The Rule of Law in Poland: A Sorry Spectacle

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With political appointments to its National Council of the Judiciary (*Krajowa Rada Sądownictwa*, KRS), Poland is now seeing the next step in the dismantling the rule of law. This constitutionally enshrined body is responsible for preserving the autonomy of Poland's courts and the independence of its judiciary; its main power is to appoint new judges and make decisions regarding the promotion of currently serving ones. The KRS is composed in a manner intended to ensure cooperation between the legislative, executive, and judicial branches, in line with the principle of checks and balances provided for in the Constitution.

The change in the procedure for appointments to the KRS was one of the reasons thousands of Poles took to the streets last summer to protest in the name of independent courts (the other reason was the assault on the Supreme Court). Their fears have turned out to be well founded: the recently published list of candidates for the KRS and the circumstances in which those candidates were proposed indicate that this body will be completely dependent upon Justice Minister Zbigniew Ziobro, allowing him to influence the process of appointment of Polish judges. This influence extends to those who take up seats in the new chambers of the Supreme Court – chambers which are responsible *inter alia* for confirming the validity of presidential and general elections.

Earlier this year, Law and Justice (*Prawo i Sprawiedliwość*, PiS) prepared the ground for this takeover of the KRS by transferring from the judiciary to the legislature the power to appoint 15 members of the KRS. This was a flagrant upsetting of the balance of power between the judiciary and the legislature, where PiS have a majority. This unconstitutional move led judicial associations and the political opposition to call for a boycott of appointments to the new KRS. The call was a success: out of 10,000 Polish judges, only eighteen agreed to stand for appointment to the new KRS.

An overwhelming majority of the eighteen candidates for the new KRS have links to Minister Ziobro. Six are judges who not long ago were dependent upon the Minister in an official capacity, having until recently worked at the Ministry of Justice. Under Polish Constitutional Tribunal case law, judges working at the Ministry cannot adjudicate in court because of their dependence upon the executive branch. Under the new dispensation, these former dependents of the Minister are not only going to be protecting the independence of other judges but will be making decisions regarding their appointment and promotion. Another group of candidates are Minister Ziobro's recent appointments to court presidents, or their spouses (!), or judges whose candidacies were submitted by an employee of the Ministry of Justice. The other candidates include one judge with more than 50 disciplinary charges against him (and a record of poor performance), another whose record of poor performance (a significant percentage of cases overturned at higher instances) would normally disqualify him from promotion in the judicial system, and one retired and therefore automatically ineligible for appointment to the KRS. It is a telling fact that none of the supporters and promoters of the 18 candidates have revealed their identities.

The official line of argument given by the government to support the proposal of these candidates is that every judge represents judges, irrespective of who appoints them and whether they are independent of the appointing person. It can easily be demonstrated that such an argument does not hold water. For example, one can imagine a situation in which the Polish Constitution provided for a National Council for Equal Opportunities between the Sexes in which 50% of the seats were for women. If the same thing were to happen there as has happened in the KRS, that 50% would be appointed by men. What is more, the women

submitted as candidates would be the wives, daughters and financial dependants of those men. To add insult to injury, the argument would be made that every woman represents women.

To conclude, the new method of making appointments to the KRS displays two characteristics familiar to those who study authoritarian systems. First, it displays a preference for mediocre appointments, the choice of second-rate actors to play starring roles. Second, the appointments represent a further step in the hollowing out of institutions responsible for protecting the rule of law. When the core of those institutions, which is independence, is removed, they become useful props for the ruling powers to move about the stage in a purely theatrical show of legitimacy.

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