

Poland: New government moves quickly to disempower constitutional court

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On December 2 the parliamentary majority of the Law and Justice (PiS) party appointed five new judges to Poland's highest court, the Constitutional Tribunal. The action is an integral part of the new PiS government's campaign to introduce an authoritarian state in Poland.

As a pretext for its move the PiS majority claimed that an amendment to the bill regulating the selection of justices enacted on June 25 was unconstitutional. The initiative by the government blatantly contravenes the Polish constitution, which stipulates that only the Constitutional Tribunal has the right to review laws and statutes to determine their constitutionality.

The election of the new judges took place despite the fact that five Constitutional Tribunal justices had already been appointed by the previous parliament led by Civic Platform (PO) on October 8. The new parliament went ahead with the replacement appointments just a day before the Constitutional Tribunal was due to decide on the constitutionality of the bill enacted by the previous legislature. Moreover, the parliament acted ahead of its own new amendment to the bill regulating justices' elections due to go into effect on December 8.

In an unprecedented move Polish President Andrzej Duda had refused to accept the oath of office from the judges chosen in October, although legally obliged to do so as the head of state. He wasted no time, however, in accepting the vows of four of the PiS-nominated judges just hours after their elections.

The parliamentary session of December 2 was stormy, with members from the opposition parties, Civic Platform (PO), Nowoczesna (Modern) and the Polish People's Party (PSL), waving copies of the constitution, and loudly protesting the illegal elections of the PiS-nominated justices.

Ryszard Petru of the pro-business Nowoczesna accused PiS delegates of building an "outlaw empire of nihilism and cynicism", forcing through unlawful political bills not included in the party's election promises and undermining the country's young, 26-year-old parliamentary democracy. PiS delegates were often compared to "komuna", a pejorative slang name for the despised Stalinist regime that ruled Poland until 1989.

A meeting of the five-member Constitutional Tribunal ruled on December 3 that the statute enacted by the previous PO-PSL majority parliament was legal, with an exception regarding the election of the two out of five Tribunal judges.

The Tribunal also ruled that the president is obliged to accept the oath of office from the new Tribunal judges elected by the Sejm as quickly as possible. By making a legal determination not to accept the oath of appointed judges, president Duda, a lawyer by profession, not only violated the constitution but also interfered with the judiciary competences of the Constitutional Court.

A crowd of several hundred had gathered in front of the Tribunal, some protesting against the PiS initiative and some in support of its actions in the Polish parliament (Sejm). Among the latter protesters were members of the newly formed Constitution Defence Committee (KOD).

The ongoing constitutional crisis has served to expose the role of the alleged "anti-establishment" Kukiz'15 party, whose leaders and Sejm delegates not only supported the PiS' attack on constitutional law, but went even further by proposing the total dissolution of the Constitutional Tribunal and drastic changes to the country's political system. No confidence can be placed in any of the opposition parties to effectively

counter the government's moves towards authoritarian rule.

PiS, which previously governed the country from 2005 to 2007, had often stated that the Constitutional Tribunal was an obstacle to its proposed "reforms". One of these "reforms" includes an unconstitutional bid to unify the position of attorney general with that of justice minister—an open attempt to abolish the country's tripartite division of power. The same aim is now again being pursued by the new PiS regime.

In its attempt to ridicule and undermine the credibility of the Constitutional Court, PiS is clearly emulating similar initiatives already taken by Hungary's nationalist government led by Viktor Orban. A key role in the shift to a dictatorial state in Poland is being played by PiS party leader Jarosław Kaczyński, who clearly pulls the strings of President Duda and Prime Minister Beata Szydło.

Another Kaczyński loyalist is the rabidly anti-Russian and anti-Semitic defence minister, Antoni Macierewicz, while a number of other key ministry posts have been filled by people with criminal records.

In the next stage of the crisis the Constitutional Tribunal will rule December 9 on the constitutionality of Wednesday's appointment of the five PiS-nominated justices.



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