The Roots of Poland's Defiance of the European Union

Poles demonstrated with Polish and European Union flags and copies of the Constitution in front of the presidential palace in Warsaw last month to protest the new judicial laws.CreditJanek Skarzynski/Agence France-Presse — Getty Images

WARSAW — It is 3:30 p.m. on a Saturday and the sun is already setting over Warsaw. The hours of daylight here are dictated by the tilt of the Earth, Poland's position in the Northern Hemisphere and the time of year.

But the early time of the sunset is the result of something else. Poland's fierce desire to be part of Europe after breaking through the Soviet Iron Curtain.

For decades, the Soviet Union was on permanent daylight saving time, its clock constantly racing ahead of the sun. The Poles did not want to be told by the Russians when the day would end. Even if it meant putting up with darkness in the afternoon, they would rather be on European time because it meant being part of the European Union.

But last week, Poland challenged the very notion of what it means to be part of the bloc when the country pushed ahead with controversial measures to overhaul its judicial system and essentially put the courts under the control of the governing party. The action set off unprecedented censure from the European Union.

For the first time, the European Commission, the bloc's executive arm, used the most powerful threat in its arsenal to try to stop the measure, invoking Article 7 of the European Union treaty, which could strip Poland of its voting rights. It accused the government of trying to undermine core democratic values

President Andrzej Duda signed the measures into law anyway.

This is still a nation, however, that wants to stand with the West. Even though the governing party has denounced the European Union's officials in Brussels as elitist and condescending, it relies on the financial support that membership brings and continues to deepen its military ties with other NATO nations.

But not only did the defiance put the direction of Polish democracy at stake, critics of the laws said, it also challenged the very notion of how effectively the bloc can deal with countries that step out of line. If Brussels fails to curb what it sees as behavior that undermines democratic values in Poland, other nations with their own populist leaders, like the Czech Republic and Romania, will be emboldened to chart their own course.

A Complex Defiance

Poland is not Hungary, where Prime Minister Viktor Orban frequently antagonizes European Union leaders and cozies up to President Vladimir V. Putin of Russia. The dispute with the European Union is a more complex, and uniquely Polish, affair.

The crisis has its roots in 1989, when the country became the first Eastern bloc nation to hold partly free elections after decades of bitter and often-deadly struggle. It would take eight more years to create a constitution, one that Marcin Matczak, a professor of constitutional law at Warsaw University, said was "enacted within a post-totalitarian trauma."

President Andrzej Duda of Poland signed the judicial overhaul into law hours after the European Union formally registered its displeasure. CreditRadek Pietruszka/European Pressphoto Agency

“There was a great fear that the government may be too strong and that we could return to the old times,” he said. “Even the preamble of our Constitution says so. We remember the time when our human rights were infringed upon.”

Important among its provisions was a clear separation of powers between the courts and the politicians. But when the Constitution was enacted in 1997, no right-wing party was represented, including Center Agreement, a Christian democratic party and the predecessor to Law and Justice, the current ruling party.

“They refused to give this Constitution legitimacy,” Mr. Matcza said.

Mr. Matczak, a fierce opponent of the legislation signed by Mr. Duda, acknowledged that this lack of inclusion led to a bitterness that still fuels the governing party and its powerful leader, Jaroslaw Kaczynski.

Igor Janke, a former journalist who now runs a think tank, Freedom Institute, informally advises members of the government. Mr. Janke, who says he is

sympathetic to the governing party, points to these early years of Polish democracy as being at the heart of today's problems.

"When someone tells me we are destroying the judiciary, I say, 'What judiciary?'" he said.

In the 1990s, he contends, many of those guilty of committing crimes against the Polish people escaped justice. He calls them "the red spiders."

Red spiders breed more red spiders, and even though only two of the 80-odd justices on the Supreme Court have ties dating to the Soviet era, their influence is still felt, he said, echoing the party line.

First, Attack the Judges

Mr. Matczak says he believes something more sinister is at work.

When Law and Justice briefly held power before, from 2005 to 2007, its leader, Mr. Kaczynski, found himself stymied by the courts at every turn. He coined a term for what he viewed as obstructionism: prawny imposybilizm, or legal impossibilism.

When the party won power again, he said, Mr. Kaczynski "came back wiser and not willing to make the same mistakes." He added, "They started their actions with removing the legal impossibilism."

The first move was to dismantle the Constitutional Tribunal, which is empowered to review Poland's laws. They removed unfriendly justices and ensured the once-powerful body was little more than a rubber stamp for the party, Mr. Matczak said.

"The mechanics of this attack on the Supreme Court are very similar," he said. "First, you have an attack on judges."

Prime Minister Mateusz Morawiecki giving an address this month in Parliament.CreditJanek Skarzynski/Agence France-Presse — Getty Images

Mr. Matczak said a close reading of the new laws shows their true intent. “The whole idea behind these two bills is to have full control over the national judiciary council, which has control over appointing judges,” he said. “And if you have control over the selecting committee, you need vacancies.”

Age limits create those vacancies on the Supreme Court. He said he feared that the next step for the government would be to use a subservient judicial system to go after both old enemies and political rivals.

He pointed to a new provision that allows for something known as a special extraordinary appeal, which would essentially allow any case over the past 20 years to be reopened.

“The result of this new legal tool will be over one million cases reopened over three years,” he speculated.

Mr. Matczak said he also fears that Mr. Kaczynski and his party plan to create a “fourth republic” — one based on conservative values and purged of pernicious

enemies dating back to the Communist era.

“He wants to create a new country with new rules,” he said of Mr. Kaczynski.

U.S. and Britain Stand Down

So far, outside the European Union, the reaction has been muted.

Just one day after the legislation became law, Poland’s new prime minister, Mateusz Morawiecki, stood side by side in Warsaw with Britain’s prime minister, Theresa May, to announce a new defense agreement and a commitment to protecting the rights of the one million Poles in Britain after it leaves the bloc.

Mrs. May danced around a question about the battle over the courts. “These constitutional issues are normally, and should be primarily, a matter for the individual country concerned,” she said, expressing the hope that negotiations with Brussels would resolve any outstanding issues.

Likewise, the United States has avoided criticizing Poland, and the government here continues to seek the favor of the Trump administration. When the United Nations General Assembly voted overwhelmingly to condemn Washington’s recognition of Jerusalem as the capital of Israel, Poland was among a number of American allies to abstain.

That leaves the European Union to wrestle with the consequences of the current crisis.

Mr. Matczak, for one, says he sees dark days ahead.

“I am ashamed now,” he said. “We were a paragon of transformation of the rule of law. That has all changed.”

Joanna Berendt contributed reporting.

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