

POLAND

AN EPIDEMIC DEMOCRACY

Although Poland has been less tragically hit by the coronavirus than Western Europe so far, the epidemic has already sped up the erosion of democracy. For the first time since the collapse of communism, many voters are wondering whether to boycott an election.

The epidemic arrived in Poland during preparations for the presidential election, which both the ruling camp led by Jarosław Kaczyński and the opposition were treating as a “play-off” following the parliamentary elections in October 2019. The president has the right to veto new laws and the current government does not have the majority in the Sejm (at least 60% of members of parliament) needed to override this veto. The incumbent president, Andrzej Duda, a Kaczyński loyalist, was leading clearly in the polls before the epidemic, but his re-election for a second five-year term was not guaranteed. The opposition still hoped that it would win, potentially paralysing Kaczyński’s party’s efforts to build a “new state”.

Suspect corona-elections

The curtailing of civil rights due to the coronavirus, with strict confinement rules is seriously impeding fair competition during the election campaign. In his bid for re-election, A. Duda is taking advantage of state resources – for instance, with his trips as president – while his rivals are stifled by the lockdown. These problems are not altogether surprising in emergencies, which is why the Polish constitution is quite skilfully designed to avoid these kinds of threats to the functioning of

democracy. It allows a “state of natural disaster” (which includes an epidemic, according to the law) to be declared, suspending preparations for any kind of elections. The vote should only be held three months after the state of emergency ends, in part to allow time for a fair election campaign. The government can declare this kind of state of emergency for a month; to be able to extend it for a further month, the Sejm’s approval is needed each time.

The problem is that J. Kaczyński’s determination to have A. Duda re-elected, combined with fears that the pandemic’s health-related and economic costs could damage the ruling camp’s popularity (and the president’s chances of being re-elected), mean that he wants the election to be held as soon as possible, ideally in May – the date scheduled before the epidemic began. The restrictions on civil rights (the lockdown, the closure of shops) were introduced bypassing the Polish constitution so that the announcement of a “state of natural disaster” would not postpone the election by a few months. At the same time, defying the principle that the electoral law cannot be changed six months before an election (according to an old interpretation by the Polish Constitutional Court), the electoral code has been constantly tinkered with over the past few weeks. It has already been decided that the May election will be conducted entirely by post (to avoid spreading the virus at polling stations) and in an extraordinary mode organised primarily by the government, rather than by the National Election Commission headed by a judge, which is designed to increase its independence.

For a few years, the ruling camp strongly limited the right to vote by post, claiming

that it could lead to electoral fraud, especially in Poland, which lacks experience in this kind of voting. Five years ago, around 40,000 people voted by post. Now, it has suddenly been decided that a presidential election – involving delivering ballots to the roughly 30 million Polish citizens who are old enough to vote – can be conducted in a secret and honest way (that is safe for the people delivering the ballots and overseeing the process). The opposition has been offered an alternative to this “corona-election” that would involve changing the constitution to extend A. Duda’s term by two years (with a ban on seeking re-election) so that a normal election can be held in 2022. It is unclear whether it should be taken seriously, though.

The strength of the “nation state”?

All of this meddling with the election law and tempting the opposition to manipulate the constitution together is taking place in a country where the governing party neutralised and effectively took over the Constitutional Tribunal a few years ago. The destruction of the Tribunal was not accompanied by intricate plans for the future, it seems. The Polish political order has been deprived of a “fuse” protecting the rule of law as part of the struggle against “legal impotence”, the system of checks and balances that hampered the ruling party’s “reformist” ideas. Now, during the epidemic, the lack of this “fuse” prevents a quick assessment to see whether the authorities’ efforts to allow A. Duda to remain president for two more years are constitutional or not.

The election-related developments in Poland are admittedly less spectacular than the actions of Viktor Orbán, who has used the epidemic to push through regulations allowing him to rule by decree for an unspecified period of time. Yet V. Orbán and J. Kaczyński are driven by the same principle: old norms cease to be valid in abnormal times. The good habits, rules and

arguments of the “old” liberal-democratic era must fade away when confronted with the thriving nation state’s priorities as it ensures true order, calm and justice – especially when the health and life of the nation is threatened.

The election campaign under lockdown, which is by definition imbalanced, the last-minute changes to the electoral law, the lack of clarity about the date of the election and the huge doubts about whether it can be conducted entirely by post, as well as fairly, mean that Poles are openly discussing boycotting the election. So far, A. Duda’s rivals have not pulled out of the election (his main rival hinted that she would boycott it, but has not been consistent in her declarations), but voters who oppose the current authorities are wondering whether, by voting, they should legitimise the very flawed “corona-election” (and, most likely, A. Duda’s victory). For the first time in an EU country and for the first time in Poland in thirty years, there is a risk that a direct election could be questioned by a significant part of society, which is already extremely polarised between J. Kaczyński’s camp and its political opponents.

Government propaganda, primarily broadcast by state television, is serving Poles a kind of doublespeak. On the one hand, it is praising the authorities’ fight to rescue Poland from the pandemic; on the other, it claims that the situation in Poland is not bad enough to prevent the presidential election from going ahead. This further undermines many Poles’ trust in the credibility of statistics on the number of Covid-19 cases and deaths. Citing these doubts, the opposition is exposing the insufficient number of tests, the unprepared healthcare system (which has been neglected for years) and the shortage of doctors and nurses. Yet even if the official statistics turn out to be understated, the fact remains that Poland -

and a few other countries in Central and Eastern Europe- has been significantly less affected by the virus than the western part of the EU, at least for now. The relatively early lockdowns may have helped (as emphasised by the authorities), as well as the lower population density, lower mobility and fewer trips abroad.

Fearing for their health and lives, and with little confidence in the healthcare system, Poles have complied with the preventive restrictions on mobility and the recent order to wear masks in public quite dutifully. Middle-aged and elderly Poles remember the police curfew and martial law of the 1980s, compared to which the current restrictions seem trifling. Over the past few years, Poland has seen real wages grow significantly, the most generous social policy since the collapse of communism and a growing conviction that, after the sacrifices of the long and difficult political transition, the time has finally come to reap the fruits and be able to spend more. Now the coronavirus crisis will impose austerity again (the IMF forecasts that Polish GDP will contract by 4.6% this year). SMEs are struggling during the Polish government's protracted and chaotic preparation of assistance plans. Yet at this stage, there is no sign that a significant number of the government's supporters are turning away from it; instead, the coronavirus crisis is consolidating Poland's polarised electorates.

The authorities' eurosceptic games

Despite strong economic links with the rest of the EU (mainly with Germany), Warsaw views European disputes over the joint budgetary response to the coronavirus crisis as if from the outside or hardly at all. The government is trying to ensure that the EU's actions extend to the whole Union, not just the Eurozone. Yet the fact that Poland remains outside the currency union means that the discussion about Eurobonds, a joint rescue fund, and fiscal transfers to Italy or Spain has not generated

much interest, let alone emotion, in public opinion. A similar indifference towards economic disputes in the EU emerged in Poland during the Eurozone debt crisis, but it seems even stronger now. Even the closure of Poland's borders with other countries in the Schengen Area, a significantly more radical step than in most other EU countries at the start of the epidemic, did not attract much attention among Poles and the media – even though the government's decision initially meant that not just lorries were being stopped at border crossings, but also Lithuanians, Latvians and Estonians who were returning to their countries from Germany, in a none too humane manner.

However, to strike out against the European institutions, the Polish authorities and pro-government media are now using the tragedy of Lombardy and Italy's grievances towards Europe due to insufficient support instrumentally. "The pandemic has shown that one can only count on nation states", "Brussels has let us down", "the EU has disappointed" – this message is repeated by politicians who, just a few weeks ago, would have sounded the alarm in defence of sovereignty if someone in Brussels had proposed to transfer any significant powers in the field of healthcare and crisis management to the EU institutions. This explosion of strongly eurosceptic rhetoric among the Polish authorities partly results from the current ruling camp's worldview, with its fixation on sovereignty (now also displayed for the sake of A. Duda's re-election campaign), as well as the authorities' reflex – familiar from other countries – to blame Brussels from problems (this time, the epidemic). Moreover, it is surely the result of the dispute between Warsaw and the EU institutions over the rule of law, which has been going on for a few years now. The message of Polish government propaganda is: "Brussels is claiming the right to interfere in the reform of our judiciary and, with the arrival of the epidemic, it has been

citing the lack of crisis management powers in the Treaties”.

This eurosceptic rhetoric was exacerbated by the decision taken by the European Court of Justice (ECJ) at the start of April to temporarily suspend (until a full verdict) one of the key reforms disciplining judges, which – as the European Commission stated in its complaint to the ECJ a few months ago – undermines the Polish judiciary’s independence from the executive. According to polls, even with J. Kaczyński’s party in power, the Poles remain one of the most pro-European nations in Europe, even though, for a large part of society, this is not at odds with support for the current authorities’ stance on the EU. With the current crisis, the following question is returning: how long will this great pro-EU sentiment survive despite systematic anti-Brussels propaganda? Recently, the Commission had to remind the Polish authorities to inform the public, in accordance with the rules, about the use of EU funds for particular investments (including efforts to combat the coronavirus) because, at least in some cases, the EU subsidies had not been mentioned due to resentment against Brussels.

Another Polish question concerns the length of the “epidemic pause”, which – it seems – was introduced at the European Commission by its president, Ursula von der Leyen, pushing the rule of law far into the background during these weeks to avoid escalating disputes with Warsaw (and Budapest). Meanwhile, according to reports by Polish legal associations (Iustitia and Lex Super Omnia), 34 judges and 20 prosecutors in Poland are currently affected by politically motivated disciplinary proceedings. The European Parliament is calling for the rule of law and a fair election in Poland (and for Hungary to abandon its “democracy by decree”), but it can only do so in resolutions, which are political appeals without legal force. It is

not even clear now whether the Polish authorities will comply with the ECJ’s decision and how long the Commission will delay its reaction if the Polish authorities ignore the Court. The epidemic can be seen as a legitimate reason for some delay, but some NGOs and the opposition fear that it will be a pretext for von der Leyen, who is suspected of a too dovelike attitude towards the “illiberal democrats” of Central Europe, not to start a new political battle with Warsaw.

Doctors to the US

The United States’ abandonment of its role as global leader in the struggle against the coronavirus crisis is visible from traditionally pro-American Poland, too. Nevertheless, the epidemic has not changed Warsaw’s geopolitical priorities. Although China is trying to take advantage of the crisis diplomatically, Poland is much more irritated by Russia’s efforts, including the Russian military medics’ mission to Lombardy, which even caused considerable controversy in Italy, in part due to the accompanying Russian propaganda. The Polish assistance sent to Italy shortly afterwards – a 15-person mission of doctors and paramedics – has been presented by Warsaw as support as part of NATO, rather than the EU. Incidentally, as part of its “medical diplomacy”, Poland recently pledged to send a medical assistance mission for combating the coronavirus... to Chicago.

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