



TEXTS ADOPTED

Provisional edition

P8_TA-PROV(2017)0442

The situation of the rule of law and democracy in Poland

European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP))

The European Parliament,

- having regard to the EU Treaties and in particular to Articles 2, 3, 4, 6 and 7 of the Treaty on European Union (TEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the Constitution of the Republic of Poland,
- having regard to the European Convention on Human Rights (ECHR) and the related case law of the European Court of Human Rights (ECtHR),
- having regard to the Commission communication of 11 March 2014 on a new EU framework to strengthen the rule of law (COM(2014)0158),
- having regard to its resolution of 13 April 2016 on the situation in Poland¹,
- having regard to its resolution of 14 September 2016 on recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union²,
- having regard to the Commission's Rule of Law Recommendation of 21 December 2016³ complementing its recommendation of 27 July 2016, taking into account the latest developments in Poland in the light of the appointment of a new President of the Constitutional Tribunal,

¹ Texts adopted, P8_TA(2016)0123.

² Texts adopted, P8_TA(2016)0344.

³ Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374 (OJ L 22, 27.1.2017, p. 65).

- having regard to the Commission’s third Rule of Law Recommendation of 26 July 2017¹, in which it expresses its grave concerns regarding the planned reform of the judiciary in Poland, which in the Commission’s assessment amplifies the systemic threat to the rule of law in Poland already identified in the rule of law procedure initiated by the Commission in January 2016,
- having regard to the Polish Government’s response of 20 February 2017 rejecting the notion that there existed a systemic threat to the rule of law in Poland, and to the reported reply of the Polish Government of 29 August 2017 rejecting the Commission’s objections to reforms of the judiciary and challenging its competence to assess the justice system,
- having regard to the infringement procedures launched by the Commission against Poland, including the procedure of 29 July 2017 and the reasoned opinion of 12 September 2017 concerning the Law on the Ordinary Courts Organisation, which stated that Polish Law is incompatible with EU law, notably with Article 157 of the Treaty on the Functioning of the European Union (TFEU), Directive 2006/54/EC on gender equality in employment, and Article 19(1) of the TEU read in connection with Article 47 of the EU Charter of Fundamental Rights,
- having regard to the exchanges of views held in its Committee on Civil Liberties, Justice and Home Affairs with the Commission’s First Vice-President, Frans Timmermans, on 22 March, 31 August and 6 November 2017,
- having regard to the exchanges of views held at the meetings of the General Affairs Council of 16 May 2017 and 25 September 2017 on the rule of law in Poland,
- having regard to the opinion of 14 October 2016 of the Venice Commission on the Act on the Constitutional Tribunal, and to the statement of 24 January 2017 by the president of the Venice Commission expressing his deep concern over the ‘worsening situation’ in Poland,
- having regard to the removal on 18 May 2017 from the Constitutional Tribunal’s website and its online legal database of the three verdicts which concerned the following judgments: 9 March 2016, K 47/15 (declaring that the changes adopted by the Polish Parliament to the act on the Constitutional Tribunal are unconstitutional), 11 August 2016, K 39/16 (contesting the legality of the main provisions of the second act amending the functioning of the Constitutional Tribunal) and 7 November 2016, K 44/16 (on the legality of the appointment of the chair and vice-chair of the Constitutional Tribunal),
- having regard to the adoption in June and July 2017 by the Polish Parliament of four laws reforming the judiciary, namely: the law amending the law on the National School of Judiciary and Public Prosecution, the law on Ordinary Courts Organisation and certain other laws (‘law on the National School of Judiciary’); the law amending the law on the National Council for the Judiciary and certain other laws (‘law on the National Council for the Judiciary’); the law amending the law on the Ordinary Courts Organisation (‘law on Ordinary Courts Organisation’); and the law on the Supreme Court, which raised

¹ Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146 (OJ L 228, 2.9.2017, p. 19).

serious concerns regarding violation of the separation of powers and the end of the independence of the judiciary,

- having regard to the letter from the President of the European Parliament of 18 July 2017 expressing the concerns of the great majority of political group leaders in Parliament regarding the laws adopted reforming the judiciary,
- having regard to the decision of the Polish President of 27 July 2017 to veto two controversial laws which had been passed by the Polish Parliament earlier that month and which seriously threatened judicial independence in Poland,
- having regard to the two proposals by the Polish President regarding the National Council for the Judiciary and the Supreme Court, which raise concerns as to whether they are in line with the Polish Constitution, and which do not address the problems related to the separation of powers or the independence of the judiciary,
- having regard to the decision of the Polish Constitutional Tribunal of 24 October 2017 ruling that the rules for electing the Presidents of the Supreme Court and of the General Assembly of the Judges of the Supreme Court are unconstitutional,
- having regard to the temporary order issued by the Court of Justice of the EU on 27 July 2017 in Case C-441/17 to stop large-scale logging in the Bialowieza forest, which was not implemented by the Polish Government, and to the fears that continued logging would cause ‘serious and irreparable damage’ to the forest while the court works on the case,
- having regard to the interim orders of 8 June 2017 issued by the European Court of Human Rights to halt summary returns to Belarus; having regard to the proposals made in January 2017 for amendments to the Law on Foreigners by Poland’s Minister of the Interior, which raise concerns regarding their compatibility with European and international law,
- having regard to the Law on Public Assemblies, as amended in December 2016, which allows for excessive limitations on the right of assembly, including prioritisation of so-called ‘regular/cyclical assemblies’ devoted to patriotic, religious and historic events and the possibility for the authorities to ban counter-demonstrations,
- having regard to the Law on the National Institute for Freedom - Centre for Civil Society Development of 15 September 2017, which places access to public funding for civil society organisations, including from EU funds, under the control of the government, thus raising concerns regarding the adequate funding of NGOs, including among others women’s rights organisations,
- having regard to the reports by international NGOs on the rule of law and fundamental rights in Poland, including the Amnesty International report of 19 October 2017 entitled ‘Poland: On the streets to defend human rights’ and the Human Rights Watch report of 24 October 2017 entitled ‘Eroding Checks and Balances – Rule of Law and Human Rights Under Attack in Poland’,
- having regard to the OSCE/ODIHR opinions of 5 May 2017 on draft amendments to the act on the National Council of the Judiciary and certain other acts of Poland; of 22 August 2017 on the Draft Act of Poland on the National Freedom Institute – Centre for the Development of Civil Society; and of 30 August 2017 on certain provisions of the Draft

Act on the Supreme Court of Poland, which pointed out that the proposed provisions were inherently incompatible with international standards and OSCE commitments,

- having regard to the concluding observations on the seventh periodic report of Poland, adopted by the UN Human Rights Committee on 31 October 2016, which urged Poland to take steps to protect the independence of the Constitutional Tribunal and the judiciary, and to define more precisely the offence of terrorism, in order to safeguard against abuse,
 - having regard to Canada’s intervention of 9 May 2017 at the UN Human Rights Council in the context of Poland’s Universal Periodic Review, and to the letter of 23 October 2017 addressed by the UN High Commissioner for Human Rights to Poland,
 - having regard to the preliminary observations on the official visit to Poland of 27 October 2017 by the UN Special Rapporteur on the independence of judges and lawyers, which expressed concern over the state of the independence of the judiciary in Poland,
 - having regard to Resolution 2188 (2017) of 11 October 2017 of the Parliamentary Assembly of the Council of Europe, ‘New threats to the rule of law in Council of Europe member States: selected examples’,
 - having regard to the repeated mass protests in opposition to government policies and legislation, including the ‘Black Protest’ of October 2016 which prevented a change to the current abortion law, the ‘Freedom March’ of 6 May 2017, and the protests in July 2017 following the adoption of laws reforming the judiciary,
 - having regard to the law limiting access to the emergency contraceptive pill for women and girls of June 2017; having regard to the WHO factsheet of June 2017, which deems the emergency contraceptive pill safe and recommends its availability as part of necessary reproductive healthcare; having regard to the Commission implementing decision of 7 January 2015 amending the marketing authorisation granted by Decision C(2009)4049 for ‘ellaOne - ulipristal acetate’, a medicinal product for human use,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities; whereas these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail; whereas adherence to these values was approved by the Polish people in the referendum held in 2003;
- B. whereas Article 9 of the Polish Constitution states that the Republic of Poland shall respect international law binding upon it;
- C. whereas the EU operates on the basis of the presumption of mutual trust, i.e. that Member States will act in accordance with democracy, the rule of law and fundamental rights, as enshrined in the ECHR and in the Charter of Fundamental Rights;
- D. whereas the rule of law is one of the common values on which the EU is founded, and whereas the Commission, together with Parliament and the Council, is responsible under the Treaties for guaranteeing respect for the rule of law as a fundamental value of the Union and making sure that EU law, values and principles are respected;

- E. whereas those principles include: legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including full respect for fundamental rights; and equality before the law;
 - F. whereas the independence of the judiciary is enshrined in Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR, and is an essential requirement of the democratic principle of the separation of powers, which is also reflected in Article 10 of the Polish Constitution;
 - G. whereas freedom of association should be protected; whereas a vibrant civil society and pluralistic media play a vital role in promoting an open and pluralistic society, public participation in the democratic process, and strengthening the accountability of governments; whereas NGOs should be adequately funded;
 - H. whereas the Polish Government's refusal to implement the order of the Court of Justice of the EU on logging in the Bialowieza forest and its refusal to respect the interim orders by the ECtHR on returns to Belarus are visible symbols of Poland not following the EU Treaties;
 - I. whereas dozens of protesters have faced proceedings under the Code of Petty Offences and in some cases under the Criminal Code; whereas over 300 people are reported to have been summoned by the police in relation to their participation in protests in October 2017;
 - J. whereas, according to the Charter of the Fundamental Rights, the ECHR and the case law of the ECtHR, women's sexual and reproductive health is related to multiple human rights, including the right to life and dignity, freedom from inhuman and degrading treatment, the right of access to healthcare, the right to privacy, the right to education and the prohibition of discrimination, as is also reflected in the Polish Constitution;
 - K. whereas the denial of access to sexual and reproductive health and rights services, including safe and legal abortion, is a violation of women's fundamental rights; whereas the UN Human Rights Committee has called on Poland to refrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women's access to safe and legal abortion; whereas the ECtHR has ruled against Poland in several cases owing to Poland's restrictive interpretation of this right;
1. Stresses that it is fundamentally important to uphold the common European values listed in Article 2 of the TEU and in the Polish Constitution, and to guarantee fundamental rights as laid down in the Charter of Fundamental Rights of the European Union;
 2. Reiterates its position expressed in its resolutions of 13 April 2016 and of 14 September 2016; reiterates, in particular, its concern over the rapid legislative developments taking place in many areas without proper consultations or the possibility of an independent and legitimate constitutional review, thus risking the systematic undermining of fundamental human rights, democratic checks and balances and the rule of law; reiterates, in particular, its concern regarding such changes in the areas of public media, criminal law, police law, civil service law, the law on counter-terrorism, NGO law, asylum law, freedom of assembly and women's rights;

3. Regrets strongly and with growing concern the fact that no compromise solution has been found to the fundamental problem of the proper functioning of the Constitutional Tribunal (its independence and legitimacy, and the publication and implementation of all its judgments), which seriously undermines the Polish Constitution and democracy and the rule of law in Poland; points out with deep regret that the Polish Government refuses to take into account the constructive criticism coming from the Polish public and from national, international and EU institutions, and that no actions have been announced to address these concerns;
4. Is deeply concerned at the redrafted legislation relating to the Polish judiciary, as regards specifically its potential to structurally undermine judicial independence and weaken the rule of law in Poland;
5. Notes that on 27 July 2017 President Duda vetoed two controversial laws which had been passed by the Polish Parliament as being incompatible with the Polish Constitution, claiming that they seriously threatened judicial independence in Poland; calls for an extensive debate at national level with all relevant stakeholders regarding judicial reform, which should uphold the rule of law and comply with EU law and European standards of judicial independence; calls on the Polish President not to sign new laws unless they fully guarantee the independence of the judiciary;
6. Supports the Rule of Law Recommendations issued by the Commission, as well as the infringement proceedings taken out by it against Poland for breaches of EU law; acknowledges the Commission's determination to monitor, as guardian of the Treaties, the situation in Poland and the follow-up to its recommendations by the Polish authorities, while continuing to offer full support to Poland in finding adequate solutions to strengthen the rule of law;
7. Urges the Polish Parliament and Government to implement fully all recommendations of the Commission and the Venice Commission, and to refrain from conducting any reform which would put at risk respect for the rule of law, and in particular the independence of the judiciary; calls in this respect for postponement of the adoption of any laws until a proper assessment has been made by the Commission and the Venice Commission;
8. Calls on the Polish Government to comply with the temporary order of the Court of Justice of the EU of 27 July 2017 in Case C-441/17 and to immediately suspend large-scale logging in the Bialowieza forest, which risks causing serious and irreversible damage to this UNESCO World Heritage site; calls on the Polish Government to halt summary returns to Belarus so as to comply with the binding interim orders of the ECtHR of 8 June 2017, and to ensure that anyone who expresses an intention to seek asylum or international protection at Poland's borders enjoys full access to the Polish asylum procedure in line with international obligations and EU law;
9. Calls on the Polish Government to respect the right of freedom of assembly by removing from the current law on assembly the provisions prioritising government-approved 'cyclical' assemblies; urges the authorities to refrain from applying criminal sanctions to people who participate in peaceful assemblies or counter-demonstrations and to drop criminal charges against peaceful protesters;
10. Calls on the Polish Government to repeal the law on establishing a National Institute for Freedom - Centre for the Development of Civil Society, which hinders access to state

funding from critical civil society groups, and to ensure that the distribution of public funds to civil society is carried out in a fair, impartial and transparent manner, ensuring pluralistic representation;

11. Expresses its concern at the media reports of police surveillance of opposition and civil society leaders, and urges the Polish authorities to investigate these reports and to fully respect the privacy of all citizens;
12. Calls on the Polish Government to take a firm stand on women's and girls' rights by providing free and accessible contraception without discrimination, making emergency contraception available without medical prescription; calls, in this context, for the law limiting women's and girls' access to the emergency contraceptive pill to be repealed;
13. Strongly criticises any legislative proposal that would prohibit abortion in cases of severe or fatal foetal impairment; stresses that universal access to healthcare, including sexual and reproductive healthcare and the associated rights, is a fundamental human right; strongly reaffirms its support for women's rights organisations, as they have recently been the target of legal prosecution;
14. Calls on the Polish Government to comply with all provisions relating to the rule of law and fundamental rights enshrined in the Treaties, the Charter of Fundamental Rights, the ECHR and international human rights standards, and to engage directly in dialogue with the Commission;
15. Calls the Commission to keep Parliament regularly and closely informed, in a transparent fashion, of progress made and action taken;
16. Believes that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU; instructs its Committee on Civil Liberties, Justice and Home Affairs to draw up a specific report in accordance with Rule 83(1)(a) of its Rules of Procedure, with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) of the TEU;
17. Reiterates the need for a regular process of monitoring and dialogue involving all Member States in order to safeguard the EU's fundamental values of democracy, fundamental rights and the rule of law, involving the Council, the Commission and Parliament, as put forward in its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights¹ (DRF Pact);
18. Calls on the Polish Government to take appropriate action on and strongly condemn the xenophobic and fascist march that took place in Warsaw on Saturday, 11 November 2017;
19. Instructs its President to forward this resolution to the Commission and the Council, the President, Government and Parliament of Poland, the governments and parliaments of the Member States, the Council of Europe and the OSCE.

¹ Texts adopted, P8_TA(2016)0409.