



POLISH LEAGUE AGAINST DEFAMATION

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Judiciary system reform and the issue of war reparations – the reactions of the German media

The planned reform of the judiciary system in Poland has inspired a strong reaction from the German media. The tone of the press, ongoing since the Law and Justice Party (PiS) won the parliamentary elections, has been decidedly critical. German journalists' calls to introduce formal and informal EU sanctions against Poland have increased in intensity. It seems that the voice of the German media is more and more often in unison with the views of the Berlin politicians and EU commissioners, and sometimes even speaks directly for them.

Raising the issue of war reparations by the Polish government surprised German journalists. In the long-term perspective, this subject might become the main point of dispute in Poland's relations with Berlin.

Practical advice from Der Tagesspiegel

The frequency of articles devoted entirely or partially to Poland is striking. The liberal daily Der Tagesspiegel, published in Berlin, in July alone issued about forty articles on Poland-related issues in its politics section.

In the article **“It's time for smart sanctions against Erdoğan” (26.07.2017)** the well-known Berlin publicist Christoph von Marschall advised EU decision-makers on which sanctions should be applied to Turkey, Poland, and Hungary, which were mentioned in the same sentence. In the case of Turkey, the publicist suggested hitting the country's tourism. (For instance, by discouraging German tourists with official warnings about the security situation in Turkey). Marschall is also calling for Poland and Hungary to be punished for the alleged violations of the rule of law. However, he claimed that any sanctions involving depriving Poland of voting rights would be ineffective. In Marschall's opinion, only restrictions on EU funds (e.g. through the endless verification process of grant applications) can bring the change in the direction of Poland's policy which he urges.

Poland's attack on Europe

A similar tone can be discerned in Marschall's commentary released a week earlier under the telling title **“The end of the rule of law. Poland's attack on Europe” (Der Tagesspiegel, 20.07.2017)**. The author presents a gloomy picture of the situation as early as in the first sentence. *“The European Union has so far not experienced such an attack on its fundamental values. It can slowly lead to doubts about whether the EU is able to withstand this attack in the long term. (...) the democratically elected Polish government is dismantling the rule of law and the tripartition of power.”* According to Marschall, the events taking place in Poland (e.g. the proposed reform of the judiciary system) constitute *“a fundamental threat to the existence of liberal democracy in Europe”*. The former correspondent in Washington claims that other issues, such as the massive inflow of refugees, and problems with the euro, are fading in comparison with the alleged democracy crisis in Poland. As usual, the publicist is mourning the

lack of effective mechanisms which could be used to punish an EU Member State which has broken the rules – here he is referring to Poland, which he is calling a “villain”.

The expressions and references made by German publicists are also symptomatic: Poland is a threat to Europe, a villain which should be punished, together with its Hungarian co-perpetrator. It seems that these texts, on the one hand, are meant to encourage the Berlin politicians to take bolder action against Poland, and at the same time to inspire in the readers an aversion to a country which is violating the European order.

The end of the article is interesting. The German journalist claims that President Andrzej Duda is the last person who can, by vetoing the Acts reforming the judiciary, prevent Poland's leaving “*the family of law-abiding states*”. Marschall is thus calling for using all possible diplomatic channels to influence the Polish President and the First Lady.

Three voices on the judiciary

In its 30 July issue **Der Tagesspiegel** published texts by three authors presenting their views on the planned reform of the judiciary system in Poland. Ryszard Czarnecki, a PiS politician, and Vice-President of the European Parliament, in his article “*Polska droga (The Polish way)*” outlined the position of the Polish Government, and the main points of the reforms. Quoting examples of the gross violations of the law, such as the corruption scandal in the Court of Appeal in Kraków, he presented the reasons behind the public support for the planned changes. As he pointed out, “*it would be unfortunate if, with regard to the issue of the judiciary system reform, the German media and politicians stood against the will of the Polish public.*”

A different view was presented by the German political scientist and commenter Klaus Bachmann in his text entitled “*The tyranny of the majority*” (Der Tagesspiegel, 30.07.2017) According to Bachmann, the ruling majority, after eliminating the Constitutional Tribunal, is violating the Constitution. He referred to the failure to publish the judgments of the Constitutional Tribunal as the political “original sin”, which preceded further actions by PiS perceived by Bachmann as unconstitutional.

The German MEP Sylvia-Yvonne Kaufmann (SPD) in her article entitled “*Unworthy of support*” (Der Tagesspiegel, 30.07.2017) called for the imposing of sanctions against Poland. According to the author, the Polish Government led by Beata Szydło is introducing major changes in Poland, and leading to its isolation within the European Union. The key example quoted by Kaufmann is the judiciary system reforms, which in her opinion are aimed solely at gaining control over the courts. The author claims that restricting Poland's voting rights in the Council of the European Union is difficult to implement, as Hungary has announced its intention to veto the restriction. Among possible sanctions, Kaufmann refers to the proposal by the European Commissioner for Justice Vera Jourova, who suggested that from 2021 onwards awarding EU funds should be based on compliance with the rule of law by Member States benefitting from them.

An ultimatum to Poland – MP Budka's suggestions

Borys Budka, a PO (Civic Platform Party) MP, and former Minister of Justice, in his interview in the German daily **Die Zeit** (23.08.2017), calls for an ultimatum to Poland: if the government does not withdraw the judiciary system reforms, Poland will face sanctions.

“The European Union must give Poland an ultimatum. Only decisive action can make the Government yield. I am the last person to be pleased with the sanctions, because they would first of all hit Polish society (...). Thus, this is a very difficult decision. The European Union must show its strength, and at the same time demonstrate that it is not directed against Poles but against Poland's government”.

The former Minister of Justice in Ewa Kopacz's Government expressed his hope that after the Presidential vetoes the political entourage of President Andrzej Duda would include moderate PiS politicians.

War reparations

The issue of war reparations has raised the amount of criticism of Poland in the German media to a higher level, and has even overshadowed the subject of the judiciary. At first, German publicists seemed surprised and confused over the raising of this matter, which is one of the most-fundamental issues.

As stated by Christoph von Marschall in his article "*The dispute over Poland is paralysing the European Union*" (Der Tagesspiegel, 16.09.2017), the issue of war reparations is very delicate. *"It combines moral, legal and political aspects. The damage inflicted by Germany on Poland during World War II cannot be repaired or morally redeemed by war reparations. The Polish intelligentsia was murdered, and most citizens were deprived of their freedom. The Holocaust damaged the whole of society. For centuries Poland presented a relatively tolerant approach towards Jews, as a result of which the number of Jews who settled there was the largest compared to that in other European countries."*

According to the publicist, the issue of war reparations in legal terms is already closed. *"Poland received 100,000 square kilometres of territory previously belonging to Germany, which were predominantly more economically developed than pre-war Poland."* Marschall recalled that the EU was established as a reaction to the atrocities of both wars, and is concerned about the European dimension of Poland's claims. *"After 1989, Germany became Poland's proponent, and facilitated its attempts to join the European Union (...). PiS's persistence regarding war reparations bears features of provocation and the lack of gratitude, even if Germany's fault is unquestionable"*.

It is worth pointing out that the comments made by Der Tagesspiegel's readers on the issue of reparations were mostly negative, and in agreement with the arguments presented in the article. The dominating tones were negative opinions about PiS, and the conviction that Poland had shown ingratitude.

The end of reconciliation

A similar tone can be observed in the commentary by Michael Thumann "*Reconciliation was yesterday*" (13.09.2017, Die Zeit). *"This is not about working through experiences but about invalidating the rules which Poles and Germans agreed on several dozen years ago. Friendship and good neighbourly relations cannot be valued with money. Reconciliation cannot be bought (...),"* stated the publicist, failing to mention the persecution of Poland by the German press which has been going on for two years.

He also readily finds an explanation for why Poland raised the issue of war reparations, and abandoned the previous model of reconciliation between Poland and Germany. *"Why is the Government of the populist Jarosław Kaczyński breaking with that tradition? His motivation is certainly not the memory of his country's past. This is about his personal past. Kaczyński feels surrounded by enemies – both in his country and in the European Union. In this context it becomes clear why the issue of war reparations sprang up exactly at the time when the European Commission was launching proceedings against his Government."*

As with many German publicists, Thumann shares a few pieces of good advice for German politicians on how to effectively exert pressure on Warsaw. *"Public comments on Kaczyński's dismantling of Polish democracy must come from Brussels rather than from Berlin. Open criticism is only helping Jarosław Kaczyński."*

The rejection of reparation claims

The German weekly **Der Spiegel**, in its online edition, quoted a statement by the German Minister of Foreign Affairs Siegmund Gabriel, in which he claimed that **Poland's reparation claims would sour relations between Poland and Germany**.

“Poland's reparation claims for losses suffered during World War II are a threat to Polish-German relations. (...) Reparation claims would be an attempt to damage the close and positive relations between Germany and Poland”. According to the German Minister of Foreign Affairs, relations between Poland and Germany have never been this good, and Berlin wishes to keep them this way.

The Süddeutsche Zeitung journalist Stefan Ulrich made a less diplomatic statement. In the summary of the article **“German guilt towards Poland”** (Süddeutsche Zeitung, 14.09.2017) he claims *“the greatest threat (to Poland) is its own Government. It is destroying the rule of law, dismantling the tripartition of power and restricting the freedom of views, as if it were continuing the work of the communists.”* Ulrich believes that from the legal perspective Germany has no financial liabilities towards Poland, but is obligated to take special care of its neighbour. *“The Federal Government does not have to pay billions in war reparations. However, within the European Union it must insist that PiS Government's excesses end. These are the most valuable reparations that Germany can give to Poland.”*

Summary

For two years a major sector of the German media has continued its persecution of the Law and Justice Government. Their inability to accept the permanent nature of changes in Poland is symptomatic. The level of public support for Beata Szydło's Government is disregarded or played down, as are its successes in combatting corruption and tax fraud. For German publicists, the favourable economic results (around a 4% rise in GDP), low unemployment, and the pro-family policy, are of minor importance. What are the reasons for the harsh tone of articles written by German journalists?

It seems that most of them have a predefined thesis. The criticism expressed by the German publicists is ideologically driven. The aversion towards PiS arises from the anti-nationalist reaction developed after both World Wars in many Western societies. Patriotism, for many publicists being synonymous with nationalism, is in conflict with political correctness. Based on their own ideological views, a Government which openly promotes patriotic attitudes, advocates adherence to tradition, faith and history, and at the same time is consistently implementing reforms and increasing the number of its voters, is unacceptable.

At the political level, PiS's government is a challenge to Germany's dominant position in the EU. The fact that Poland is openly questioning the German-French leadership in the EU is not only impacting on these countries' standing, but, from the perspective of Berlin and Paris, is weakening the “cohesion of decision-making” in the European Union. In the eyes of the German and French élites, taming Poland seems to be the condition for further EU integration and for achieving the federalist model.

The geopolitical jigsaw

In the geopolitical dimension (after the Brexit vote) Poland has become the main and natural partner of the USA in the European Union. Poland's key position in the eastern wing of NATO

makes us an indispensable element in the American deterrence strategy applied towards Russia. In the last year the military presence of the USA in Europe has been the most prominent in Poland. The creation of a potential (additional or alternative) centre of power, i.e. the Intermarium countries, might pose a serious challenge for the EU integration concept in its federalist form, especially when facing the immigration crisis. The success of the Intermarium idea will always depend on the potential support of the USA. Thanks to the countries of the so-called New Europe, Washington is gaining an opportunity to exert influence on the European Union.

War reparations

The issue of War reparations raised by Poland in relations with Germany was a surprise for German publicists. At the same time, the role of the German media in the decline of the countries' mutual relations has been completely overlooked. For Berlin the matter of reparations is very inconvenient. The German public opinion is aware of the country's blame for the crimes and destruction in the times of the occupation. Leaving aside the legal and economic dimensions of potential reparations, the very fact that this subject has been raised is bringing very serious image-related damage to Germany. War reparations have impacted very strongly on Germany's historical policy built over decades. The basis of this policy has been the gradual separation of Germany's history from Nazism, and even an attempt to present German society as the victim of national socialism. Losing its positive image might be particularly harmful for the German export-oriented industry. It is also difficult to imagine even the unofficial leadership of Germany in the European Union with a simultaneous conflict with Poland over war reparations. Other countries such as the United Kingdom and the United States, which are sceptical about the growing position of Berlin, might wish to use the subject of reparations as a form of pressure in their negotiations with Germany. Undoubtedly, the matter of reparations, which is morally right, has definitely brought the dispute between Poland and Germany to a higher level.