

**POLAND'S FOREIGN
POLICY MECHANISMS:
LEGAL FRAMEWORK
AND POLICY ANALYSIS**

Y. A. Vorozheina*



This article describes the features of Poland's foreign policy. Special attention is paid to the foreign policy mandate of the president, government, and minister of foreign affairs as well as a procedure for devising Poland's foreign policy strategy. Another focus is the contribution of local government to Poland's foreign policy.

The author describes Poland's foreign policy mechanism and emphasises its potential instability associated with a multi-tier decision-making procedure and the blurred boundaries between foreign policy mandates conferred by the Constitution upon the government and the president. The latter creates the potential for institutional conflict. It is stressed that the efficiency of Poland's foreign policy mechanism is strongly affected by the relations between the government and the president and requires consensus on all major foreign policy issues. The author emphasises the effect of the domestic policy situation on the Polish foreign policy mechanism and, as a result, the Republic's stance in the international arena.

Key words: Republic of Poland, Poland's foreign policy, foreign policy mechanism, foreign policy powers

At present, Poland's domestic and foreign policy is undergoing a significant transformation. This transformation is due to the victory of the right-wing national-conservative party "Law and Justice" in Poland's parliamentary elections 2015. "Law and Justice" is an ideological antagonist of the previous ruling centrist coalition of "Civic Platform" and "Polish Peasant Party" ("Polish People's Party"). A little more than six months after a new government was formed by "Law and Justice", some important and substantive changes in Poland's foreign policy were introduced. For instance, the preparation of a reform of the Constitutional Court by the new Poland's government provoked the emergence and development of a

* Immanuel Kant Baltic Federal University
14 A. Nevskogo ul., Kaliningrad,
236041, Russia

Submitted on September 15, 2016

doi: 10.5922/2079-8555-2017-1-3

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crisis of relations between Warsaw and Brussels¹. There have been adverse changes in Poland's foreign policy against Russia, which have found expression in suspension by Poland of the regime of local border traffic with the Kaliningrad region. Polish-Ukrainian relations are unstable owing to the recognition by the Polish parliament of the Volyn massacre as genocide of the Poles and the proclamation of July 11 as the National Day of Remembrance of the Victims of the Genocide [18].

These examples suggest that "new" Poland's foreign policy is becoming an increasingly important subject of research. In this context, it is worth noting that the main interest of researchers is focused on the analysis of the conceptual origins of Poland's foreign policy, specific foreign policy actions and its historical aspects. At the same time, researchers are devoting too little attention to the issues relating to the political and legal mechanism of formation and implementation of Poland's foreign policy. The current process of transformation of Poland's foreign policy proves the need for understanding the system, which determines the order of formation and implementation of Poland's foreign policy. Therefore, in this paper we consider the political and legal specifics of the functioning of Poland's foreign policy as well as foreign policy competence of Poland's government institutions.

Principles of formulation and implementation of Poland's foreign policy are defined in the Constitution of 2 April 1997. In accordance with the Constitution of the Republic of Poland, the foreign minister and the Council of Ministers, the President and the Poland's parliament (an upper house, the Senate, and a lower house, the Sejm) as well as local governments have jurisdiction in various issues directly or indirectly related to the process of formation and implementation of Poland's foreign policy.

Despite the fact that there are several actors authorized to participate in the implementation of foreign policy, "the right of implementation of the foreign policy" is granted only to the Council of Ministers, i. e. the Government of the Republic [9]. However, the Constitution of the Republic of Poland gives neither the Prime Minister nor the Minister of Foreign Affairs the entire range of powers necessary for full execution of this competence. In addition, there is no exhaustive specification of this constitutional mandate, which complicates its correct interpretation. According to Poland's basic law, the conduction of foreign policy stands for the overall coordination in the field of relations with other states and international organizations. The Constitution of the Republic of Poland confers on the government the right of "conclusion of international agreements that require ratification, and conclusion or renunciation of other international treaties" [9, art. 146]. Any other clauses that could supplement or elaborate the content of this multi-valued wording of "the right of implementation of the foreign policy" are not provided in the Constitution of the Republic of Poland.

The Ministry of Foreign Affairs and diplomatic missions abroad are the key actors authorized for actual implementation of Poland's foreign policy. Competencies of the Minister of Foreign Affairs of Poland are described in

¹ The Polish Constitutional Court crisis of 2015.



detail in the Act on Governmental Administration of 4 September 1997 [27]. This act prescribes a wide array of commitments to the Ministry of Foreign Affairs and the foreign ministers, e. g. coordinating Poland's foreign policy; maintaining relations with other states and international organizations; presenting and protecting interests of Poland and its citizens abroad (including courts and international tribunals); supporting activities that contribute to creating a better image of Poland's economy, culture, language, tourism, science, etc [27]. In addition to these powers the foreign minister is responsible for developing and submitting an annual report to the Council of Ministers and the Parliament that shall contain the main directions and goals of Poland's foreign policy for the coming year. This in turn allows us to state that Poland's Ministry of Foreign Affairs and its head play a central role in shaping the content of the foreign policy agenda and long-term strategic course of Poland's foreign policy. In that context, it is appropriate to mention the Department of Foreign Policy Strategy and Planning (under the Ministry of Foreign Affairs of Poland). Its task is to assist Poland's Minister of Foreign Affairs in developing the content of foreign policy concept.

The Department's area of responsibility includes the following tasks:

- analysis of the key priorities of the foreign policy (which determine Poland's national interest);
- preparation of Poland's foreign policy strategy for action on the European and global scale;
- preparation of medium and long-term plans and programmes, annual plans of foreign policy;
- preparation (in cooperation with other MFA's structures) of an annual report of the Minister of Foreign Affairs on Poland's foreign policy;
- development of Poland's foreign policy strategy in the European Union;
- analysis of information provided by Poland's intelligence services [31].

In addition, the Department of Foreign Policy Strategy and Planning focuses its activity on regulatory functions, including:

- coordination of development of Poland's strategic foreign policy;
- control of realization of main priorities of Poland's foreign policy;
- coordination of cooperation of the MFA with national and foreign scientific centers and analytical institutions² [31].

This review indicates that the Department of Foreign Policy Strategy and Planning is the lead advisor to the Minister of Foreign Affairs on the conceptual part of the strategic plan, and a link between the Foreign Ministry and Poland's community of experts in international relations.

However, despite the significant powers of Poland's Foreign Ministry, the MFA's personnel policy and the selection of international and national experts are dependent on the political conjuncture. Therefore, the victory of a new political force in Poland's parliamentary elections automatically indicates a reshuffle of the senior MFA's staff (Director General of the Diplomatic Service, Secretaries of State and their deputies). This is a sign of immediate dependence of the course conducted by the Ministry of Foreign

² The leading expert institutions of Poland in the field of foreign policy analysis are the Polish Institute of International Affairs and the Institute of East-Central Europe.



Affairs on the ideology of the party that forms the Government in Poland. It is also worth noting that in the history of modern Poland professional diplomats held the post of the Foreign Minister only four times³. Other Poland's former Ministers of Foreign Affairs had been politicians, scientists or economists prior to the appointment to the post.

It is noteworthy that until 1997 (the year of adoption of the current Poland's Constitution) Poland's foreign ministers were the so-called "presidential ministers", due to the fact that the candidacy of Foreign Minister had to be endorsed by the President. Now, the President as the supreme representative of the Republic has significant but mixed powers in the field of foreign affairs. For instance, under the Constitution, the President must cooperate with the Prime Minister and the Foreign Minister in the field of foreign affairs [9, art. 133]. However, the concept of "cooperation" is not specified in detail in Poland's Constitution, which leads to its situational interpretation. It is noteworthy that in a certain period of modern Poland's history it was one of the reasons for open conflicts between the President and the Prime Minister, who represented antagonistic political forces, which were unable to reach consensus on major foreign policy issues. For example, in October 2008 a dispute broke out between the Polish President Lech Kaczynski ("Law and Justice") and the Prime Ministers Donald Tusk (the leader of the party "Civic Platform"). The dispute concerned the question of whether the President had constitutional right to represent Poland at the meetings of the European Council. The conflict situation occurred not only because of their political confrontation, but also due to the fact that Poland's Constitution doesn't specify the representative of the Republic of Poland in the EU institutions [19; 20].

This conflict situation was resolved by a resolution of Poland's Constitutional Tribunal, according to which the President, the Government and the Prime Minister in the discharge of their mandates in the field of foreign policy must follow the provisions on the interaction of the authorities. In addition, it was recognized that the President, as the supreme representative of the Republic, can take an independent decision on his participation in the meetings of the European Council. However, at the same time the resolution stated that the President was not empowered to independently implement Poland's foreign policy⁴ [15].

The opposition between President L. Kaczynski and Prime Minister Donald Tusk was repeatedly manifested in their foreign policy rhetoric. They demonstrated either substantively different or even diametrically opposed views on the foreign policy priorities as well as the events that have taken

³ Wladyslaw Bartoszewski (Minister of Foreign Affairs in 1995 and 2000-2001), Adam Rotfeld (Minister of Foreign Affairs in 2005), Stefan Meller (Minister of Foreign Affairs in 2005-2006) and the current Foreign Minister, Witold Waszczykowski, had significant experience of diplomatic service.

⁴ It is worth paying attention to the fact that the Constitution of Poland does not specify a representative of the country in the institutions of the European Union. Experts in modern legal system of Poland, Lech Mazhevsky and Marian Grzybowski, pointed out that developing and signing of the EU treaties related to security and common foreign policy issues present special difficulties because no relevant institution with such powers is defined in the Constitution of Poland [7, p. 14; 12, p. 14].



place on the international scene and Poland's role in them. For instance, Donald Tusk acted as an active proponent of the development of Polish-German relations, unlike L. Kaczynski, who defended a skeptical position with respect to Berlin. The Prime Minister and the President also took opposite positions with respect to the 2004 conflict in South Ossetia, when Donald Tusk critically assessed President Kaczynski's participation in the meeting in support of M. Saakashvili [10]. The confrontation between the President and the Prime Minister in foreign policy issues became one of the reasons for separate visits of the Polish delegation to Katyn: a visit of Prime Minister Donald Tusk on April 7, 2010 and a tragically famous visit of President L. Kaczynski on April 10, 2010.

These examples illustrate that the implementation of the above-mentioned constitutional provision on cooperation in pursuing foreign policy may depend on a situational context in the conditions of political confrontation between the President and the Government of Poland. Furthermore, Poland's foreign policy mechanism adopted a completely different character after B. Komorowski's ("Civic Platform") victory in the 2010 early presidential elections. The Head of State and the Head of the Government of the Republic represented the same political force during that period, and the foreign policy of Poland's mechanism worked steadily as a consequence of the lack of President B. Komorowski's foreign policy ambitions as well as his political unity with the Government.

Currently, after the conservative party "Law and Justice" came to power in 2015, Poland's foreign policy mechanism is stable and conflict-free. It should be noted in this context that conditions of full control over the mechanism of formation and implementation of foreign policy allowed the "Law and Justice" to transform Poland's foreign policy course in line with its vision of the priorities of foreign policy.

In fact, cooperation between the President, the Government and the Minister for Foreign Affairs in developing and implementing foreign policy should translate into a coordinated decision-making process. For example, under Article 17 of the Foreign Service Act of 27 July 2001, the President appoints Ambassadors, upon the MFA's proposal, which in turn must be pre-approved by the Prime Minister of Poland. The President, the Prime Minister and the Minister of Foreign Affairs of Poland are responsible for coordinating their decisions concerning the representation of the country in the international scene as well as contacts with other countries and international organizations (mainly NATO and the United Nations).

However, it should be emphasized that the foreign policy role of the President of Poland is important. Under the Constitution, the President is not only the supreme representative of the state, but also the guarantor of the continuity of state power. The President takes measures to protect the sovereignty and independence, security and integrity of the state [9, art. 126]. The main presidential competencies in foreign policy are highlighted below:

- ratification and denunciation of international treaties;
- appointment and dismissal of the authorized representatives of the Republic of Poland in foreign countries and international organizations;
- acceptance of credentials [9, art. 133].



Special attention is paid to the presidential competence to ratify and denounce international treaties, which is also an example of multi-level decision-making process in the field of foreign policy in Poland. The Constitution stipulates that the ratification of an international treaty requires the consent of the Government and both Houses of Parliament, and then the consent of the President. According to researchers of the Poland's constitutional law, Prof. Lech Garlicki and Prof. Ryszard Stemplowski, the right to refuse ratification of an international treaty reinforces the importance of the President's role in the implementation of the foreign policy strategy [5, p. 282; 23, p. 242]. To date, the President has never refused to ratify international treaties. However, in October 2015, President Andrzej Duda vetoed the law on ratification of the Doha amendment to the Kyoto Protocol⁵ [17].

There is no doubt that the President of Poland is able to exercise significant influence on the implementation of foreign policy. However, the Constitution doesn't provide that the President is responsible for the implementation of foreign policy, which makes it possible to characterize the President's role in foreign policy as secondary (in the legal dimension) compared to the role of Poland's Government. At the same time, it should be noted that the nature of relations between the President and the Government, as well as their capacity to achieve consensus on a number of foreign policy issues, can influence the functioning of Poland's foreign policy mechanism.

It should be also mentioned that in the political dimension (as opposed to the legal dimension) the President's foreign policy role can be dominant. This specificity of the mechanism of Poland's foreign policy is manifested at present, when the President of the Republic Andrzej Duda (by virtue of his foreign policy ambitions) shows greater dynamism in the field of international relations compared to the Prime Minister Beata Szydło or the Foreign Minister Witold Waszczykowski. In other words, President Duda interacting with the Prime Minister and the Minister for Foreign Affairs, due to his intense activity⁶ in the field of international relations, claims to play a leading foreign policy role. It appears from the above that, even within the limited legal dimension of foreign policy competence, the President of Poland is able to play a more dynamic role in the field of foreign policy than the Government. The President may also compete or confront with the Government (if the President and the Prime Minister represent different political forces). This, in turn, demonstrates the instability of Poland's foreign policy mechanism⁷.

⁵ During that period, the President and the Government of Poland represented the opposing parties – “Law and Justice” and “Civic Platform” respectively.

⁶ Immediately after having been elected as president, A. Duda made a statement on his future activity in the field of foreign policy, expressing the idea of implementing the so-called “Intermarum” project (as the project of “Three Seas”). At present, A. Duda is maintaining a high level of foreign activity (in particular, in relation to the implementation of the “Intermarum” project as well as some problem areas such as Ukraine and Germany), claiming to own the conceptual vision of Poland's foreign policy [16; 30].

⁷ As I. Tarasov points out in “Political institutions and the practice of post-communism in Central and Eastern Europe”, different political orientation of the President and the parliamentary majority in general in all post-communist countries of Central and Eastern Europe is reflected in the characteristics of the decision-making process



It should be noted that both chambers of the Polish Parliament also have the ability to influence the process of implementation of Poland's foreign policy [9, art. 89]. In accordance with the Constitution, ratification of international treaties requires the approval of the Sejm (lower house) and the Senate (upper house). This indicates that the functioning of Poland's foreign policy mechanism also depends on the balance of political forces in the Parliament.

However, the mechanism of foreign policy is not limited to the above-mentioned actors. Special attention shall be given to the fact that Poland's Constitution confers competence in the field of international relations on the local self-government. Local governments of Poland have the right to join international associations of local and regional co-operation with local and regional communities of other states [9, art. 172]. In addition, a provincial assembly (a voivodship sejmik) has an obligation to adopt priorities for international cooperation of a voivodship. In accordance with the provisions of the Law on Provincial Self-government of 5 June 1998, the so-called "priorities for international cooperation" form a basis for the foreign activity of a region. Priorities for international cooperation of a voivodship are resolutions of the voivodship sejmik that are preliminary approved by the Minister of Foreign Affairs [28, art. 75]. As prescribed by this law, priorities for international cooperation should determine:

1. the main aim of international cooperation;
2. geographical priorities for future cooperation;
3. intentions to join international and regional associations [28, art. 75].

International co-operation of the provinces with regional communities of other countries should be implemented within the framework of their competences and in accordance with the state's foreign policy and its international obligations. The provinces have the right to an initiative in foreign policy matters that could be adopted for implementation after consultation with the Minister of Foreign Affairs of Poland [28, art. 77]. This indicates that Poland's local government may participate not only in the implementation of foreign policy but also in shaping its content.

Polish voivodships may also join international associations of local and regional communities. However, this must be approved by the Minister of Foreign Affairs of Poland [26]. It is worth mentioning that the representatives of local self-government bodies of Poland consistently raise the issue of expanding a range of their powers in the sphere of international cooperation⁸ [21]. However, it should be noted that even the current number of competen-

in the area of internal and foreign policy. However, as noted by the researcher, no country in Central and Eastern Europe considered a possibility of introducing constitutional reforms that could exclude or minimize the negative impact of a mismatch in political orientation of the President and the Government on the control of domestic or foreign policy [2].

⁸ In particular, in 2012 the resolution of Poland's Voivodship Marshals Convention included provisions on the need to expand the powers of the Republic's regions in the field of international relations. Marshals were in favor of the competence of decisions without consulting the Minister of Foreign Affairs and the upgrading of the status of the right to an initiative in foreign policy matters.

cies of Poland's regions in the sphere of international cooperation is enough to have a noticeable impact on the implementation of the foreign policy of the Republic.

It is worth paying attention to the fact that confrontation in the field of foreign policy between the government and the Polish government authorities is impossible in the legal dimension. However, in the political dimension, the nature of interaction between the center and the regions of Poland on the issues related to international relations can take different forms. For example, after the suspension of the regime of local border traffic between the Republic of Poland and the Russian Federation (on the initiative of Warsaw) the Marshal of the Pomeranian Voivodship Mieczyslaw Struk ("Civic Platform") expressed his disagreement with this decision [13]. In this context it should be noted that the Marshal of the Pomeranian Voivodship is opposed to the government party, which once again highlights the dependence of Poland's foreign policy mechanism on the political situation in the Republic. However, due to the fact that local governments of Poland do not have any legal instruments of influence on the decision of the Ministry of Foreign Affairs, the disagreement of the Marshal of the Pomeranian Voivodship with the suspension of the regime of local border traffic is a purely political act.

Conclusion

Poland's foreign policy mechanism includes a significant number of actors with complementary and identical competencies in the sphere of organization and implementation of foreign policy, which makes it possible to characterize Poland's foreign policy mechanism as a multi-level process.

Due to a wide range of powers Poland's Government has a decisive influence on foreign policy. However, the role of the President of the Republic should be emphasized because without the President's cooperation with Poland's Government the full functioning of the country's foreign policy mechanism is impossible. The role of the President of Poland in foreign policy is minor in relation to the role of the Government in the legal dimension. At the same time, the President is able to claim a leading role in foreign policy in the political dimension. This in turn leads to the potential instability of Poland's foreign policy mechanism, which should be considered by researchers and practitioners in the field of international relations.

The specificity of Poland's foreign policy mechanism determines the direct dependence of its effective functioning on political affiliations and relationships between the Government and the President, as well as the alignment of political forces in the Republic's parliament. Thus, the foreign policy of Poland is a potential field for domestic political confrontation that may have a significant impact on the behavior of Poland in the international arena.

In the present political circumstances established in Poland, i. e. the President and the Government are representing the same political force, Poland's

foreign policy mechanism can be described as stable. However, it is possible that Poland's foreign policy mechanism may undergo significant changes due to the intense activity of President Andrzej Duda in the process of formation and implementation of foreign policy.

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The author

Yana A. Vorozheina, PhD student, Immanuel Kant Baltic Federal University, Russia.

E-mail: j.worozheina@gmail.com

To cite this article:

Vorozheina, Y. A. 2017, Poland's Foreign Policy Mechanisms: Legal Framework and Policy Analysis, *Balt. reg.*, Vol. 9, no. 1, p. 30—40. doi: 10.5922/2079-8555-2017-1-3.