



Plenary sitting

B8-0867/2016

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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 recent developments in Poland and their impact on fundamental rights as
laid down in the Charter of Fundamental Rights of the European Union
(2016/2774(RSP))

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**European Parliament resolution on recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union
(2016/2774(RSP))**

The European Parliament,

- having regard to the Treaties and in particular to Articles 2, 3, 4 and 6 of the Treaty on European Union,
 - having regard to the Commission communication of 19 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014)0158),
 - having regard to the Charter of Fundamental Rights of the European Union,
 - having regard to the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR),
 - having regard to its debate of 19 January 2016 on the situation in Poland,
 - having regard to its resolution of 13 April 2016 on the situation in Poland¹,
 - having regard to the Venice Commission opinion of 11 March 2016 on the amendments of 22 December 2015 to the Act of 25 June 2015 on the Constitutional Tribunal of Poland,
 - having regard to the Venice Commission opinion of 13 June 2016 on the Act of 15 January 2016 amending the Police Act and certain other Acts,
 - having regard to the report of 15 June 2016 by Nils Muiznieks, the Council of Europe Commissioner for Human Rights, following his visit to Poland of 9 to 12 February 2016,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas Article 2 TEU states that the EU is founded on the values of respect for human dignity, freedom, democracy, tolerance, equality, the rule of law and respect for human rights, including equality between women and men and the rights of persons belonging to minorities, values which are shared by all Member States and which must be upheld by the EU and by each individual Member State in all their policies;
- B. whereas, following its decision to start a structured dialogue with the Polish Government under the Rule of Law Framework, on 1 June 2016 the Commission adopted a rule of law opinion concerning the constitutional situation arising from the amendments of 22 December 2015 to the Act on the Constitutional Tribunal;

¹ Texts adopted, P8_TA(2016)0123.

- C. whereas the Venice Commission clearly stated that the Constitutional Tribunal is currently unable to fulfil its role as guarantor of the supremacy of the Constitution of Poland, and also warned that crippling the Tribunal would undermine democracy, human rights and the rule of law;
- D. whereas, in addition to the constitutional crisis, there are other issues that are of serious concern to Parliament insofar as they may involve breaches of European law and of fundamental rights, including women's rights, such as the Broadcasting Act, the amendments to the Act on the Civil Service, the amendments to the Act on the Police, the new Act on the Prosecutor's Office, the presidential veto over amendments to the Act on National and Ethnic Minorities and on Regional Languages, the proposal to introduce a total ban on abortion and the proposed new law on terrorism, as well as the decision to increase logging in the Białowieża Forest; whereas such moves by the Polish Government must be closely monitored by the European institutions;
- E. whereas, under the European Convention on Human Rights, states have a margin of appreciation in deciding how to draw the balance between security and liberty; whereas Poland is by no means alone in having attracted considerable criticism as to how this balance has been drawn;
- F. whereas the recent amendments to the Police Act and certain other Acts have given rise to serious concerns on the part of the Venice Commission that the procedural safeguards and material conditions laid down for the implementation of secret surveillance are insufficient to prevent its excessive use or unjustified interference in the privacy of individuals; whereas in 2015 almost 2 million requests for telecommunications data and more than 2 000 requests for internet data concerning Polish citizens were made by the Polish intelligence services; whereas despite the Court of Justice judgment in *Digital Rights Ireland Ltd and Kärntner Landesregierung* (Joined Cases C-293/12 and C-594/12) and the ruling of the Polish Constitutional Tribunal that set out specific proportionality requirements for surveillance activities carried out by national authorities, the rules in force give the police and secret services broad access to telecommunications and internet data without an efficient mechanism for court supervision; recalls, in this connection, that both the Court of Justice and the ECtHR have stressed the need to introduce effective oversight mechanisms, preferably with judicial controls, in order to guarantee the supervision of such activities;
- G. whereas the recent amendments to the Code of Criminal Procedure reintroduce the provision that pre-trial detention can be justified on the ground of the severity of the penalty an offence carries;
- H. whereas the recent amendments to the Prosecution Act again merge the functions of the Minister of Justice and the Prosecutor-General, and increase the powers of the Prosecutor-General / Minister of Justice in appointing and dismissing prosecutors, in giving instructions to prosecutors in individual cases and in deciding to communicate information to the media pertaining to prosecutorial files;
- I. whereas the President vetoed adopted amendments to the Act on National and Ethnic Minorities and on Regional Languages;
- J. whereas political influence over public service media predates current reforms, and

whereas recent developments have reduced media freedom and independence, in particular through the adoption in December 2015 of the so-called Small Media Act and the dismissal of more than 100 journalists employed by public broadcasting services following the changes in the law;

- K. whereas the so-called blasphemy law restricting speech that causes religious offence remains a constraint on freedom of expression in Poland;
 - L. whereas the number of defamation suits brought annually by government officials and public figures against news media has increased over the last decade; whereas, according to the Helsinki Foundation for Human Rights, local media in Poland are much more vulnerable to legal reprisals by local authorities than are nationwide media¹;
 - M. whereas back in 2000 the UN Committee on Economic, Social and Cultural Rights recognised that the right to health encompasses ‘the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference’; whereas the World Health Organisation denounces the denial to women and girls of access to sexual and reproductive health care and services as a human rights violation that is deeply ingrained in societal values relating to women’s sexuality; whereas Poland already has an abortion law that is among the most restrictive in the EU; whereas the ECtHR has found Poland to be in violation of the right to private and family life in three judgments regarding access to abortion;
1. Recalls that all Member States have an obligation to respect and promote the common principles enshrined in Article 2 TEU;
 2. Believes that all Member States must fully respect international human rights law, the rule of law and fundamental rights, including the Charter of Fundamental Rights and the European Social Charter, in their legislative and administrative practice, and that all legislation, including the primary law of any Member State or candidate country, has to reflect and be in accordance with this;
 3. Regrets the deteriorating rule of law situation in other Member States such as Hungary; calls on the Commission to investigate, in particular, recent developments in Hungary such as the adoption of a new ‘anti-terror’ law;
 4. Is concerned that the effective and prolonged paralysis of the Polish Constitutional Tribunal is endangering democracy, human rights and the rule of law; calls on the Polish Government to implement fully the recommendations set out in Parliament’s resolution of 7 April 2016;
 5. Is concerned at the speed of adoption of the new laws and the lack of proper consultation, which will impact on the quality of the legal drafts adopted; points out that with no effective supervision by the Constitutional Court of the laws adopted, this procedure risks having long-lasting negative consequences for Poland’s legislative framework;
 6. Deplores the proposed adoption of a new anti-terrorism law that will limit the right to

¹ <http://www.hfhr.pl/en/publication-of-local-government-newspapers-unconstitutional-petition-to-ombudsman/>

privacy, will open up the possibility of direct and unlimited access to public databases by the Internal Security Agency with no oversight mechanism, will lower protection standards for all foreigners (putting all of them under de facto suspicion, in particular by collecting their biometric data and accessing both metadata and communications without any safeguards), will limit freedom of assembly and freedom of communication, and will enable the blocking of access to any internet content on the request of the Chief of Internal Security; calls on the Commission to assess the compliance of this law with international human rights law, the rule of law and fundamental rights;

7. Is deeply concerned over the amendments to the Police Act that expand the powers of law enforcement agencies, police forces and security forces without establishing the necessary safeguards to prevent abuses; points out the need to increase the protection of privacy and personal data and make the law clearer as to offences, activities, and people subjected to surveillance, while also remedying the lack of a democratic, independent and efficient system of control of surveillance activities; calls, in this connection, on the Polish Government to implement the recommendations made by the Venice Commission in its opinion of 13 June 2016;
8. Calls on the Polish Government, in its reform of public service media, to introduce safeguards to guarantee their independence from political influence and preserve the role the Constitution gives the National Broadcasting Council in safeguarding freedom of expression, the right to information and the public interest in radio and television broadcasting;
9. Firmly criticises the proposal to introduce a total ban on abortion, since such a ban would endanger women's lives and health and lead to greater maternal mortality and morbidity, refusal of life-saving care and an increased number of clandestine abortions; calls on the Polish Government not to present legislative initiatives relating to such a ban; stresses that universal access to health, in particular sexual and reproductive health and the associated rights, is a fundamental human right; calls on Poland to recognise the inalienable rights of women and girls to bodily integrity and autonomous decision-making as regards, inter alia, the right to access the full range of reproductive health services, including safe and legal abortion;
10. Calls on the Commission to keep Parliament regularly and closely informed of its assessments and of the progress made and the action taken;
11. Expresses the hope that the structured dialogue between the Polish Government and the Commission will lead to the reviewing of other decisions of the Polish Government that have given rise to concerns as to their legality and potential impact on fundamental rights;
12. Expects the Commission to monitor all Member States in the same way regarding democracy, the rule of law and fundamental rights, thus avoiding double standards, and to report back to Parliament;
13. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, and the President of the Republic of Poland.