



Plenary sitting

B8-0978/2016

7.9.2016

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 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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on behalf of the ECR Group

**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 Articles 2, 3, 4, 5 and 6 of the Treaty on the Functioning of the European Union (TFEU) defining categories and areas of Union competence,
 - having regard to Article 5 of the Treaty on European Union (TEU) and the principle of subsidiarity,
 - having regard to Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom,
 - having regard to Declaration No 1 concerning the Charter of Fundamental Rights of the European Union annexed to the Treaty on European Union,
 - having regard to Declaration No 61 by the Republic of Poland on the Charter of Fundamental Rights of the European Union annexed to the Treaty on European Union,
 - having regard to the law of 22 July 2016 on the Polish Constitutional Tribunal,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the current Polish Government was established in a transparent, democratic procedure based on the Polish Constitution;
- B. whereas under the Polish Constitution all Poland's institutions are bound by law;
- C. whereas under the Polish Constitution the organisation and proceedings of the Constitutional Tribunal are to be governed by a law decided upon by the Polish parliament;
- D. whereas in accordance with Articles 2 to 6 TFEU, the sphere of public morality and family law is excluded from the competences of the EU and remains an exclusive sphere of decision-making for Member States;
- E. whereas the Charter of Fundamental Rights of the European Union applies to the actions of the EU and the Member States when implementing EU legislation;
- F. whereas the application of the Charter of Fundamental Rights of the European Union to Poland is restricted as stipulated in Protocol (No 30); whereas, moreover, Declaration No 61 by the Republic of Poland on the Charter of Fundamental Rights of the European Union emphasises that 'the Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity';

- G. whereas Declaration No 1 concerning the Charter of Fundamental Rights of the European Union stipulates that ‘the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties’;
- H. whereas in Poland, just as in other EU countries such as Malta, Germany, France and Ireland, there are civic movements which would like to introduce a ban on abortion and which are perfectly entitled to do so in a democratic society; whereas a group of NGOs, as part of a civic movement, have gathered almost 500 000 signatures to a motion to restrict the abortion laws; whereas the Polish Government has not proposed any new legislation in this regard;
- I. whereas Commissioner Timmermans emphasised that ‘the Polish Government has the full right to implement any programmes they have promised to the voters’ and recommended continuing with the current format of his visits to Poland;
- J. whereas questions remain as to the legal basis of the Rule Of Law Framework;
- K. whereas on 16 August 2016 the Polish Government published 21 judgments of the Constitutional Tribunal;
- L. whereas the Polish Government’s plans to increase wood extraction from the Białowieża Forest are aimed at addressing the bark beetle invasion of the forest, which has led to the death of many trees and to changes in the local environment, including an increase in water levels, thus posing a threat to local biodiversity;
1. Underlines that, in accordance with Protocol No 30, Poland is not bound by the principles of the Charter of Fundamental Rights of the European Union unless these principles are recognised in the law or practices of Poland;
 2. Stresses that Article 5 TEU defining the principle of subsidiarity states that ‘in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States’;
 3. Underlines that areas such as freedom and justice, as well as the environment, are shared competences under Article 4 TFEU, that culture is an area where the EU can only carry out actions to support or coordinate those of the Member States, and that the sphere of public morality and family law is excluded from EU competence;
 4. Stresses therefore that new legislation in Poland such as the Antiterrorism Act, changes to the Code of Criminal Procedure, the Prosecution Act or the Public Broadcasting Service Act should not involve the EU institutions, as under the rule of subsidiarity their objectives will be best achieved by the Polish authorities;
 5. Reiterates that there is no new abortion law being put forward in the Polish parliament and firmly rejects any interference by the EU institutions in the sphere of public morality and family law, which can only be addressed at Member-State level;
 6. Points out that the Constitutional Tribunal is bound by the law adopted by the Polish

parliament; stresses that the Tribunal's judgment declaring the law unconstitutional violates the checks and balances rule by making it impossible for the parliament to exercise its constitutional right to decide on the organisation and proceedings of the Tribunal; stresses that it puts the Tribunal above all other constitutional institutions and above the Constitution itself;

7. Recalls that the constitutional crisis started under the previous parliament, which adopted a law enabling it to elect judges to the Constitutional Tribunal for the period following the parliamentary elections, which was subsequently declared unconstitutional by the Tribunal; recalls also that some judges of the Constitutional Tribunal, including its President, actively participated in the proceedings of a committee in charge of establishing that law and did not oppose those arrangements at that time;
8. Underlines that the government has shown its good will and responded to requests from the European Commission and the Venice Commission by preparing a new law on the Constitutional Tribunal and publishing 21 verdicts of the Tribunal; notes that this publication eliminates any legal uncertainty;
9. Notes that consultations between the Commission and Poland are currently ongoing; stresses that the Speaker of the Sejm of the Republic of Poland (the lower house) appointed a group of experts, open to representatives of all parliamentary parties, whose task was to draw up recommendations for future parliamentary work and to apply, to the greatest possible extent, the Venice Commission recommendations to the entire area; underlines that this group has finished its work and the results have been officially published and transferred to the Commission;
10. Stresses that the government's action in the Białowieża Forest was necessary in order to save the forest and to comply with EU law (the Habitats Directive), as a failure to act would have resulted in a massive loss of biodiversity;
11. Urges the leaders of the EU institutions and of the Member States to regard the results of the referendum of 23 June 2016 in the United Kingdom as an important signal of wider discontent; calls on them to reflect on the way the Union should be reformed in order to bring the decision-making process closer to citizens and guarantee better compliance with the principle of subsidiarity;
12. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe and the European Commission for Democracy Through Law.