human rights.

Constitutional crisis: from a battle of interpretations to legal dualism

Provocation and revenge

Political fighting over the composition of the Constitutional Tribunal – which escalated to a level that attracted attention of Brussels, international institutions and foreign diplomats – started before PiS took power. On June 25th 2015, exactly four months before the general elections, the Sejm (lower chamber of the Polish Parliament) amended the Act on the Constitutional Tribunal and changed the procedure according to which new judges should be elected and enabled the election of successors for all judges, whose mandate would end in 2015, by the Sejm of the 7th term. In consequence, the outgoing political majority, Civic Platform (PO), would have gained non-proportionate influence over the composition of the Constitutional Tribunal. On November 19th, the Sejm of the 8th term amended the Act on the Constitutional Tribunal, introducing the possibility of annulling the judicial nominations made by the previous legislature and nominating five new judges. The amendment also shortened the terms of office of the president and vice-president of the tribunal from nine to three years.

Executive branch questioning judicial decisions

The Constitutional Tribunal was asked to rule on the decisions of both the previous legislature and the incoming legislature. The tribunal delivered two judgements, on December 3rd and 9th 2015. On December 3rd, the court ruled that the previous legislature was entitled to nominate three judges for seats vacated during its mandate, but was not entitled to make the two nominations for seats vacated during the term of the new legislature. Summing up, the December judgements showed a way to achieve a political compromise in accordance with the constitution.

If President Andrzej Duda had followed this line and accepted the oath of office of the three judges nominated by the previous legislature, the crisis would have been over. Instead, the president accepted the oath of all five judges nominated by the new legislature. At the same time the government refused to publish the December judgements in the Official Journal, arguing that they were invalid on procedural grounds. These political decisions started a battle of interpretations that continues to polarise the Polish media, public institutions and citizens. Is the Constitutional Tribunal entitled to “rule on its own case”? If the case concerns the composition of the court, what should its composition be while hearing the case? Which decisions of the tribunal are binding and lawful – those adopted in accordance with the old rules or the new rules?

The legal complexity of this debate can be seen as a Kaczyński tactical masterpiece: lawyers (including representatives of the international bodies) can argue both sides as long as they like. For politicians and citizens legal details are less relevant: they are either with PiS or against it. To further complicate the legal landscape and keep fuelling political debate, the Sejm of the 8th term on December 22nd 2015 adopted its second amendment to the Act on the Constitutional Tribunal, which

affected both the functioning of the tribunal and the independence of the judges. At that point the European Commission entered the game and in its letter of December 23rd 2015 to the Polish government asked to “be informed about the constitutional situation in Poland”.³ On the same day the government asked for the opinion of the Venice Commission on the law of December 22nd 2015, thus sending the signal that it may be open for some international advice. Clearly, it was just an “outside game” played by the government. Internal attitudes must have been different because the parliament did not even wait for the Venice Commission to issue its opinion: the amended Act on the Constitutional Tribunal entered into force on December 28th 2015.

Neither the tribunal nor the Venice Commission stayed silent. On 9 March 2016, the tribunal ruled that the law of December 22nd 2015 is unconstitutional and thus decided that its own functioning be governed by the old procedures. On March 11th, the Venice Commission issued an opinion confirming that the December amendments were incompatible with the rule of law.

PiS reinvents the Constitutional Tribunal

The political response to the concerted criticism from the Council of Europe and the tribunal itself was ruthless. In July 2016 PiS – using its absolute parliamentary majority – pushed for adoption of the new law on the Constitutional Tribunal, not only changing the model of its functioning and safeguards for the independence of the judges, but also questioning the legally binding character of its judgments. According to the Helsinki Foundation for Human Rights, the new Act on the Constitutional Tribunal introduced procedures that may paralyse the tribunal’s work.⁴ This move can hardly be seen as an invitation to reach a compromise, at odds with what was suggested by the international institutions. In this context it comes with no surprise that on the 9th of March the Constitutional Tribunal responded with another judgement (the fourth on the matter in less than six months) and the Venice Commission has announced that it will send another delegation to Poland in order to analyse the situation.

After months of continual political battle around the Constitutional Tribunal, it became clear that PiS is not planning to end this crisis with a real compromise. In fact, Kaczyński has much more to win by exploiting this situation, both in Poland and at EU level. In Poland this battle keeps the political opposition and media busy and at the same time proves to PiS supporters that the government will not cease in its crusade against “corrupted elites”. In international forums, PiS is using this case to reassert its sovereignty and independence from EU institutions; to prove that it is ready to renegotiate the meaning of democratic standards in line with its political agenda. This new approach to European policy is welcomed by PiS supporters, who are mostly disenchanted with the promise of quick economic growth (closely associated with Poland joining the EU), afraid of cultural revolution from this direction (“gay marriages”; “the flood of migrants”, “Islam taking over Catholic tradition”) and seeking their own dignity in nationalistic ideals. Coming from that perspective, it is not difficult to portray the EU – together with its values, standards and legal instruments – as alienating and anti-democratic.

3. European Commission, “Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers” (on-line) [Date accessed 15.09.2016] http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm.

4. Helsinki Foundation for Human Rights, “Constitutional Tribunal – the monitoring of legislative amendments” (on-line) [Date accessed 12.09.2016] <http://www.hfhr.pl/en/constitutional-tribunal-act-the-monitoring-of-legislative-amendments/>

Consequences of the constitutional crisis

The longer the battle of interpretations continues, the more difficult it becomes to answer what should be a rather simple question: what rules regulate the functioning of the Constitutional Tribunal and the publication of its judgements? Is this a new law, an old law, or something in between? Taking into account the unusually fast pace of the parliamentary work leading to the inflation of new procedures as well as a double game played by the PiS leadership, it seems very likely that Mr Kaczyński has already achieved his goal. Without removing or subordinating the whole Constitutional Tribunal, he managed to paralyse its work and undermine its legitimacy.

What is the impact of this constitutional crisis from a human rights point of view? The full damage still remains to be seen; however, by its refusal to publish the judgements of the Constitutional Tribunal the government has already created legal uncertainty, which may soon turn into legal dualism affecting all areas of public life. This battle of interpretations involves not only the government and the tribunal itself but all public institutions – including regional and appellate courts – which have to choose where they stand. By now many courts and municipal bodies have declared that they will apply the Constitutional Tribunal's judgements regardless of their publication. On the other hand, public bodies that are subordinate to the government will most likely follow the opposite line. For example, assuming that in the near future the Constitutional Tribunal issues a critical judgement on the Antiterrorist Law (discussed later in this analysis), Polish citizens will face a situation in which the police and intelligence agencies continue to apply the Antiterrorist Law, while human rights organisations and independent public institutions maintain that these provisions have ceased to exist. Therefore, though it may seem very abstract and confusing, the battle concerning the functioning of the Constitutional Tribunal remains central to the rule of law and the protection of human rights in Poland.

Strengthening the surveillance state

Long history of accessing citizens' data without judicial oversight

Controversies related to the use of surveillance powers by Polish authorities date back 15 years, long before PiS took the power. In 2003 Poland imposed on telecommunication companies the obligation to retain so-called telecommunication metadata and make this data available upon every law enforcement request, without judicial oversight. Metadata includes information about phone calls placed or received, numbers dialled, duration of calls, geographical location of mobile devices, websites visited, log-ins, personal settings, addresses of email correspondence, etc. While it does not reveal the content of private communications, it may reveal a lot about a person's private life (social connections, habits, interests, travelling patterns).

Data retention obligations assume that data about every connection may become "interesting for the state", thus making every communi-

cating person a suspect. This controversial logic was adopted at EU level in the form of the Data Retention Directive (2006/24/EC). Poland used the implementation of the directive to strengthen general surveillance powers. Law enforcement and intelligence agencies gained direct access to the databases of the telecommunication companies (via online interfaces and without judicial oversight). On these grounds the Polish data retention law has been criticised by human rights organisations, including the Panoptykon Foundation and the Polish Helsinki Foundation for Human Rights.

Constitutional Tribunal demands “independent oversight”

Soon after the Court of Justice of the EU ruled the Data Retention Directive invalid (in April 2014), the Polish Constitutional Tribunal in its judgement of July 30th 2014 ruled that surveillance powers of Polish law enforcement and intelligence agencies with regard to telecommunication metadata needed to be limited. In particular, the court said that “independent oversight” is necessary but it did not specify how it should be implemented and whether it should be performed by the judges. Bringing this judgement is essential to understanding the origins of the reform carried out by PiS at the beginning of their mandate. On January 15th the parliament amended the Act on Police and other legal acts, including those that regulate the surveillance powers of all intelligence agencies.

While this amendment was immediately labelled “the surveillance law” by the media and gained rather a bad reputation, the original intention behind the reform was to limit surveillance powers and introduce independent oversight, in accordance with the ruling of the Constitutional Tribunal. This is partly why the government maintains that the criticism of the Act on Police is politically motivated and unjustified. However, NGOs and independent experts – including the Venice Commission in its second opinion published in June 2016 – have raised a number of concerns regarding this law. Taken together these concerns lead to the conclusion that the government not only failed to implement the judgement of the Constitutional Tribunal but also used the opportunity to extend surveillance powers in the online environment.

Overview of the new “surveillance law”

As far as the (partial) implementation of the judgement of the Constitutional Tribunal is concerned, the Act on Police did bring some positive changes, such as: increased internal control over the use of data (performed by data protection officers working inside the intelligence agencies); limitation of the purposes that justify access to telecommunication data (to crimes prosecuted by the state and those committed with the use of electronic communication); and the obligation to delete the requested data after a defined period of time. However, the Act on Police maintained the logic that metadata collection is less intrusive and therefore does not necessitate the same guarantees as “classical” surveillance. As a result, independent judicial oversight was not introduced and access to telecommunication metadata remained virtually uncontrolled.

Additional safeguards that were supposed to protect professional secrecy also seem rather weak. According to the Act on Police, as soon as the agency carrying out surveillance of metadata realises that this activity concerns a person protected by professional secrecy (e.g. a journalist or solicitor), it should refer the case to the court and wait for judicial authorisation. This safeguard can only work on the assumption of effective internal control and high ethical standards inside such agencies. Considering that there are known cases of premeditated, unlawful surveillance of journalists in Poland, this assumption may not hold up against the reality.

Exceptional mechanisms without exceptional circumstances: the Polish Antiterrorist Law

While the quick adoption of the Act on Police was provoked by the deadline for the implementation of the judgement of the Constitutional Tribunal, there was no immediate need to introduce new antiterrorism legislation. Nevertheless, on June 10th 2016 the parliament adopted the Act on Antiterrorist Activities, arguing that it was necessary to increase coordination between the intelligence agencies and to prepare for security threats related to international events organised in Poland in July 2016 – the NATO Summit and World Youth Days.

The authors of this reform did not present any evidence that would prove that the existing coordination mechanisms or surveillance powers were indeed insufficient in the context of high-risk events. Notably, security experts who analysed the proposal pointed to a number of inconsistencies and grey areas which could result in the opposite effect, namely the weakening of coordination of the intelligence agencies and slowing their response down. Finally, the very idea of rewriting anti-terrorist procedures only weeks before high-security events – with no time for proper implementation or training – could not be seen as rational. Therefore it seemed that the real rationale behind rushing the antiterrorist law through without public consultation had little to do with the summer events.

The government developed a fear-based rhetoric in order to weaken public dissent, which might otherwise have been much stronger. Nevertheless, non-governmental organisations (including the Panoptykon Foundation), independent media and the ombudsman voiced their concerns during the legislative process. Among other provisions, this critique concerned: a broad definition of “terroristic activity”; the possibility of wire-tapping phone calls and obtaining the content of electronic communications of all foreigners without judicial oversight; the possibility of blocking online content “related to the terroristic activity”; and the obligation to register all pre-paid phone cards.

A general problem, signalled by NGOs and independent experts, is that the limitations of rights and freedoms provided in the anti-terrorist law go much further than necessary, even in the context of emergency procedures, especially when it comes to foreigners living in or visiting the country. The government failed to justify how measures such as targeting all foreigners or all users of certain technologies are supposed to increase public security.

Summing up, the Polish legal landscape when it comes to surveillance powers looks gloomy. On the one hand, the government didn't solve problems that have been known about for more than a decade, such as the lack of effective judicial oversight over access to telecommunication metadata. As a result the location and contacts of all citizens – including journalists, politicians and solicitors – can be easily tracked by a number of law enforcement and intelligence agencies. On the other hand, the Act on Police and the Act on Antiterrorist Activities further extended these surveillance powers, especially in the online environment. Combined with the lack of independent oversight and mechanisms for redress, these provisions open a way for mass surveillance or the targeting of innocent people. If the government decided to use these instruments for political fights or the persecution of activists and critical media it would be extremely difficult to prove that unlawful surveillance was taking place and demand accountability.

Political “take over” of key public institutions

While the struggle around the composition and the leadership of the Constitutional Tribunal continues, PiS has managed to take political control over other key institutions: public media and the (so far independent) prosecution.

On January 28th 2016 – less than 2 months after the formation of the new government – the parliament adopted the Act on Prosecution and changed the role and powers of the prosecutor general. The new law integrated (the so far independent) functions of the minister of justice and the prosecutor general in one stroke, turning the latter into a political figure. The new minister-prosecutor gained additional powers, which correspond to his political function. Notably, he gained significant influence over appointing prosecutors across the country as well as the possibility of giving them direct orders with regard to how to carry out an investigation. This is not the first time in Poland that prosecution has become deeply politicised and used as an “armed hand” of the government – PiS did the same experiment during its previous term of government (2005-2007). Personal takeover of the public media started even faster in December 2015 with an amendment to the Act on Broadcasting. It simply changed the rules on appointing the governing bodies of the public media. Instead of the National Broadcasting Council (a constitutional body responsible for supervising public media), the key role was given to the Minister of the Treasury. With this move the government resolved that the public media will be treated just like any other state-owned enterprise, with no need to ensure political independence or other qualities related to their mission. Notably, the December amendment – on the day of its coming into force – ended the terms of all managing and supervisory boards, thus forcing an immediate personnel change.

The shift from public to national media (i.e. entirely controlled by the political majority and promoting so-called national values) was completed by the adoption of the Act on National Media in June 2016. It introduced a new programming and supervisory body – the National Media Council. The political intention behind this change was to “circumvent” the National Broadcasting Council – a constitutional body

formally responsible for the supervision of the public media – without removing it, which would have been much more difficult. Key persons in the new council are active politicians, such as Krzysztof Czabański – an elected member of the parliament, government official (in the Ministry of Culture), the author of the new law on national media and, since 2016, the Chairman of the National Media Council. Not surprisingly, the personal takeover of the public media did not end at the managerial level. Between December 2015 and September 2016 more than 200 journalists, including national TV anchors, either resigned or were dismissed.

PiS does not hide its strategy of regaining control over public institutions. On the contrary, it is presented to the public as a necessary step in fixing the “broken state”, namely, it is a way to solve urgent social and economic problems that have been long ignored by the PO. In the PiS narrative Poland has been suffering from staggering economic inequalities, whole regions are marginalised, public investment opportunities (including EU funds) have been wasted, while the area of culture traditional values and “historical truth” have been neglected or ridiculed. In accordance with this narrative, public officials, experts and journalists who lose their positions of influence are portrayed as “rotten elites”, while those who replace them are defenders of national values and true reformers.

With this rhetoric politicians are trying to undermine the legitimacy of those institutions that cannot be easily controlled, such as the Constitutional Tribunal and other courts. In June 2016 President Andrzej Duda refused to nominate 10 judges who were appointed by the National Judiciary Council – a constitutional body with full competence in this area. According to jurisprudence, the president may not refuse to nominate a judge who was duly appointed by the National Judiciary Council, as it is a symbolic act and not his prerogative. President Andrzej Duda clearly has another view, because the refusal of the nomination came without a word of justification. It seems that the main purpose behind this act was to extend presidential power into the area of the – so far independent – justice system.

The response of civil society and the “smear campaign” in the national media

Even with the national media under control – which immediately became a tool of political propaganda – PiS has not been able to successfully impose its narrative on the majority of the society. Poland remains divided, with very vocal political opposition in the parliament, fiercely critical private media and a strong civil society movement. PiS has been following a “blitzkrieg” tactic – voting new laws in within days rather than weeks and leaving no time for the opposition or civil society to react – probably hoping that by the time civil society gets organised, their plan will be complete. Certainly, with the support of an absolute parliamentary majority, Mr Kaczyński was able to implement every legal change he wanted. But not a single one went through without strong civic reactions. In fact, the awakening of Polish civil society can be seen as one positive phenomenon that is directly related to the policy pursued by the new government.

The battle around the Constitutional Tribunal catalysed the creation of a massive social movement – the Committee Defending Democracy (“KOD”), which is growing in numbers and building its constituencies around the country. The scale and frequency of the street protests was unprecedented since the Solidarity movement – the biggest demonstrations mobilised hundreds of thousands people around the country, not just in the biggest cities. A great number of civil society organisations took very critical positions in the public debate: human rights defenders, watchdog organisations, chambers of solicitors, independent associations of judges and journalists. A similar response came after the take-over of the public media, changes in the structure of the judiciary and public prosecution. Of all changes implemented by PiS, the strengthening of the surveillance law was probably the least comprehensible for the broader public. Still, this reform attracted a lot of media attention, triggered a number of protests online and for months became the main issue for human rights defenders and watchdogs, including the Panoptikon Foundation.

PiS could not ignore that scale of civic unrest and opposition coming from grass-roots, non-partisan movements and independent organisations. Not being able to take over or close down civil society organisations, it started to undermine their credibility and legitimacy. Since its very beginning KOD was presented in the media controlled by PiS as a marginal movement of “elites defending their interests”. After personal changes in the public media (now national media), even massive demonstrations organised under the KOD’s own label were reported as relatively small events inspired by political parties. Recently, the national media have started an orchestrated smear campaign directed against independent organisations, including watchdogs. They have to face (entirely unfounded) charges of corruption, personal connections with former political elites and acting on the instructions of the “controversial billionaire” George Soros. It seems likely that after this campaign, PiS will propose legal changes weakening the position of non-governmental organisations and restricting their ability to obtain foreign funding.

Interpretations and future scenarios

Looking at the legal changes implemented by the political majority after November 2015 as well as the political rhetoric used by its leaders, it would not be exaggerated to say that Poland has moved towards illiberal democracy – no longer respecting universal rights and freedoms or the rule of law. While such a diagnosis may be a useful tool of international criticism or internal pressure, it is not very helpful in understanding why this is happening and what future scenarios are possible.

In order to gain more insight into the strategy pursued by PiS, we should turn to Carl Schmidt – the most quoted political philosopher by Jarosław Kaczyński and other prominent figures in the party. Carl Schmidt developed a very influential theory of the sovereign, placing the ability to introduce a state of exception (in exceptional circumstances to suspend the law and act solely in accordance with political rationale) at its very centre. According to Schmidt, the sovereign is the one who defines the borders of legal protection, and as such is able to exclude anybody from

the law and kill them. PiS leaders also made it very clear that if there is any conflict between the “will of the majority” and the rule of law, the former should prevail. In other words, the governing party openly supports the Schmidtian vision of “radical democracy”, which is presented as the value on its own.

What will happen if other values – such as European integration, political or economic stability, international alliances – come into conflict with the will of the majority? The leader will decide. So far Jarosław Kaczyński has been interpreting the voice of the majority in accordance with his own political goals, which makes it only more difficult to predict the next step and possible scenarios. In the aftermath of the Brexit referendum, Kaczyński surprised many in his speech by stressing that Poland is and will always remain part of the EU. Whether it was an expression of his true belief or just a trick in a political game remains to be seen.

What is striking in the current landscape and calls for more analysis is the fact that PiS appears able to maintain absolute political power, regardless of the fierce social critique it receives and the obvious fact that it is not representing the majority. PiS won the elections in 2015 and gained an absolute majority in the parliament with 5.7 million votes, with the total number of people who are entitled to vote exceeding 30.6 million. Therefore, their moral claim to represent the whole of society seems much exaggerated. On the other hand, according to social surveys a significant part of society (between 19% and 39% of the respondents depending on the source of data) does support the reforms implemented by the government, including the most controversial ones. Why this is the case?

Political commentators seem to agree that the “radical democracy” narrative responded to the expectations and frustrations of those Poles who did not feel duly represented or included in the narrative promoted by PO (and endorsed by European institutions). This vision of an open, pro-European, liberal, strong Poland with a growing economy simply did not correspond with the personal experience of people who live in less developed regions of the country, struggle with low incomes and cannot benefit from European integration (travel, study, work abroad). These conditions, combined with poor education and prevailing cultural stereotypes, provided strong fuel for politics based on fear, be they the fear of terrorism or illegal migration. From the perspective of these voters, the liberal, human rights-based narrative – which requires openness, tolerance and respect for “the other” – is seen as something imposed (either by the previous government or distant EU institutions) and contradictory to their personal interests.

PiS won the elections by giving voice to these groups of voters and promising them deep institutional change – a “Poland reborn”. It is therefore not surprising that “radical democracy” became their main narrative. By doing so, PiS responds to the emotions and expectations of its voters. Thinking of future scenarios, it is uncertain how far the government is prepared to move with its legal and institutional revolution and whether it is ready to put at stake Poland’s position within the EU. In other words, have they already fulfilled their goal by proving loyalty to their voters, or are they determined to use the existing social climate to build a Polish version of an illiberal democracy, which then becomes a goal in itself?

The first scenario is much more optimistic and leaves space for reaching political compromise in the near future. It assumes that Mr Kaczyński remains a rational, forward-looking politician who only chose to build his political position with the use of powerful populist arguments but is not determined by this agenda in the long run. The second scenario assumes that building illiberal, radical democracy in Poland became a real political goal for PiS and will be pursued at the cost of other values. Such a scenario poses a real and significant threat not only to the rule of law in Poland but also to the stability of the European Union. If Jarosław Kaczyński were to follow those emotions, fears and aspirations that are most vocal in Polish society – not just in the mainstream media but even more so in the social media – he wouldn't support human rights or any of the other values behind European integration. Responding to the needs of those who are frustrated, lost in the global village, disenchanted with liberal values and therefore seek dignity or a sense of security in the proud, strong nation-state, PiS would end up leaving the EU or at least blocking every development that makes Europe stronger and more interdependent.