

## **Blocking politics and competence quarrels – Poland in the run-up to presidential election 2010**

Polish politics in 2009 passed in the shadow of the coming presidential election. President Lech Kaczyński's first term of office ends in December 2010. Donald Tusk, the Prime Minister, in the past made no bones about his determination to run for the top job in the state sooner or later. So political commentators have long anticipated a new edition of the 2005 presidential face-off in the autumn of 2010. Donald Tusk narrowly lost the 2005 run-off against Lech Kaczyński. The Prime Minister has now a comfortable lead over the President in all popularity ratings. So Lech Kaczyński last year made tough efforts to pull the helm back to him and to spoil the Prime Minister and his government their game in several critical points.

### **Competence quarrels in foreign policy**

Lech Kaczyński first tried his hand at widening his powers at the expense of the government in foreign policy. The Polish constitution accords the head of state very broad participation rights in foreign policy making. In many cases, too, provisions in the constitution allow for a certain degree for interpretation. It is customary, for instance, to have the Prime Minister represent Poland at EU summits, as the constitution nowhere explicitly requires that. Shortly before the Brussels summit on 15–16 October 2008 President Kaczyński declared he was going to attend the reunion in person, to present his view on the Caucasus conflict to EU members states. The summit itself was called primarily to discuss measures to take against the worldwide financial crisis. Quoting that Tusk insisted the Polish delegation should be composed of those announced before, that is, the Prime Minister and the Foreign Affairs and Finance Ministers. But the Prime Minister office's endeavours to keep Lech Kaczyński away from the summit, even by their flat refusal to let him use the government plane for the flight, were to nothing. The President quite simply hired himself a charter plane, and Poland saw European media flip a spate of ironic comments about that story.

On various occasions the President tried to reinforce his profile as defender of Polish interests compared with the government he believed was overly Euro-enthusiastic or, alternately, excessively submissive to Russia, as when he stalled the signing of the Lisbon Treaty he had himself negotiated, or as he put the blame on the government after the Obama administration dropped a previous plan to get a contingent of American mid-range missiles stationed on Polish soil.

### **Blocking home policy measures**

But last year the President pulled the conflict with the government more and more to internal policy questions. In contrast to foreign policy the constitution is very clear in setting out internal policy issues. It vests all internal policy power almost exclusively in the head of government. In that respect the head of state can do no more than block the political process either by availing himself of his veto right or have the Constitutional

Tribunal check acts of law for conformity with the constitution. The president is also called upon to countersign a number of political appointments, e.g., of generals or ambassadors. While he is not in a position to refuse signing indefinitely he can still defer the signing for some time.

Last year Kaczyński used the presidential veto as his favourite political instrument. He did not succeed in every one protest against the government's legislative undertakings. The President, for one, failed in his attempt to torpedo the government plan to contain early retirement schemes. His veto against the separation of the offices of justice minister and prosecutor general was overruled with the required three-fifths majority in the Sejm. Poland is now going to get its first ever independent prosecutor general, who is to take office on 31 March 2010.

But on a few points the coalition government buckled. The parties in government, the Civic Platform (PO) and the Polish People's Party (PSL), between them just fall short of the requisite three-fifths of seats in parliament. To defeat a veto of the head of state they need the support of at least one of the two opposition parties. They cannot count on the Law and Justice (PiS) caucus to support them. Jarosław Kaczyński, the President's twin brother, is still the leader of the law-and-order party. So it is more and more often the small party of The Left that tips the balance in favour either of the President or the government. The Left is composed of deputies of the Democratic Left Alliance (SLD), the Labour Union (UP) and four independents formerly mostly with the Social Democratic Party of Poland (SDPL). Led by Grzegorz Napieralski, the head both of the party and the Sejm caucus, The Left demonstrated on several occasions in recent months that— their reservations against the PiS and President Kaczyński notwithstanding — they must not be automatically ticked off as adversaries of the president. The Left takes advantage of votes on the President's vetoes just to reinforce their own political profile. Their support of Kaczyński's veto stopping a government legislation package which would have revamped Poland's public health service is a case in point.

### **Donald Tusk under growing pressure**

But it is no longer the President and the opposition parties alone that spoil the game for the Prime Minister these days. Trade unions, too, stand up united against most of his economic and social policy undertakings. PSL, the partner in the coalition, tends to sit back in the government and often shows itself shy of reform. Farmers, the voting base of the PSL, generally prefer steadiness to renewal.

Moreover Tusk is facing trouble in connection with an enquiry committee the Sejm established to probe a so-called „Gambling Affair”. Last October it transpired that businessmen active in the games of chance business tried to influence several PO politicians to prevent new regulations which would raise taxes on their operations. The Sejm enquiry committee is now to check the allegations.

The Prime Minister is now in a paradoxical situation. In 2007, the PO posted the most impressive win ever in a parliamentary election in the Third Polish Republic. His own party is held firmly in grip (that, incidentally, is anything but obvious for Poland's government heads), and his government, while losing some of the strong support it had, is still getting more positive than negative ratings. But despite all these factors the overall adverse processes leave Tusk with his scope of political action curbed, more perhaps than for any of his predecessors in the position of Polish Prime Minister.

### **Liberation attempts**

That is why Tusk on several occasions tried to set bounds to the President's permanent interventions. As early as in October 2008, in reaction to the bickering about the right to represent Poland at EU summits Tusk asked the Constitutional Tribunal to issue a clear verdict on the legal status of the representation right. The court decision was released in

May 2009. The court said the President is entitled to attend Council of Europe meetings if he considers that politically expedient. The negotiation strategy, however, is the sole right of the Council of Ministers.

In the autumn of 2009 Donald Tusk again tried to re-establish his political sovereignty in public action and discourse as he called for a debate on changes to the constitution. His idea for a new constitution is, for example, to get all foreign policy competence unequivocally assigned to the government. Tusk also wants a simple majority in parliament to suffice to overrule future presidential vetoes.

Just how strongly Donald Tusk will be pushing his drive for a constitutional debate this year remains to be seen. At the beginning of this election year the problem looks likely to resolve itself this autumn.<sup>1</sup> For months now Lech Kaczyński has trailed not only Donald Tusk, and strongly too, in opinion polls. An October 2009 poll published by *Gazeta Wyborcza* daily showed the incumbent President stood no chance even in a possible run-off against either of the two candidates who had meanwhile announced their intention to run. Lech Kaczyński trailed in the poll both Andrzej Olechowski, a non-affiliated candidate, and SLD politician Jerzy Szmajdziński by well over thirty percent.

### **Kaczyński stumbling over the „paradox of the Polish presidency“?**

It seems then that the President's destructive politics has had meagre results. Even worse, Lech Kaczyński may himself have ruined his chance for re-election precisely by his aggressive political style. That is what Mariusz Janicki and Wiesław Władyka surmise in the first January edition of the weekly *Polityka*. The two commentators observe that Kaczyński may be headed for defeat because he lacks the sense for the „paradox of the Polish presidency“. The paradox the authors claim is that head of state in Poland get weaker in proportion to the obduracy and recklessness with which they push their efforts to stay in power. As the President fastidiously picks on every syllable in the constitution to interpret every vague point in the constitution to his advantage, he earns himself a reputation of a petty-minded bureaucrat, rather than respectful authority as a calm nonpartisan head of state.

To prove their point the authors recall some of Kaczyński's predecessors in office. Lech Wałęsa, the first President of the Third Polish Republic, obviously felt hampered by the constitutional checks and balances. By his quirky interpretations of the letter of the law he tried repeatedly to broaden his political scope of operation. He pushed that practice so far that it took just a few years for the term „Falandisation of the law“ (from the President's legal adviser Lech Falandyś) to be included in the authoritative „Dictionary of the Polish Language“. Most Poles became disgruntled with the authoritarian demeanour of their head of state that so much so that they denied him a second term of office. Wałęsa's successor Aleksander Kwaśniewski, in turn, brought with him a much less conflict-ridden presidency. While journalists often decried his easygoing ways and avoidance of conflict, voters put great value by his reserved political style.

Such balanced and restrained political style is truly valued by Poles, and it shows in their declarations of political priorities. A major poll in the autumn of 2009 showed that the political priorities of Poles are almost identical with the political ideas on the agenda of the Kaczyński brothers. Asked to say what they believed are the most important responsibilities of the state the first cue words Poles mentioned were „internal security“, „fighting corruption“ and „reducing social inequalities“. „Freedom and civil rights“ and „necessary reforms“, both ideas likely to be linked to the Civic Platform were mentioned in the fourth place only. Just nine percent of those polled said „protecting minority rights“ was an important responsibility of the state. Briefly, then, Kaczyński is so unpopular in

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<sup>1</sup> While Kaczyński's term of office closes technically in December, under the constitution a date for the vote has to be set on a day between 100 and 75 days before the term of office expires. In the election year 2010, this date must be set for any day between the 19 September and the 3 October. The constitution also forbids the Sejm speaker to announce the proposed vote date earlier than seven, or later than six, months prior to expiry of the President's term of office. So the date of vote is unlikely to be announced before the end of May.

Poland not because he preaches the political ideas he does, but in spite of that. It is not his programs but solely his ways and style that apparently jeopardise his re-election.

### **Why Tusk gave up**

Observers were at first bewildered hearing Donald Tusk, who continues to score excellent personal ratings in opinion polls, declare 28 January he was not going to run for president. The race would have been a good opportunity for him to take revenge for his narrow defeat of 2005. Yet Tusk told a press conference at the Warsaw stock exchange he needed „real power“ to face up to the challenges ahead of Poland. But real power was vested in the government, and not in the presidential palace, said Tusk.

Well-wishing political commentators for some time suggested to Tusk he should perhaps consider not running for president, for several reasons:

- First, the position of PO Chairman is not going to be vacated. Wars of succession which could tarnish the image of the party and hamper its functioning in the run-up to the parliamentary election in 2011 are ruled out for the time being.
- Lech Kaczyński's possible defeat against any other candidate than the popular Donald Tusk himself would be twice as painful to Lech Kaczyński and could destroy him for good.
- Further, current poll findings make it by no means certain that in a run-off Tusk would face Lech Kaczyński. Yet it is only in confrontation with Lech Kaczyński that Tusk is sure to win. Donald Tusk's popularity derives largely from his being perceived as the opposite of Kaczyński in his character traits and at the same time the most promising adversary of the unpopular Kaczyński. In confrontation with other candidates, say at present the non-affiliated Włodzimierz Cimoszewicz and Andrzej Olechowski, can Tusk no longer rely upon his voters preferring him to an unpopular competitor. Indeed, the opposite may be true, as both of them are very popular politicians of international standing. A former Foreign Minister, and even a former Prime Minister (Cimoszewicz), lag behind the government chief in no way in terms of political experience. Instead of a bout of personalities Tusk would find himself forced to face a confrontation of political programmes against either of the two.
- However, any programme debate with Tusk implies also a debate of the government's policies over the past two years. These policies keep getting worse and worse ratings in opinion polls for several months now. In this sense, the Civic Platform may find it tempting to nominate a candidate who is member of the party but is not involved directly with the Tusk administration.
- Should Tusk give up the idea of running for president the PiS election campaign would run out of steam at least for now, because the PiS propaganda could no longer attack the government for its failures nor could it portray Tusk as driven by a sheer greed for power. PiS strategists' latest charges that Tusk just shied away fearing a showdown with Kaczyński has had little appeal.
- Lastly, Tusk seems to have now realised that the position of government chief is going to be really interesting for him precisely when Lech Kaczyński has been voted out. In co-existence with a head of state who is favourably disposed to him, with a bit of luck someone from his own party, Tusk could see his scope for action broadened from day to day. With the Presidential palace, on the other hand, Tusk would get very limited political scope.

This last-named consideration carries a certain risk. As he resigns from running for the presidency Tusk brings upon himself a prospect of having to linger on another five years in what is a disliked and often counter-productive cohabitation with Kaczyński. Kaczyński can strike political capital in the election as the only one candidate actually holding a public office. Further, one lesson of 2005 is that Kaczyński is not to be written off too early. In that

year of presidential as well as parliamentary elections, Tusk and the PO were comfortably ahead of Kaczyński and the PiS, respectively, even in the final week before the vote. Yet in a last final spurt the national conservatives carried the day for them.

First polls following Tusk's resignation from the presidential race give Kaczyński at least a glimmer of hope. He is now the runner-up, trailing the PO's potential substitute candidate Bronisław Komorowski by a mere 13 percent. For comparison, in September 2005 a major polling institute, CBOS, gave Tusk an 18-percent lead on Kaczyński. In the first round early in October Tusk's lead had shrunk to 3 percent. The decisive run-up ended with an 8-percent win for Kaczyński.

Knut Dethlefsen, Head, Friedrich Ebert Foundation in Poland

Warsaw, 1 February 2010