

Rule of Law in Poland

By Kamil STRZĘPEK

On the 10 of February, the University of Caen had the great honour to host a conference on the rule of law in Poland, held by Kamil Strzepak, international law professor at the University of Kardynała Stefana Wyszyńskiego in Warsaw.

The goal of the conference was to understand the current political situation in Poland and possible solutions.

I. The historical context

To fully understand what's going on in Poland, the professor started by providing context and focusing on the historical aspect. It was very interesting to learn more about Polish history.

Following World War II, Poland was almost completely ruined, with nearly 6 million citizens killed and 85% of its infrastructure and architecture destroyed. The country suffered a significant loss of its intellectual and cultural elite, including professors and engineers, who emigrated to other countries during the war. After 1945, Soviet influence led to the era of communism and Stalinism. Despite society's opposition to the authorities, the regime persisted for decades.

The creation of trade unions in 1980 marked the beginning of the system's collapse. Martial law was introduced in 1981, but social and economic pressure eventually forced communists to negotiate a power transition in 1989.

Following the 1989 political transformation, Poland shifted from a centralised to a market economy. The country joined NATO in 1999 and the EU in 2004 to secure safety and economic development. Professor Strzepak highlighted a generational shift in perspective, noting that younger Poles tend to be more supportive of the European Union and possess a deeper understanding of its functions compared to older generations.

II. The political crisis

There is a fundamental dispute over the transition of power. One narrative views the 1989 transformation as a peaceful success. The second narrative of "rupture" claims the Republic was built on a "rotten compromise" with communists and that the judicial system remains a communist bastion.

The professor explains that as a young democracy, Poland lacks the long-standing tradition of respecting "unwritten rules" that stable democracies follow. A global trend of conflict exists between the will of the people that characterise majoritarian democracy (where the winning party believes it has a mandate to change all institutions and the judiciary) and the rule of law (where authorities must act strictly within the law).

The 1997 Constitution divides power among the executive, legislative, and judicial branches. However, lack of checks and balances and fragmented responsibilities, exemplified by a 2009 dispute between the President and Prime Minister over who represents Poland at EU meeting, have led to instability.

The focus on the constitutional crisis has led to a neglect of citizens' daily problems and fundamental rights, such as same-sex marriage, which is still illegal in Poland.

III. The possible solutions

This conflict could be resolved through mediation. Potential mediators to bridge the social divide include the Catholic Church, the academic community, or the media, though the latter currently suffers from high polarization.

While changing the Constitution is the most durable solution, it is difficult as it requires a 2/3 majority. Currently, the Constitution lacks specific chapters on relations with the EU. Legislative reforms could, however, be installed.

Ordinary legal acts are often hindered because the President holds veto power and may belong to a different political party than the parliamentary majority. This can hold up some key reforms. Solutions may come from the European Court of Justice (CJEU) rulings or a new generation of leaders who better understand the modern world and the EU. Mr Strzepek came back on some key cases of the CJEU that influenced the Polish courts. This includes cases on the primacy of EU law, or the cases concerning preliminary rulings and the independence of judges.

Finally, the Russian-Ukrainian war shifted national focus away from internal constitutional clashes. It fostered a common consensus among powers to adopt new legislation regarding refugees and encouraged a renewed focus on the international community.

The conference highlighted that the current crisis in Poland is a fundamental test of the maturity of its young democracy. While the transition of 1989 brought about significant economic growth and successful integration into NATO and the EU, it also left behind a divided political narrative regarding the legitimacy of the current state and its judicial foundations. Despite these challenges, the recent unified response to the Ukrainian crisis suggests that common ground can still be found in times of international necessity, and left us on a positive note.

We would like to extend our sincere gratitude to Professor Kamil Strzpek for sharing his knowledge and providing such a clear analysis of the complex legal landscape in Poland. His insights have been invaluable in helping us understand the evolution of Polish democracy.

It was a great honour for the University of Caen to host this seminar, and we truly hope to welcome Professor Strzpek back to our campus in the future.

*The students of the “Master in International Law and European Law of the University of
Caen”*