



Plenary sitting

B8-0465/2016

11.4.2016

MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission

pursuant to Rule 123(2) of the Rules of Procedure

on the situation in Poland
(2015/3031(RSP))

**Syed Kamall, Ryszard Antoni Legutko, Anna Elżbieta Fotyga,
Tomasz Piotr Poręba, Ryszard Czarnecki, Karol Karski,
Jadwiga Wiśniewska, Sławomir Kłosowski, Edward Czesak,
Janusz Wojciechowski, Stanisław Ożóg, Zbigniew Kuźmiuk,
Zdzisław Krasnodębski, Roberts Zile, Czesław Hoc, Marek Jurek**
on behalf of the ECR Group

**European Parliament resolution on the situation in Poland
(2015/3031(RSP))**

The European Parliament,

- having regard to Article 5 of the Treaty on European Union and Article 6 of the Treaty on the Functioning of the European Union,
 - having regard to the Polish constitution, in particular Articles 2, 10, 190, 194, 195 and 197 thereof,
 - having regard to the Constitutional Tribunal Act of 25 June 2015 and the subsequent amendments thereto,
 - having regard to the resolutions adopted by the Sejm of the Republic of Poland on 25 November 2015 on the lack of legal force of the resolutions adopted by the Sejm on 8 October 2015 on the election of judges of the Constitutional Tribunal,
 - having regard to the Rules of Procedure of the Sejm of the Republic of Poland,
 - having regard to Opinion No 833/2015 of the European Commission for Democracy through Law (Venice Commission) on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland,
 - having regard to Opinion CDL-STD(1997)020 of the Venice Commission,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the current Polish Government has the strongest democratic mandate in the country's history since the fall of communism;
- B. whereas the amendments to the Constitutional Tribunal (CT) Act adopted by the previous government on 25 June 2015 were introduced in order to fill five judicial tenures which would normally have become available only after the democratic elections of 25 October 2015, thus making a last-minute change to the composition of the Tribunal;
- C. whereas under Article 21 of the 2015 CT Act any person elected to the position of CT judge must swear an oath to the President, this being mandatory in order to become a constitutional judge;
- D. whereas on 19 November and 22 December 2015 the Polish parliament amended the 2015 CT Act, laying down rules of procedure for constitutional review in accordance with Article 197 of the Polish constitution;
- E. whereas the presumption of the constitutionality of a statute properly published is a basic constitutional principle necessary to ensure the rule of law when reviewing the constitutionality of each statute;

- F. whereas only the President of the Republic of Poland, by virtue of Article 122(3) of the Polish constitution, can refer a legal act for constitutional review before it enters into force;
- G. whereas it is indispensable that judgments of the Constitutional Court be adopted under due procedure, this being a *sine qua non* condition for a resolution by constitutional judges to be considered a judgment within the meaning of Article 190 of the Polish constitution, and thus subject to official publication;
- H. whereas Poland asked the Venice Commission to examine the provisions of the new statute setting out the rules of adjudication by the CT;
- I. whereas Opinion No 833/2015 of the Venice Commission was presented to the Sejm of the Republic of Poland on 11 March 2016;
1. Stresses that the amendments to the CT Act adopted on 25 June 2015 and the election of five judges on 8 October 2015 just before the parliamentary elections of 25 October 2015 are a source of current controversy surrounding the CT;
 2. Emphasises that the previous government secured itself an overwhelming majority of as many as 14 of the 15 CT judges, thus violating the elementary principle of pluralism of the courts and going against the 1997 recommendations of the Venice Commission, which stated that ‘A ruling party should not be in a position to have all judges appointed to its liking’;
 3. Emphasises that the reversal of these appointments by the new parliament was carried out in the course of the ordinary self-correction procedure, and stresses that there are no grounds to deny a newly elected parliament the right to decide on the correctness of its previous decision in the course of the same procedure;
 4. Points out that the amendments to the 2015 CT Act introduced by the Law and Justice government aim to facilitate proceedings for concrete constitutional review and to provide for more transparent rules for political, abstract constitutional review, while also limiting the unrestricted discretionary power of the President of the CT in this respect;
 5. Stresses that the CT resolution of 9 March 2016 was considered and adopted by a bench of 12, instead of at least 13, judges, which constitutes an apparent breach of procedure under Polish law and goes against Article 197 of the constitution, under which the CT is required to follow its statutory rules of procedure; emphasises, moreover, that under Article 7 of the constitution the government is bound by the principle of legality and must not publish any resolutions adopted in apparent breach of prescribed procedure;
 6. Welcomes the decision of the Speaker of the Sejm of the Republic of Poland to appoint a group of experts, open to representatives of all parliamentary parties, whose task will be to draw up recommendations for future parliamentary work and to apply, to the greatest possible extent, the Venice Commission recommendations to the systemic area in question, while upholding the conviction that the work of the CT should be as transparent as possible, and access to this court as wide as possible;

7. Stresses that the President of the Venice Commission made it clear in his remarks that the reform of the CT is an internal Polish issue and should be dealt with by the relevant national authorities; emphasises that such an approach is in line with the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union;
8. Emphasises, in this connection, that the matter can only be settled properly if all participants in the Polish political scene act responsibly and reach a compromise;
9. Instructs its President to forward this resolution to the Commission, the Council, the Member States, the Council of Europe and the European Commission for Democracy Through Law.