

Boris Johnson & Poland's Prime Minister Find 'Common Cause' in European Justice Row

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The call between Johnson and Prime Minister Mateus Morawiecki noted shared troubles with the European Court of Justice, prompting worries about threats to judicial independence in both nations.

The Prime Minister Boris Johnson “noted the debate” between Poland and the European Court of Justice (ECJ) during a conversation with his Polish counterpart, Mateus Morawiecki, in a call ahead of the COP 26 Summit.

The call made common cause with Poland against the European Union (EU). Johnson has been frustrated over the decision by the President of the European Commission, Ursula von der Leyen, to reject UK demands to change the role of the European Court of Justice in settling post-Brexit disputes in Northern Ireland.

Poland’s Government is also in a row with the rest of the EU, with Morawiecki accusing EU institutions of seeking to turn Poland into a “province.”

Morawiecki claimed the European Court of Justice was responsible for a “creeping revolution” designed to undermine Poland’s sovereignty after the EU threatened to cut the country’s funding. The threat was made when Poland’s constitutional court ruled that key parts of EU law were incompatible with its constitution.

The ruling followed five years of the ruling Law and Justice Party undermining Poland’s independent judiciary.

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Although the details on how the “debate was noted” have not been published, the news has provoked concern from critics of the ruling Law and Justice Party. The writer and historian Anne Appelbaum tweeted “so now Johnson supports the destruction of independent courts and the illegal nomination of judges? Also the disciplining of judges who make decisions the ruling party doesn’t like? Because that’s what’s at stake in Poland.”

“Old enough to remember when British Prime Ministers believed in the rule of law,” she added.

Judicial Rows

In 2019, Law and Justice passed a “muzzle” law that empowers a disciplinary chamber to bring proceedings against judges for questioning the ruling party’s platform. This means the Polish Government can fire judges or cut their salaries if they speak out against legislation aimed at the judiciary. Sanctions can also be applied to those who question the legitimacy of new judicial appointees.

This is one of many changes implemented since 2015 to undermine the independence of Poland’s judiciary. Law and Justice wanted to create a situation where it could appoint its own judges and have a majority in the nation’s Constitutional Tribunal.

What this means in practice is that Government-appointed judges who can be relied on to support Law and Justice’s agenda can pass laws without the scrutiny of a Parliamentary vote. This, for example, is what happened with the controversial changes to abortion law in 2020.

The attacks on judicial independence have attracted the EU’s censure, with EU bodies warning Law and Justice that its judicial reforms contravene principles of judicial independence – enshrined in Article 6 of the European Convention on Human Rights.

This has now escalated in the latest iteration of the five-year row between Poland and the EU, with the ECJ claiming a new procedure for the appointment of members of Poland’s Supreme Court amounted to a violation of EU law. Von der Leyen has said she is “deeply concerned” about Poland’s attacks on an independent judiciary, and how despite dialogue with Poland, the “situation has worsened.”

Here in the UK, the row with the EU focuses on the controversial Northern Ireland protocol of the Brexit Deal, which was agreed on Christmas Eve last year. The UK Government wants to replace the European Court of Justice with an arbitration mechanism that would mean disputes around Northern Ireland will no longer be settled in Luxembourg.

However, von der Leyen hit back, saying the court’s role in the arrangement is not up for renegotiation and that the EU had already shown “as much as possible flexibility within the protocol” to deal with UK concerns.

This, then, is the “common cause” shared between Johnson and Morawiecki, with both leaders frustrated over being tied into European legal structures.

But that common cause could run deeper. Johnson and his Government having expressed frustrations with the independence of the UK judiciary too – particularly after the Supreme Court ruled that his decision to prorogue Parliament in autumn 2019 was “unlawful.”

Following the ruling, the former Conservative Party leader Lord Howard attacked the Supreme Court for sometimes “distorting” the law to achieve a desired outcome.

This led to Government-backed plans to reduce the size of the Supreme Court, as well as to curtail the court's ability to become involved in constitutional issues. Another proposal, linked to Dominic Cummings, would involve specialist judges being drafted in to sit on cases, which could lead to the court becoming more politicised.

The current Justice Secretary Dominic Raab has also launched an attack on human rights law, telling the Sunday Telegraph that he was devising a mechanism that would allow ministers to introduce ad hoc legislation to "correct" court judgments. That would include judgements passed by the European Court of Human Rights in Strasbourg or by UK judges. Raab's vision follows a string of attacks by colleagues including the Prime Minister on "lefty" lawyers in cases ranging from criminal justice to immigration.

The Brexit deal locked the UK into continued membership of the European Court of Human Rights, which is separate from the ECJ.

The Right Alliance

Poland's authoritarian leadership and the Conservatives have had common cause for more than a decade, thanks to the creation of the European Conservatives and Reformists (ECR) group in the European Parliament and their membership of European Conservatives and Democratic Alliance at the Council of Europe.

The latter was co-founded by Law and Justice and its chair is Conservative MP Ian Liddell-Grainger. The Alliance brings together right-wing and far-right politicians from Europe, including from Spain's Vox Party, Italy's Lega, Austria's Freedom Party and Sweden's People Party. Members also include MPs from Germany's far-right Alternative für Deutschland.

Although the Conservative Party is no longer a member of the ECR, since the UK has left the EU, supporters can still join Conservative Friends of the ECR. The group itself is co-chaired by Raffaele Fitto from the Brothers of Italy – a political party whose success is prompting fears of a "fascist revival" – and Law and Justice's Ryszard Antoni Legutko.

Other members include representatives from far-right or nationalist parties The Greek Solution, Dutch Reformed Party, the Bulgarian National Movement and Lithuania's National Alliance.

Professor Rafal Pankowski from Poland's anti-racist organisation NEVER AGAIN Association told Byline Times that "the Conservatives have been guilty of legitimising far-right nationalist and homophobic parties in Central and Eastern Europe since the creation of the ECR group in the European Parliament in 2009. At that time, it claimed the alliance would have a moderating impact on its partners. The opposite has happened, those parties have in fact radicalised over the last decade. This strategic blunder has contributed to the current rise of nationalist populism and the crisis of the rule of law and minority rights."

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