

The European Union vs. the Government in Warsaw. The political debate around the possibility of applying Article 7 of the European Union Treaty against Poland

Małgorzata Świder^{1*}

¹ Ss. University of Opole, Department of Political Science, Poland.

* Corresponding author E-mail address: malgorzata_swider@onet.pl

Abstract

Both the assumptions behind the reform of judiciary, the manner of its introducing and also other elements that influence the current perception of rule of law in Poland have recently become a topic of three plenary debates of the European Parliament. As a result, it was decided that a report on Poland would be prepared, which can offer the basis of applying Article 7, which means disciplining and punishing states that violate the European values. This has exacerbated the political atmosphere in Poland and, first of all, has affected the political debate going on in the country. It is starting to take a more and more brutal form and is characterized by a heavy load of colloquialism, negative expression, brutalization and disrespect for the adversary. Besides, it is being filled with more and more plays on words, jokes and irony. Such a debate is based on destructive premises and brings results of the same effect in practice, especially as it is often conducted also on the international arena and is closely followed by the public opinion abroad. Consequently, in discussions, instead of substantive arguments, there frequently appear expressions which bear evaluations and strong emotions.

Keywords: rule of law, European Parliament, political debate, constitutional crisis

1 Introduction

Relations between individual environments present on the Polish political stage after 1989 have always been characterized by bipolarity. Initially, their nature was that of sociopolitical division into the Solidarity camp and the “post-People’s Republic” one. Following the year 2005 which proved of breakthrough consequences to the party system, the centre of gravity of the dualistic division was shifted onto the conflict between the conservative and the liberal environments (Jakubowski 2011).

The themes that divide and raise politicians’ and citizens’ emotions are questions of the constitutional crisis and the reform of the judiciary as introduced by the Government formed by the *PIS* (Law and Justice). The level of interest in them is visible in the fact that over the span of two years there have appeared 106 thousand records devoted to them, which were found out by the Batory Foundation to have been viewed 52.5 million times (Popielawska, Szyszko 2017). Both the assumptions behind the reform of the judiciary, the manner of its introduction and other elements composing the perception of rule of law in Poland have become the subject of three plenary debates of the European Parliament (EP). It needs recalling here that it is only complex questions connected with rule of law that matter in Brussels, which first Vice-President of the European Commission, Frans Timmermans, mentioned in November 2017. The Polish Government is expected to implement actions within four areas: first, the European Commission demands that independence be restored to the Constitutional Tribunal; second, the Commission wants Poland to adjust the law on common courts to that binding in the EU and to abolish the influence of the Minister of Justice, who is the Prosecutor General at the same time, and now has acquired the competences of nominating and dismissing presidents of common courts; third, another requirement is that Poland adjusts its law on legal schools to the European law, thus abolishing the power of the Minister of Justice; fourth, the two new projects of bills proposed by President Andrzej Duda should be adjusted to the European law when it comes to independence of courts and that of the National Council of the Judiciary (“Antypolska orgia” 2017). The document includes also an appeal of the EP to the Polish Government to condemn the “xenophobic and fascist” Independence March (of 11 November). In the resolution, there was included a call for immediate “stopping of mass deforestation of Białowieża Forest” and “respecting the right of freedom of assembly through removal, from the current bill, the records concerning the priority treatment of the so-called cyclical assemblies that enjoy the Government’s support”.

Based on the EP’s resolution of November, the EMPs passed a resolution on 20 December 2017 (438 votes in favour, 152 votes against and 71 abstentions) which made the Committee on Civil Liberties, Justice and Home Affairs (LIBE) responsible for preparing a report on Poland, which next was to constitute the foundation of eventual applying of Article 7, that is disciplining and punishing states which violate the EU’s values. According to the Treaty, it can be launched by European Commission (EC) or the EP, or one third of the EU member countries. The EMPs meant to have the first stage of the procedure of Article 7 started, that is turning to the EU Council to declare the existence of “evident risk” of violation of fundamental values. This requires agreement of the majority (at least 22 out of the 28) of the EU member states. At the second stage, all the governments conclude that the violation has a permanent character, is serious and if this occurs, procedures of the third stage can be started, which

opens a road to voting sanctions. The Treaty does not define what particular sanctions could be introduced – apart from suspending the right of vote in the EU Council. Potentially, it can end in suspending EU funds. The decision concerning sanctions requires unanimity of the EU leaders (Komisja Europejska uruchamia wobec Polski...: 2017).

The launching of the procedure connected with Article 7 of the EU Treaty has only exacerbated the political situation in Poland even more, and – first of all – has affected the debate being in progress. According to the definition given by Marek Czyżewski, a debate is understood as a set of communication-related occurrences held with the aim to negotiate the meanings by actors participating in it. Consequently, one can list three types of a debate: public debate, debate of politics and political debate. The public debate covers, according to the definition, all messages which are available publicly (an institutional debate carried out by institutions performing public services, a debate connected with given social groups and one developed in the media) (Balczyńska-Kosman 2013). In turn, the debate of politics is a part of the former, understood as utterances by people belonging to the elites holding power, which are connected with the political roles and functions performed by these people. Finally, the political debate is defined by Czyżewski as a process of communication of symbolic elites, that is groups and persons who have control over centres of mass communication, primarily journalists and politicians (Balczyńska-Kosman 2013). In our considerations, it is the political debate which will be paid attention to as it determines all sorts of communication-oriented occurrences begun and developed within the frameworks of symbolic elites, but relating solely to the thematic area linked to politics. The political debate performs a special role in shaping social reality and integrating communication practices occurring in it.

In order to examine the course of the political debate of symbolic elites, which refers to rule of law in Poland and actions taken by the EP and the EC, some statements delivered by leading politicians belonging to both the ruling coalition – the United Right (*PIS* and *Solidarna Polska*) and the Opposition parties (*PO* and *Nowoczesna*) will be analyzed by means of the method of critical analysis of utterances. Arguments and the language of the utterances made by both parties will be determined, as well as their connotations. Finally, data provided by the Center for Public Opinion Research (CBOS) will be quoted with reference to the interest on the part of public opinion in questions of rule of law and procedures initiated by the EP.

The issue of rule of law in Poland was discussed by the EU's structures already in 2016, when the EC decided that it was necessary to accept an opinion on the state of it in Poland. The Commission was particularly concerned about the following: the composition of the Constitutional Tribunal (not swearing in three judges by President Andrzej Duda), not publishing of its verdicts (for 84 days) and the form of the act on the Tribunal. The decision of the Commission raised polemics among politicians who – on the one hand – praised the decision of the EU's structures, following the assumption that that was a right step in the face of breaking the law by the Government, like – for instance – Grzegorz Schetyna, the leader of *Platforma Obywatelska* (Citizens Platform), who said, “We are experiencing the effects of bad politics of *PIS*.” Others negated the right of the EU to interfere in Polish issues, especially as they did not perceive any legal problems in Poland, like – for example – Ryszard Terlecki (*PIS*), who claimed that: “It is in Poland that the solution to this question lies, and not in Brussels.” The most balanced position was taken by *Polskie Stronnictwo Ludowe* (Polish People's Party), whose leader, Władysław Kosiniak-Kamysz, said that “the key to solving lies in Polish Parliament. The European Commission cannot, should not, solve these matters for us” (Komisja Europejska przyjęła opinię...).

Beside these utterances, there appeared statements which could testify to exacerbation of the debate and even its brutalization. Accusations of informing on one's own country or indeed being guilty of treason were voiced. As a matter of fact, opinions of this type were not commonly used, yet the problem of connecting more and more critical utterances by MPs of the Citizens Platform and the *Nowoczesna*, concerning rule of law, with treason started to appear more and more often. Still, probably the most brutal statement was formulated by an MP of the Law and Justice, who declared on the Catholic Radio *Nadzieja* (Hope), “I am a Pole and I wouldn't ever, in my life, inform on my own country. For me, a man who does so is a traitor and, truly, should be hanged on the rope” (O tym, że posłowie opozycji...).

An instance of the intensifying political debate developing on the international arena could be the utterances of EMPs who referred directly to the procedure of launching Article 7 by the EP. In this case, these EMPs represented not only Polish political parties, but also factions of the EP. Janusz Lewandowski (*PO*), delivering his speech on 15 November 2017 on behalf of the largest centre-right faction in the EP, quoted the letter by Piotr Szczyński who had burnt himself to death in Warsaw in protest against the present governance. “I am ashamed of that I have to explain to my acquaintances in the West that Poland is not the same as the Polish Government” – Lewandowski quoted the words. He mentioned Poland's isolation and self-exclusion, which stands in contrast to the “Polish reason of state” (Bielecki 2017). In response, Ryszard Legutko, an EMP of the Law and Justice (speaking on behalf of European Conservatives) accused Lewandowski of saying “disgusting things” and also attacked verbally those who criticized Poland on the forum of the EU. He accused them of “anti-Polish obsession” and spoke about “anti-Polish orgy”, “talking nonsense” and repeating a “Niagara of lies”, also in the context of German media. He then likened the actions of the EU politicians to those of Soviet diplomats and accused Emanuel Macron of post-colonial reactions towards Poland. After delivering his speech, he walked out in

protest. Marek Jurek (Right-Wing of the Republic of Poland) was slightly less emotional when he – in turn – criticized Guy Verhofstadt for using hate speech when – speaking on behalf of the Liberals – the Belgian expressed his surprise at the fact that marches of nationalists were permitted to be held a few hundred kilometres away from Auschwitz (he meant the Independence March of 11 November in Warsaw) (Bielecki 2017). Criticism was also voiced openly towards Frans Timmermans who was reproached by Jacek Saryusz-Wolski for repeating false accusations raised by the “total Opposition”, although it was just a long-desired “curative reform” which was going on in Poland (Bielecki 2017). Soon after the debate, R. Legutko, while making reference to the decisions announced by the Commission, stated that they had not come as a surprise, since the EC had acted with reference to Poland “most severely since the very beginning and is not keen to reach any compromise”. Moreover, its aim “is to completely humiliate the Polish Government, being interested in nothing but its ultimate capitulation”. Besides, the EC “is not concerned about any reform but intends to fight the Polish Government which is acknowledged to be an alien body within the EU.” He called the actions taken by the Commission just another show of arrogance towards Poland (Art. 7 to kolejny...).

The debate on the state of rule of law has acquired brutal overtones. A certain exception here was the communiqué issued by the Ministry of Foreign Affairs, which came to include an expression of regret rendered in a “diplomatic language”, because of the European Commission’s launching the procedures of Article 7 of the Treaty. Nevertheless, that move was assessed as a political and not legal action, in this way denying the EC impartiality in acting (Komisja Europejska uruchamia art. 7. Traktatu...). President A. Duda expressed his opinion in a similar tone on 20 December 2017, when he commented on the EU Commission’s decision of launching the procedure of Article 7 of the Treaty of the European Union, saying “I do not understand this decision, it is purely political, has nothing to do with any substantive element” (“Hipokryzja, nieprawda...).

Also the parliamentary opposition (mainly *PO* and *Nowoczesna*) have stiffened the language of the debate, holding *PIS* politicians responsible for the conflict between Poland and the EU. They are highlighting, at the same time, the breaking of the principles of rule of law by the Government, political marginalization of the country and also point to possible consequences of the sanctions for Poland (*Gazeta Wyborcza* – the daily, in the columns of which politicians of the Opposition often present their opinions and which is synonymous with the opposition against the *PIS* Government, wrote on the first page that sanctions were nearer and nearer) (Bielecki 2017). A recurrent motive in the narration used by the Opposition in recent time has been that of the so-called Polesxit, that is Poland’s leaving the Union, the proof of which was the questioning by the governmental fraction of the fundamental EU’s values (Popielawska, Szyszko). An equally frequent theme in their utterances, this time directly linked to the problem of activating Article 7 of the Treaty, have been the double standards applied by the ruling party (*PIS*). This relates first of all to the argument of de-communization of the judiciary, which has not been carried out until today. The face of the governmental reform of the judiciary is Stanisław Piotrowicz, an MP of *PIS* and a former communist prosecutor. This contradiction was also publicized in the foreign media, like the BBC (*Zagraniczne media...*). Piotrowicz’s past has raised a series of controversies, even among MPs supporting *PIS*, e.g., Kornel Morawiecki – an MP of the new faction in Polish parliament – Kukiz’15 and privately the father to the current Prime Minister (Kornel Morawiecki o Piotrowiczu...; Dżek). Recalling Piotrowicz’s past is meant to show the cynicism of the governmental environments and primarily to strengthen the thesis that the true goal of the reform of judiciary are changes in the polity of Poland and introduction of the authoritarian system in Poland by the leader of the parliamentary majority, Jarosław Kaczyński.

The motive of treason and informing on one’s own country was exploited by the government’s spokesperson who stated, “The Citizens Platform informed on their own country” (Koć 2017) and also appeared in one of the most controversial utterances in recent months, whose author was EMP Ryszard Czarnecki. On 3 January 2018, he made reference to Róża Thun’s (of *PO*) critical comments on rule of law in Poland, stating that “Mrs. von Thun und Hohenstein appeared in the role of an informer on her own country [...]. During World War 2 we had *shmaltsowniks* [during Nazi occupation people who demanded money from Jews under threat of informing Nazis about them – M.Ś.], and today we have got Róża von Thun und Hohenstein and, unfortunately, she follows a certain tradition. Let us hope voters remember it and bill her for that when the time of voting comes” (Leszczyński: 2018). This comment raised a storm in the media, in the effect of which the Vice-President of the EP was removed from the post.

The debate going on the Polish political stage is starting to take a more and more brutal form. Politicians are using the language of politics not as a means of communication, but as a tool of rivalry. The wordings used on such occasions, their connotation and references are most often designed to impress domestic receivers. It is they who can connect them with suitable associations (Balczyńska-Kosman 2013). It needs paying attention here to the phenomenon of impoverishment of the language of politics through debasement of vocabulary, high level of colloquialism of terms, presence of vulgarisms, decreasing the distance between the participants of the message and a lack of expressions of respect. There are more and more plays on words, jokes and irony applied in the debate. Alina Balczyńska-Kosman defines such a behaviour with the term “carnivalization of the language of politics”. Kazimierz Ożóg understands this term as “striving for play on words and word games”. It is often that ambiguity of elements of the language is used for this purpose. In the Polish politics they are most frequently

references to historical events and notions, most often perceived very negatively, such as “betrayal”, “informants”, “shmalcovniks”, “Targowica” [historically, a synonym of betraying Polish nation – M.Ś.], “serving interests of foreign powers”.

All that testifies to making use of a political debate to ruthlessly fight, discredit or even humiliate the adversary. Communication between political adversaries, carried out on the basis of the so-called scheme of adversaries (Balczyńska-Kosman 2013: 8), accepts confrontation of the parties, mutual attacks, criticism or even hostility. Such a communication is not intended to secure understanding. This phenomenon is not new in Poland. Krzysztof Szczerski [2012: 21] wrote about the model of difference, commonly encountered in Poland, a relation based on hostility, one in which commonwealths, people representing determined views, who enter into a conflict, put themselves “on two sides of the barricade”. A conflict defined in such a way can be settled by means of a compromise, since then each party interprets it as their failure.

And what do Poles think about the possible application of Article 7 of the European Union Treaty against Poland because of breaking of rule of law? According to the research data provided by the CBOS in December 2017, 40% of the respondents were of the opinion that the resolution accepted by the EP, relating to rule of law in Poland was unjustified; 35% of the polled said it was justified (CBOS...). At the same time, 45% of the respondents assessed that the motive behind the acceptance of the resolution was “a dislike of the *PIS* and the present government in Poland”, while according to 31%, it resulted from “the EMPs’ concern about the state of rule of law and democracy in Poland”. Also the support on the part of a few Polish Deputies for the EP’s resolution which is critical in reference to Poland was negatively perceived by 26% of the surveyed who viewed their attitude as “decisively negative” and another 23% as “rather negative”. In this context, the question of Poles’ attitude towards Poland’s membership of the EU seems justified. In December 2017, there were 85% of the EU enthusiasts, which is by 3% less than declared in the survey conducted in June half a year earlier; 8% of the surveyed population declared their negative attitude towards the country’s membership of the EU and 7% were not decided.

2 Conclusion

The contemporary political debate in Poland and, in particular, that relating to the relations/conflicts with the EU, is characterized by a great deal of colloquialism, negative expression, brutalization and discrediting the adversary. It is based on destructive premises and brings just such effects, especially as it is often run on the international arena and is closely followed by the public opinion abroad. Instead of substantive arguments, participants of the debate frequently make use of evaluative statements and strong emotions. The rhetoric filled with aggression, which Michał Głowiński (2007) calls “rhetoric of hatred”, is thriving. All that leads to a rise in pathological phenomena and particularly – to instrumentalization of the debate, that is – as Piotr Borowiec (2013: 34) observes – making use of a language of contempt and looking for culprits. Thus, the only aim of the debate is elimination of the adversary and not bringing them round to accepting other points of view (Borowiec 2013: 34).

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