



TEXTS ADOPTED

P9_TA(2020)0225

Determination of a clear risk of a serious breach by Poland of the rule of law

European Parliament resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017)0835 – 2017/0360R(NLE))

The European Parliament,

- having regard to the proposal for a Council decision (COM(2017)0835),
- having regard to the Treaty on European Union, and in particular Article 2 and Article 7(1) thereof,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,
- having regard to the Universal Declaration of Human Rights,
- having regard to the international human rights treaties of the United Nations, such as the International Covenant on Civil and Political Rights,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),
- having regard to its legislative resolution of 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the Union is based¹,
- having regard to Communication of 15 October 2003 from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based²,

¹ OJ C 104 E, 30.4.2004, p. 408.

² COM(2003)0606.

- having regard to Communication of 11 March 2014 from the Commission to the European Parliament and the Council, ‘A new EU Framework to strengthen the Rule of Law’¹,
- having regard to its resolution of 13 April 2016 on the situation in Poland²,
- having regard to its resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union³,
- having regard to its resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland⁴,
- having regard to the activation by the Commission of the structured dialogue under the Rule of Law Framework in January 2016,
- having regard to Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland⁵,
- having regard to Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374⁶,
- having regard to Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146⁷,
- having regard to Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Commission Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520⁸,
- having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland⁹,
- having regard to its resolution of 14 November 2019 on the criminalisation of sexual education in Poland¹⁰,
- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones¹¹,

¹ COM(2014)0158.

² Texts adopted, [P8_TA\(2016\)0123](#).

³ Texts adopted, [P8_TA\(2016\)0344](#).

⁴ Texts adopted, [P8_TA\(2017\)0442](#).

⁵ OJ L 217, 12.8.2016, p. 53.

⁶ OJ L 22, 27.1.2017, p. 65.

⁷ OJ L 228, 2.9.2017, p. 19.

⁸ OJ L 17, 23.1.2018, p. 50.

⁹ Texts adopted, [P8_TA\(2018\)0055](#).

¹⁰ Texts adopted, [P9_TA\(2019\)0058](#).

¹¹ Texts adopted, [P9_TA\(2019\)0101](#).

- having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017¹ ,
- having regard to its resolution of 3 May 2018 on media pluralism and media freedom in the European Union² ,
- having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary³ ,
- having regard to its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences⁴ ,
- having regard to 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 rights⁵ ,
- having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU⁶,
- having regard to its resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence⁷,
- having regard to its legislative resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States⁸,
- having regard to its legislative resolution of 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Rights and Values programme⁹,
- having regard to the four infringement procedures launched by the Commission against Poland in relation to the reform of the Polish judicial system, of which the first two resulted in judgments of the Court of Justice¹⁰ finding violations of the second subparagraph of Article 19(1) of the Treaty on European Union enshrining the principle of effective judicial protection, while the two other procedures are still pending,
- having regard to the three hearings of Poland held in 2018 by the General Affairs Council within the framework of the Article 7(1) TEU procedure,

¹ Texts adopted, [P8_TA\(2019\)0032](#).

² Texts adopted, [P8_TA\(2018\)0204](#).

³ Texts adopted, [P9_TA\(2020\)0014](#).

⁴ Texts adopted, [P9_TA\(2020\)0054](#).

⁵ Texts adopted, [P8_TA\(2016\)0409](#).

⁶ Texts adopted, [P8_TA\(2019\)0111](#).

⁷ Texts adopted, [P9_TA\(2019\)0080](#).

⁸ Texts adopted, [P8_TA\(2019\)0349](#).

⁹ Texts adopted, [P8_TA\(2019\)0407](#).

¹⁰ Judgment of the Court of Justice of 24 June 2019, *Commission v Poland*, C-619/18, ECLI:EU:C:2019:531; judgment of the Court of Justice of 5 November 2019, *Commission v Poland*, C-192/18, ECLI:EU:C:2019:924.

- having regard to the mission report of 3 December 2018, following the visit by the Committee on Civil Liberties and Justice and Home Affairs to Warsaw from 19 until 21 September 2018, and to the hearings on the rule of law situation in Poland held in that Committee on 20 November 2018 and 23 April 2020;
 - having regard to the annual reports of the European Union Agency for Fundamental Rights and the European Anti-Fraud Office,
 - having regard to the 2018 WHO recommendations on adolescent sexual and reproductive health and rights,
 - having regard to the judgment of the European Court of Human Rights of 24 July 2014, *Al Nashiri v. Poland* (application No. 28761/11),
 - having regard to Rules 89 and 105(5) of its Rules of Procedure,
 - having regard to the opinion of the Committee on Women’s Rights and Gender Equality,
 - having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0138/2020),
- A. whereas the Union 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, as set out in Article 2 of the Treaty on European Union and as reflected in the Charter of Fundamental Rights of the European Union and embedded in international human rights treaties;
- B. whereas, in contrast to Article 258 of the Treaty on the Functioning of the European Union, the scope of Article 7 of the Treaty on European Union is not confined to areas covered by Union law, as indicated in the Commission’s Communication of 15 October 2003, and whereas the Union can therefore assess the existence of a clear risk of a serious breach of the common values referred to in Article 2 of the Treaty on European Union not only in the event of a breach in this limited field but also in the event of a breach in an area where the Member States act autonomously;
- C. whereas any clear risk of a serious breach by a Member State of the values referred to in Article 2 of the Treaty on European Union does not concern solely the individual Member State where the risk materialises but has a negative impact on the other Member States, on mutual trust between Member States and on the very nature of the Union;
- D. whereas the Member States have, in accordance with Article 49 of the Treaty on European Union, freely and voluntarily committed themselves to the common values referred to in Article 2 thereof;
1. States that the concerns of Parliament relate to the following issues:
- the functioning of the legislative and electoral system,
 - the independence of the judiciary and the rights of judges,
 - the protection of fundamental rights;

2. Reiterates its position, expressed in several of its resolutions on the situation of the rule of law and democracy in Poland, that the facts and trends mentioned in this resolution taken together represent a systemic threat to the values of Article 2 of the Treaty on European Union (TEU) and constitute a clear risk of a serious breach thereof;
3. Expresses its deep concern that, despite three hearings with the Polish authorities having been held in the Council, multiple exchanges of views in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs in the presence of the Polish authorities, alarming reports by the United Nations, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe, and four infringement procedures launched by the Commission, the rule of law situation in Poland has not only not been addressed but has seriously deteriorated since the triggering of the procedure referred to in Article 7(1) TEU; is of the opinion that discussions in the Council within the framework of the procedure referred to in Article 7(1) TEU have been neither regular nor structured, and have neither sufficiently addressed the substantial issues that warranted the activation of the procedure nor adequately mapped the impact that the Polish government's actions are having on the values referred to in Article 2 TEU;
4. Notes that the Commission's reasoned proposal of 20 December 2017 in accordance with Article 7(1) of the TEU regarding the rule of law in Poland: proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law¹ has a limited scope, namely the rule of law situation in Poland in the strict sense of independence of the judiciary; sees an urgent need to widen the scope of the reasoned proposal by including clear risks of serious breaches of other basic values of the Union, especially democracy and respect for human rights;
5. Takes the view that the latest developments in the ongoing hearings under Article 7(1) TEU once again underline the imminent need for a complementary and preventive Union mechanism on democracy, the rule of law and fundamental rights as put forward in its resolution of 25 October 2016;
6. Reiterates its position on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, including the need to safeguard the rights of beneficiaries, and calls on the Council to start interinstitutional negotiations as soon as possible;
7. Reiterates its position as regards the budget envelope for the new Citizens, Equality, Rights and Values Programme within the next multiannual financial framework, and calls on the Council and the Commission to ensure that adequate funding is provided for national and local civil society organisations to grow grassroots support for democracy, rule of law and fundamental rights in the Member States, including Poland;

Functioning of the legislative and electoral system in Poland

Use of powers of constitutional revision by the Polish parliament

¹ COM(2017)0835.

8. Denounces the fact that the Polish parliament assumed powers of constitutional revision which it did not have when it acted as the ordinary legislature in adopting the Act of 22 December 2015 amending the Act on the Constitutional Tribunal¹ and the Act of 22 July 2016 on the Constitutional Tribunal², as found by the Constitutional Tribunal in its judgments of 9 March³, 11 August⁴ and 7 November 2016⁵;
9. Regrets, furthermore, that many particularly sensitive legislative acts have been adopted by the Polish parliament at a time when independent constitutional review of laws can no longer be effectively guaranteed, such as the Act of 30 December 2015 amending the Act on Civil Service and certain other acts⁷, the Act of 15 January 2016 amending the Act on the police and certain other acts⁸, the Act of 28 January 2016 on the public prosecution office⁹ and the Act of 28 January 2016 - regulations implementing the Act on the public prosecution office¹⁰, the Act of 18 March 2016 amending the Act on the Ombudsman and certain other acts¹¹, the Act of 22 June 2016 on the National Media Council¹², the Act of 10 June 2016 on anti-terrorist actions¹³ and several other acts fundamentally reorganising the judicial system¹⁴;

The use of expedited legislative procedures

10. Deplores the frequent use of expedited legislative procedures by the Polish parliament for the adoption of crucial legislation redesigning the organisation and functioning of the judiciary, without meaningful consultation with stakeholders, including the judicial community¹⁵;

Electoral law and organisation of elections

¹ Ustawa z dnia 22 grudnia 2015 r. o zmianie ustawy o Trybunale Konstytucyjnym (Dz.U. 2015 poz. 2217).

² Ustawa z dnia 22 lipca 2016 r. o Trybunale Konstytucyjnym (Dz.U. 2016 poz. 1157).

³ Judgement of the Constitutional Tribunal of 9 March 2016, K 47/15.

⁴ Judgement of the Constitutional Tribunal of 11 August 2016, K 39/16.

⁵ Judgement of the Constitutional Tribunal of 7 November 2016, K 44/16.

⁶ See Venice Commission Opinion of 14 October 2016 on the Law of 22 July 2016 on the Constitutional Tribunal, Opinion no. 860/2016, para. 127; Commission Reasoned Proposal of 20 December 2017, paras 91 and following.

⁷ Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw (Dz.U. 2016 poz. 34).

⁸ Ustawa z dnia 15 stycznia 2016 r. o zmianie ustawy o Policji oraz niektórych innych ustaw (Dz.U. 2016 poz. 147).

⁹ Ustawa z dnia 28 stycznia 2016 r. Prawo o prokuraturze (Dz.U. 2016 poz. 177).

¹⁰ Ustawa z dnia 28 stycznia 2016 r. Przepisy wprowadzające ustawę - Prawo o prokuraturze (Dz.U. 2016 poz. 178).

¹¹ Ustawa z dnia 18 marca 2016 r. o zmianie ustawy o Rzeczniku Praw Obywatelskich oraz niektórych innych ustaw (Dz.U. 2016 poz. 677).

¹² Ustawa z dnia 22 czerwca 2016 r. o Radzie Mediów Narodowych (Dz.U. 2016 poz. 929).

¹³ Ustawa z dnia 10 czerwca 2016 r. o działaniach antyterrorystycznych (Dz.U. 2016 poz. 904).

¹⁴ See Commission Reasoned Proposal of 20 December 2017, paras 112-113.

¹⁵ ENCJ, Warsaw Declaration of 3 June 2016.

11. Notes with concern that the OSCE concluded that media bias and intolerant rhetoric in the campaign for the October 2019 parliamentary elections were of significant concern¹ and that, while all candidates were able to campaign freely, senior state officials used publicly funded events for campaign messaging; notes, furthermore, that the dominance of the ruling party in public media further amplified its advantage² ; regrets that hostility, threats against the media, intolerant rhetoric and cases of misuse of state resources detracted from the process of the Polish presidential election in June and July 2020³ ;
12. Is concerned that the new Chamber of Extraordinary Control and Public Matters of the Supreme Court (hereinafter the 'Extraordinary Chamber'), the majority of whose members are individuals nominated by the new National Council of the Judiciary and which risks not qualifying as an independent tribunal in the assessment of the Court of Justice of the European Union (hereinafter the 'Court of Justice'), is to ascertain the validity of elections and to examine electoral disputes; notes that this raises serious concerns as regards the separation of powers and the functioning of Polish democracy, in that it makes judicial review of electoral disputes particularly vulnerable to political influence and is capable of creating legal uncertainty as to the validity of such review⁴ ;
13. Notes that, in its 2002 Code of Good Practice in Electoral Matters⁵ , the Venice Commission provides clear guidelines on the holding of general elections during public emergencies, including epidemics; notes that, while the Code provides for the possibility of exceptional voting arrangements, any amendments to introduce such arrangements may only be considered to be in accordance with European best practices 'if the principle of free suffrage is guaranteed'; considers that this is not the case with the amendments to the electoral framework for the presidential elections that were to take place on 10 May 2020, since they could impede the elections from taking a fair, secret and equal course, with full respect for the right to privacy⁶ and in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁷ ; notes moreover that those amendments run counter to the case law of the Polish Constitutional Tribunal that was developed when

¹ OSCE/ODIHR, Statement of Preliminary Findings and Conclusions after its Limited Election Observation Mission, 14 October 2019.

² OSCE/ODIHR, Limited Election Observation Mission Final Report on the parliamentary elections of 13 October 2019, Warsaw, 14 February 2020.

³ OSCE/ODIHR, Special Election Assessment Mission, Statement of preliminary findings and conclusions on the second round of presidential elections of 12 July 2020, Warsaw, 13 July 2020.

⁴ Venice Commission, Opinion of 8-9 December 2017, CDL-AD(2017)031, para. 43; Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520 (OJ L 17, 23.1.2018, p. 50), para. 25.

⁵ Venice Commission, CDL-AD (2002) 23, Opinion no. 190/2002, Code of good practice in electoral matters. Guidelines and explanatory report, 30 October 2002; See, as well, Venice Commission, CDL-PI(2020)005rev-e, Report on Respect for Democracy Human Rights and Rule of Law during States of Emergency - Reflections, p. 23.

⁶ See, as well, OSCE/ODIHR, Opinion on the draft act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Senate Paper No. 99), 27 April 2020.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

constitutional review was still effective, and which stated that the electoral code is not to be modified 6 months before any elections; notes with concern that the announcement to postpone the presidential elections came only 4 days before the scheduled date;

Independence of the judiciary and of other institutions and the rights of judges in Poland

Reform of the justice system – general considerations

14. Recognises that, while the organisation of the justice system is a national competence, the Court of Justice has repeatedly held that Member States are required to comply with their obligations under Union law when exercising that competence; reiterates that national judges are also European judges, applying Union law, which makes their independence a common concern for the Union, including the Court of Justice, which has to enforce respect for the rule of law as laid down in Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the ‘Charter’) in the field of application of Union law; calls on the Polish authorities to uphold and maintain the independence of Polish courts;

The composition and functioning of the Constitutional Tribunal

15. Recalls that the Acts concerning the Constitutional Tribunal adopted on 22 December 2015 and 22 July 2016, as well as the package of three acts adopted at the end of 2016¹, seriously undermined the Constitutional Tribunal’s independence and legitimacy and that the Acts of 22 December 2015 and of 22 July 2016 were declared unconstitutional by the Constitutional Tribunal on 9 March 2016 and 11 August 2016, respectively; recalls that those judgments were not published at the time or implemented by the Polish authorities; seriously deplores the fact that the constitutionality of Polish laws can no longer be effectively guaranteed in Poland since the entry into force of the aforementioned legislative changes²; invites the Commission to consider launching an infringement procedure in relation to the legislation on the Constitutional Tribunal, its unlawful composition and its role in preventing compliance with the preliminary ruling of the Court of Justice of 19 November 2019³;

The retirement, appointment and disciplinary regimes for judges of the Supreme Court

16. Recalls that, in 2017, changes in the method of nomination of candidates for the office of the First President of the Supreme Court (hereinafter the ‘First President’) effectively rendered the participation of the Supreme Court judges in the selection procedure meaningless; denounces the fact that the Act of 20 December 2019 amending the Act on the organisation of the common courts, the Act on the Supreme Court and certain other

¹ Ustawa z dnia 30 listopada 2016 r. o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym (Dz.U. 2016 poz. 2072); ustawa z dnia 30 listopada 2016 r. o statusie sędziów Trybunału Konstytucyjnego (Dz.U. 2016 poz. 2073); Ustawa z dnia 13 grudnia 2016 r. - Przepisy wprowadzające ustawę o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym oraz ustawę o statusie sędziów Trybunału Konstytucyjnego (Dz.U. 2016 poz. 2074).

² Venice Commission Opinion of 14-15 October 2016, para. 128; UN, Human Rights Committee, Concluding observations on the seventh periodic report of Poland, 31 October 2016, paras 7-8; Commission Recommendation (EU) 2017/1520.

³ Judgment of the Court of Justice 19 November 2019, A.K. and Others v Sąd Najwyższy, C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982.

acts¹ (the ‘Act of 20 December 2019’) even further reduces the participation of the judges in the selection process for the First President by introducing a position of Acting First President of the Supreme Court (hereinafter the ‘Acting First President’) appointed by the President of the Republic of Poland and by reducing the quorum in the third round to 32 out of 125 judges only, thereby effectively abandoning the model of power-sharing between the President of the Republic of Poland and the judicial community enshrined in Article 183(3) of the Polish Constitution²;

17. Notes with concern the irregularities surrounding the nomination of the Acting First President and his further actions; is deeply concerned that the process of electing the candidates for the office of First President did not comply with Article 183 of the Polish Constitution or the Rules of Procedure of the Supreme Court and violated basic standards of deliberation among the members of the General Assembly of the Judges of the Supreme Court (hereinafter the ‘General Assembly’); notes with regret that doubts concerning the validity of the election process in the General Assembly as well as the impartiality and independence of the Acting First Presidents during the election process could undermine further the separation of powers and the legitimacy of the new First President nominated by the President of the Republic of Poland on 25 May 2020, and could thus call into question the independence of the Supreme Court; recalls that similar violations of law by the President of the Republic of Poland occurred when nominating the President of the Constitutional Tribunal;
18. Shares the Commission’s concern that the power of the President of the Republic of Poland (and in some cases the Minister of Justice) to exercise influence over disciplinary proceedings against Supreme Court judges by appointing a disciplinary officer who will investigate the case, excluding the disciplinary officer of the Supreme Court from on-going proceedings, raises concerns as regards the principle of separation of powers and may affect judicial independence³;
19. Recalls that the Court of Justice, in its judgment of 24 June 2019⁴, found that lowering the retirement age of sitting judges of the Supreme Court is contrary to Union law and breaches the principle of the irremovability of judges and thus that of judicial independence, after it had earlier granted the Commission’s request for interim measures on the matter by order of 17 December 2018⁵; notes that the Polish authorities passed the Act of 21 November 2018 amending the Act on the Supreme Court⁶ in order to comply with the order of the Court of Justice, the only instance so far in which they undid changes

¹ Ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Dz.U. 2020 poz. 190).

² Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, CDL-PI(2020)002, paras 51-55.

³ See Commission Reasoned Proposal of 20 December 2017, COM(2017)0835, para. 133. See also OSCE-ODIHR, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017), 13 November 2017, p. 33.

⁴ Judgment of the Court of Justice of 24 June 2019, Commission v Poland, C-619/18, ECLI:EU:C:2019:531.

⁵ Order of the Court of Justice of 17 December 2018, Commission v Poland, C-619/18 R, ECLI:EU:C:2018:1021.

⁶ Ustawa z dnia 21 listopada 2018 r. o zmianie ustawy o Sądzie Najwyższym (Dz.U. 2018 poz. 2507).

to the legislative framework governing the justice system in connection with a decision by the Court of Justice;

The composition and functioning of the Disciplinary Chamber and Extraordinary Chamber of the Supreme Court

20. Recalls that, in 2018, two new chambers within the Supreme Court were created, namely the Disciplinary Chamber and the Extraordinary Chamber, which were staffed with newly appointed judges selected by the new National Council of the Judiciary and entrusted with special powers – including the power of the Extraordinary Chamber to quash final judgments taken by lower courts or by the Supreme Court itself by way of extraordinary review, and the power of the Disciplinary Chamber to discipline other judges of the Supreme Court and of common courts, creating de facto a “Supreme Court within the Supreme Court”;¹
21. Recalls that, in its ruling of 19 November 2019², the Court of Justice, answering a request for a preliminary ruling by the Supreme Court (Chamber of Labour Law and Social Insurance, hereinafter the ‘Labour Chamber’) concerning the Disciplinary Chamber, ruled that national courts have a duty to disregard provisions of national law which reserve jurisdiction to hear a case where Union law may be applied to a body that does not meet the requirements of independence and impartiality;
22. Notes that the referring Supreme Court (Labour Chamber) subsequently concluded in its judgment of 5 December 2019³ that the Disciplinary Chamber does not fulfil the requirements of an independent and impartial tribunal within the meaning of Polish and Union law, and that the Supreme Court (Civil, Criminal and Labour Chambers) adopted a resolution on 23 January 2020⁴ reiterating that the Disciplinary Chamber is not a court due to its lack of independence and therefore its judgments cannot be considered to be judgments given by a duly appointed court; notes with grave concern that the Polish authorities have declared that those decisions are of no legal significance when it comes to the continuing functioning of the Disciplinary Chamber and the new National Council of the Judiciary, and that the Constitutional Tribunal declared the Supreme Court resolution unconstitutional on 20 April 2020⁵, creating a dangerous judiciary duality in Poland in open violation of the primacy of Union law and in particular of Article 19(1) TEU as

¹ OSCE-ODIHR, Opinion of 13 November 2017, p. 7-20; Venice Commission, Opinion of 8-9 December 2017, para. 43; Commission Recommendation (EU) 2018/103, para. 25; GRECO, Addendum to the Fourth Round Evaluation Report on Poland (Rule 34) of 18-22 June 2018, para. 31; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 8.

² Judgment of the Court of Justice 19 November 2019, A.K. and Others v Sąd Najwyższy, C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982.

³ Judgment of the Supreme Court of 5 December 2019, III PO 7/19.

⁴ Resolution of the Joint Civil, Criminal and Labour Chambers of the Supreme Court of 23 January 2020, BSA I-4110-1/2020.

⁵ Judgment of the Constitutional Tribunal of 20 April 2020, U 2/20.

interpreted by the Court of Justice in that it prevents the effectiveness and application of the Court of Justice's ruling of 19 November 2019¹ by the Polish courts²;

23. Notes the order of the Court of Justice of 8 April 2020³ instructing Poland to immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber and calls on the Polish authorities to swiftly implement the order; calls on the Polish authorities to fully comply with the order and calls on the Commission to submit an additional request to the Court of Justice seeking that payment of a fine be ordered in the event of persisting non-compliance; calls on the Commission to urgently start infringement proceedings in relation to the national provisions on the powers of the Extraordinary Chamber, since its composition suffers from the same flaws as the Disciplinary Chamber;

The composition and functioning of the new National Council of the Judiciary

24. Recalls that it is up to the Member States to establish a council for the judiciary, but that, where such council is established, its independence must be guaranteed in line with European standards and the Member State's constitution; recalls that, following the reform of the National Council of the Judiciary, which is the body responsible for safeguarding the independence of the courts and judges in accordance with Article 186(1) of the Polish Constitution, by means of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts⁴, the judicial community in Poland was deprived of the power to delegate representatives to the National Council of the Judiciary, and hence its influence on recruitment and promotion of judges; recalls that before the reform, 15 out of 25 members of the National Council of the Judiciary were judges elected by their peers, while since the 2017 reform, those judges are elected by the Polish parliament; strongly regrets that, taken in conjunction with the premature termination in early 2018 of the mandates of all the members appointed under the old rules, this measure led to a far-reaching politicisation of the National Council of the Judiciary⁵;
25. Recalls that the Supreme Court, implementing the criteria set out by the Court of Justice in its judgment of 19 November 2019, found in its judgment of 5 December 2019 and in its decisions of 15 January 2020⁶, as well as in its resolution of 23 January 2020, that the decisive role of the new National Council of the Judiciary in the selection of the judges of

¹ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 38.

² Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 38.

³ Order of the Court of Justice of 8 April 2020, *Commission v Poland*, C-791/19 R, ECLI:EU:C:2020:277.

⁴ Ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Dz.U. 2018 poz. 3).

⁵ Consultative Council of European Judges, Opinions of the Bureau of 7 April 2017 and 12 October 2017; OSCE/ODIHR, Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary, 5 May 2017; Venice Commission, Opinion of 8-9 December 2017, p. 5-7; GRECO, Ad hoc Report on Poland (Rule 34) of 19-23 March 2018 and Addendum of 18-22 June 2018; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 42 and 61.

⁶ Decision of the Supreme Court of 15 January 2020, III PO 8/18. Decision of the Supreme Court of 15 January 2020, III PO 9/18.

the newly created Disciplinary Chamber undermines the latter's independence and impartiality¹; is concerned about the legal status of the judges appointed or promoted by the new National Council of the Judiciary in its current composition and about the impact their participation in adjudicating may have on the validity and legality of proceedings;

26. Recalls that the European Network of Councils for the Judiciary suspended the new National Council of the Judiciary on 17 September 2018 because it no longer fulfilled the requirements of being independent of the executive and legislature and initiated the expulsion procedure in April 2020²;
27. Calls on the Commission to start infringement proceedings regarding the Act of 12 May 2011 on the National Council of the Judiciary³, as amended on 8 December 2017, and to ask the Court of Justice to suspend the activities of the new National Council of the Judiciary by way of interim measures;

The rules governing the organisation of the common courts and the appointment of courts presidents and the retirement regime for judges of the common courts

28. Regrets that the Minister of Justice, who is, in the Polish system, also the Prosecutor General, obtained the power to appoint and dismiss court presidents of the lower courts at his discretion during a transitional period of 6 months, and that in the 2017-2018 period, the Minister of Justice replaced over 150 court presidents and vice-presidents; notes that, after this period, the removal of court presidents remained in the hands of the Minister of Justice, with virtually no effective checks attached to that power; notes, furthermore, that the Minister of Justice also obtained other "disciplinary" powers vis-à-vis court presidents, and presidents of higher courts, who in turn, now have large administrative powers vis-à-vis presidents of lower courts⁴; regrets this major setback for the rule of law and judicial independence in Poland⁵;
29. Regrets that the Act of 20 December 2019 that entered into force on 14 February 2020 changed the composition of the assemblies of judges and moved some of the powers of those bodies of judicial self-government to the colleges of courts presidents appointed by the Minister of Justice⁶;

¹ On this subject, see, as well, the following cases pending before the European Court of Human Rights: *Reczkowicz and two Others v. Poland* (application nos. 43447/19, 49868/19 and 57511/19), *Grzęda v. Poland* (no. 43572/18), *Xero Flor w Polsce sp. z o.o. v. Poland* (no.4907/18), *Broda v. Poland* and *Bojara v. Poland* (nos. 26691/18 and 27367/18), *Żurek v. Poland* (no. 39650/18) and *Sobczyńska and Others v. Poland* (nos. 62765/14, 62769/14, 62772/14 and 11708/18).

² ENCJ, Letter of 21 February 2020 by the ENCJ Executive Board. See as well the letter of 4 May 2020 by the European Association of Judges in support of the ENCJ.

³ Ustawa z dnia 12 maja 2011 r. o Krajowej Radzie Sądownictwa (Dz.U. 2011 nr 126 poz. 714).

⁴ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 45.

⁵ See also Council of Europe, Bureau of the Consultative Council of European Judges (CCJE-BU), CCJE-BU(2018)6REV, 18 June 2018.

⁶ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 46 to 50.

30. Recalls that, in its judgement of 5 November 2019¹, the Court of Justice found that the provisions of the Act of 12 July 2017 amending the Act on the organisation of the common courts and certain other acts², which lowered the retirement age of judges of the common courts, whilst allowing the Minister of Justice to decide on the prolongation of their active service, and which set a different retirement age depending on their gender, were contrary to Union law;

The rights and independence of judges, including the new disciplinary regime for judges

31. Denounces the new provisions introducing further disciplinary offences and sanctions in respect of judges and court presidents because they pose a serious risk to judicial independence³; denounces the new provisions prohibiting any political activity of judges, obliging judges to disclose publicly their membership in associations and restricting substantively the deliberations of judicial self-governing bodies, which go beyond the principles of legal certainty, necessity and proportionality in restricting the judges' freedom of expression⁴ ;
32. Is deeply concerned by the disciplinary proceedings initiated against judges and prosecutors in Poland in connection with their judicial decisions applying Union law or public statements in defence of judicial independence and the rule of law in Poland; in particular, condemns the threat of disciplinary proceedings⁵ against more than 10 % of the judges for signing a letter to the OSCE regarding proper conduct of presidential elections and for providing support for repressed judges; condemns the smear campaign against Polish judges and the involvement of public officials therein; calls on the Polish authorities to refrain from the abusive use of disciplinary proceedings and from other activities undermining the authority of the judiciary;
33. Calls on the Polish authorities to remove the new provisions (on disciplinary offences and other) that prevent the courts from examining questions of independence and impartiality of other judges from the standpoint of Union law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), hence depriving judges from exercising their duty under Union law to set aside national provisions conflicting with Union law⁶;
34. Welcomes the Commission's initiation of infringement proceedings in relation to the aforementioned new provisions; regrets there has been no progress since 29 April 2020; calls on the Commission to deal with the case as a matter of priority and to request the

¹ Judgment of the Court of Justice of 5 November 2019, *Commission v Poland*, C-192/18, ECLI:EU:C:2019:924.

² Ustawa z dnia 12 lipca 2017 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (Dz.U. 2017 poz. 1452).

³ OSCE/ODIHR, Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019), 14 January 2020, p. 23-26; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 44-45.

⁴ OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 18-21; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 24-30;

⁵ Communication by the Deputy Disciplinary Prosecutor of Judges of Common Courts, July 2020, <http://rzecznik.gov.pl/wp-content/uploads/2020/07/KomunikatFWS.pdf>.

⁶ OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 13-17; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 31-43.

Court of Justice to use the expedited procedure and to grant interim measures, when it comes to a referral of the case to the Court of Justice;

The status of the Prosecutor General and the organisation of the prosecution services

35. Denounces the merger of the office of the Minister of Justice and that of the Prosecutor General, the increased powers of the Prosecutor General vis-à-vis the prosecution system, the increased powers of the Minister of Justice in respect of the judiciary (Act of 27 July 2001 on the organisation of common courts¹, as amended) and the weak position of checks on those powers (National Council of Public Prosecutors), which result in the accumulation of too many powers for one person and have direct negative consequences for the independence of the prosecutorial system from the political sphere, as stated by the Venice Commission²;
36. Recalls that, in its judgement of 5 November 2019, the Court of Justice found that lowering the retirement age of public prosecutors was contrary to Union law because it established a different retirement age for male and female public prosecutors in Poland;

Overall assessment of the rule of law situation in Poland

37. Concurs with the Commission, the Parliamentary Assembly of the Council of Europe and the Group of States against Corruption and the United Nations Special Rapporteur on the Independence of Judges and Lawyers that the aforementioned separate changes to the legislative framework governing the judicial system, considering their interaction and overall impact, amount to a serious, sustained and systemic breach of the rule of law, enabling the legislative and executive powers to interfere throughout the entire structure and output of the justice system in a manner which is incompatible with the principles of separation of powers and the rule of law, thereby significantly weakening the independence of the judiciary in Poland³; condemns the destabilising impact on the Polish legal order of the measures taken and appointments made by the Polish authorities since 2016;

Protection of fundamental rights in Poland

The Polish Commissioner for Human Rights

¹ Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych (Dz.U. 2001 nr 98 poz. 1070).

² Venice Commission Opinion of 8-9 December 2017 on the Act on the Public Prosecutor's office, as amended, CDL-AD(2017)028, para. 115.

³ Commission Recommendation (EU) 2018/103; United Nations, Special Rapporteur on the independence of judges and lawyers, Statement of 25 June 2018; European Commission, 2019 European semester: Country report Poland, 27 February 2019, SWD(2019) 1020 final, p. 42; the Presidents of the European Network of Councils for the Judiciary, the Network of Presidents of the Supreme Courts of the EU and the European Judges Association, letter of 20 September 2019; GRECO, Follow-up to the Addendum to the Fourth Round Evaluation Report (rule 34) – Poland, 6 December 2019, para. 65; PACE, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 4.

38. Is concerned about political attacks on the independence of the Office of the Commissioner for Human Rights¹; highlights the fact that the Commissioner for Human Rights has been publicly critical, within his area of responsibility, of various measures taken by the current government; recalls the fact that the statute of the Commissioner for Human Rights is enshrined in the Polish Constitution and that the term of office of the current Commissioner for Human Rights is due to end in September 2020; recalls that, according to the Polish Constitution, the Commissioner should be elected by the Sejm with the consent of the Senate;

The right to a fair trial

39. Is concerned about reports alleging undue delays in court proceedings, difficulties in accessing legal assistance during arrest, and instances of insufficient respect for the confidentiality of communication between counsel and client²; calls on the Commission to closely monitor the situation regarding lawyers in Poland; recalls the right of all citizens to be advised, defended and represented by an independent lawyer in accordance with Articles 47 and 48 of the Charter;
40. Is concerned that, since the entry into force on 14 February 2020 of the Act of 20 December 2019, only the Extraordinary Chamber, whose independence and impartiality itself is in question, can decide whether a judge, tribunal or court is independent and impartial, hence depriving citizens of an important element of judicial review at all other instances³; recalls the fact that following the case law of the Court of Justice, the right to a fair trial obliges every court to check, on its own initiative, whether it fulfils the criteria of independence and impartiality⁴;

The right to information and freedom of expression, including media freedom and pluralism

41. Reiterates that media freedom and media pluralism are inseparable from democracy and the rule of law and that the right to inform and the right to be informed are part of the basic democratic values on which Union is founded; recalls that, in its resolution of 16 January 2020, Parliament called on the Council to address in the hearings under Article 7(1) TEU any new developments in the field of freedom of expression, including media freedom;
42. Recalls that, in its resolution of 14 September 2016, Parliament expressed its concern about previously adopted and newly suggested changes to Polish media law; repeats its call on the Commission to carry out an assessment of the legislation adopted as regards its

¹ See, as well, Council of Europe Commissioner for Human Rights, Letter addressed to the Prime Minister of Poland, 19 January 2018; Joint Statement in Support of the Polish Commissioner for Human Rights, signed by ENNHRI, Equinet, GANHRI, IOI, OHCHR Europe, June 2019.

² UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, para. 33.

³ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para 59.

⁴ Judgment of the Court of Justice of 26 March 2020, *Simpson v Council and HG v Commission*, Joined Cases C-542/18 RX-II and C-543/18 RX-II, ECLI:EU:C:2020:232, para 57.

compatibility with Union law, in particular with Article 11 of the Charter and Union law on public media;

43. Expresses its serious concerns about actions carried out in recent years by the Polish authorities in relation to the public broadcaster, including a re-shaping of the public broadcaster into a pro-government broadcaster, preventing public media and their governing bodies from expressing independent or dissenting voices and exercising control over broadcasting content¹; recalls the fact that Article 54 of the Polish Constitution guarantees freedom of expression and forbids censorship;
44. Is deeply concerned by the excessive use of defamation cases by some politicians against journalists, including by imposing criminal fines and suspending journalists from exercising their profession; fears that there will be a chilling effect on the profession and independence of journalists and media²; calls on the Polish authorities to guarantee access to appropriate legal remedies for journalists and their families who become the subject of lawsuits intended to silence or intimidate independent media; calls on the Polish authorities to fully implement the Council of Europe's Recommendation of 13 April 2016 on the protection of journalism and safety of journalists and other media actors³; regrets that so far the Commission has not come up with the anti-SLAPP (strategic lawsuit against public participation) legislation that would also protect Polish journalists and media from vexatious lawsuits;
45. Is concerned about reported cases of detention of journalists for doing their job when reporting on anti-lockdown protests during the COVID-19 epidemic⁴;

Academic freedom

46. Expresses concern over the use and threat of defamation litigation against academics; calls on the Polish authorities to respect freedom of speech and academic freedom, in line with international standards;⁵
47. Calls on the Polish parliament to repeal Chapter 6c of the Act of 18 December 1998 on the Institute of National Remembrance – Committee for the Prosecution of the Crimes against the Polish Nation⁶, which jeopardises freedom of speech and independent research by rendering it a civil offense that is actionable before civil courts to cause harm to the

¹ See, as well, the World Press Freedom Index, according to which Poland has fallen from 18th to 62nd place in the ranking since 2015.

² Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2020 Annual Report, March 2020, p. 42.

³ Council of Europe, Recommendation CM/Rec(2016)4 of 13 April 2016 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors.

⁴ International Press Institute (IPI) Tracker on Press Freedom Violations Linked to COVID-19 Coverage, <https://ipi.media/covid19-media-freedom-monitoring/>.

⁵ Council of Europe, the Organisation of American States et al., Declaration of the Global Forum on Academic Freedom, Institutional Autonomy, and the Future of Democracy, 21 June 2019.

⁶ Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu (Dz.U. 1998 nr 155 poz. 1016).

reputation of Poland and its people, such as by making any accusation of complicity of Poland or Poles in the Holocaust¹;

Freedom of assembly

48. Reiterates its call on the Polish government to respect the right of freedom of assembly by removing from the current Act of 24 July 2015 on public assemblies², as amended on 13 December 2016³, the provisions prioritising government-approved ‘cyclical’ assemblies⁴ ; urges the Polish 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; urges the Polish authorities moreover to adequately protect peaceful assemblies and bring to justice those who violently attack people participating in peaceful assemblies;
49. Is concerned about the very restrictive ban on public assemblies⁵ which was in force during the COVID-19 pandemic without the introduction of a state of natural disaster as laid down in Article 232 of the Polish Constitution and insists on the need to apply the principle of proportionality when restricting the right to assembly;

Freedom of association

50. Calls on the Polish authorities to modify the Act of 15 September 2017 on the National Institute for Freedom - Centre for the Development of Civil Society^{6,7} in order to ensure access to state funding for critical civil society groups at local, regional and national levels, and a fair, impartial and transparent distribution of public funds to civil society, ensuring pluralistic representation⁸; reiterates its call for adequate funding to be made available for the organisations concerned through different funding instruments at Union level, such as the Union values strand of the new Citizens, Equality, Rights and Values Programme and Union pilot projects; is deeply concerned that Polish Members of the European Economic and Social Committee are facing political pressure for the actions taken in the remit of their mandate⁹;

¹ See as well the Statement of 28 June 2018 by the OSCE Representative on Freedom of the Media.

² Ustawa z dnia 24 lipca 2015 r. - Prawo o zgromadzeniach (Dz.U. 2015 poz. 1485).

³ Ustawa z dnia 13 grudnia 2016 r. o zmianie ustawy - Prawo o zgromadzeniach (Dz.U. 2017 poz. 579).

⁴ See as well the Communication of 23 April 2018 by UN Experts to urge Poland to ensure free and full participation at climate talks.

⁵ Polish Commissioner for Human Rights, letter to the Ministry of the Interior and Administration, 6 May 2020.

⁶ Ustawa z dnia 15 września 2017 r. o Narodowym Instytucie Wolności - Centrum Rozwoju Społeczeństwa Obywatelskiego (Dz.U. 2017 poz. 1909).

⁷ OSCE/ODIHR, Opinion on the Draft Act of Poland on the National Freedom Institute - Centre for the Development of Civil Society, Warsaw, 22 August 2017.

⁸ EESC, Report on Fundamental rights and the rule of law: national developments from a civil society perspective 2018-2019, June 2020, p. 41-42.

⁹ EESC, Press Statement “Alarming pressure on civil society: Polish EESC member becomes a target of government retaliation and NGOs no longer able to choose their own candidates”, 23 June 2020.

51. Is concerned about the press statement by the Minister of Justice and the Minister of Environment in relation to certain non-governmental organisations, aimed to stigmatise them as working in the interests of foreign actors; is seriously concerned about the planned project for a draft law on creating a public register on financing non-governmental organisations obliging them to declare any foreign sources of financing¹ ;

Privacy and data protection

52. Reiterates its conclusion set out in its resolution of 14 September 2016 that the procedural safeguards and material conditions laid down in the Act of 10 June 2016 on anti-terrorist actions and the Act of 6 April 1990 on the police² , as amended, for the implementation of secret surveillance are not sufficient to prevent its excessive use or unjustified interference with the privacy and data protection of individuals, including of opposition and civil society leaders³ ; repeats its call on the Commission to carry out an assessment of that legislation as regards its compatibility with Union Law, and urges Polish authorities to fully respect the privacy of all citizens;
53. Is deeply concerned about the fact that the Ministry of Digital Affairs of Poland transferred personal data from the Universal Electronic System for Registration of the Population (hereinafter the ‘PESEL register’) to the postal services operator on 22 April 2020, in order to facilitate the organisation of the presidential elections on 10 May 2020 via postal ballot, without a proper legal basis to do so, as the Polish parliament did not adopt a bill allowing for an all-postal election until 7 May 2020; notes, furthermore, that the PESEL register is not identical to the electoral register and also includes the personal data of citizens of other Member States, and that, therefore, the above-mentioned transfer could constitute a potential breach of Regulation (EU) 2016/679; recalls that the European Data Protection Board stated that public authorities may disclose information on individuals included in electoral lists, but only when this is specifically authorised by national law⁴; notes that the Polish Commissioner for Human Rights filed a complaint with the Voivodeship Administrative Court in Warsaw on the basis of a possible breach of Articles 7 and 51 of the Polish Constitution by the Ministry of Digital Affairs of Poland;

Comprehensive sexuality education

54. Reiterates its deep concern expressed in its resolution of 14 November 2019, also shared by the Council of Europe Commissioner for Human Rights⁵, over the draft law amending Article 200b of the Polish Penal Code, as submitted to the Polish parliament by the ‘Stop Paedophilia’ initiative, for its extremely vague, broad and disproportionate provisions, which *de facto* seek to criminalise the dissemination of sexual education to minors and whose scope potentially threatens all persons, in particular parents, teachers and sex

¹ Press release by the Minister of Environment, in cooperation with the Minister of Justice, 7 August 2020, <https://www.gov.pl/web/srodowisko/nowe-prawo-wzmocni-przejrzystosc-finansowania-organizacji-pozarzadowych>.

² Ustawa z dnia 6 kwietnia 1990 r. o Policji (Dz.U. 1990 nr 30 poz. 179).

³ UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, paras 39-40. See as well Communication by UN Experts to urge Poland to ensure free and full participation at climate talks, 23 April 2018.

⁴ EDPB, letter on Polish presidential elections data disclosure, 5 May 2020.

⁵ Council of Europe Commissioner for Human Rights, Statement of 14 April 2020.

educators, with up to three years in prison for teaching about human sexuality, health and intimate relations;

55. Stresses that age-appropriate and evidence-based comprehensive sexuality and relationship education is key to building young peoples' skills to form healthy, equal, nurturing and safe relationships, free from discrimination, coercion and violence; believes that comprehensive sexuality education also has a positive impact on gender equality outcomes, including transforming harmful gender norms and attitudes towards gender-based violence, helping prevent intimate partner violence and sexual coercion, homophobia and transphobia, breaking the silence around sexual violence, sexual exploitation or abuse, and empowering young people to seek help; calls on the Polish parliament to refrain from adopting the proposed draft law amending Article 200b of the Polish Penal Code and strongly invites the Polish authorities to ensure access to scientifically accurate and comprehensive sexuality education for all school children in line with international standards and that those who provide such education and information are supported in so doing in a factual and objective manner;

Sexual and reproductive health and rights

56. Recalls that, in accordance with the Charter, the ECHR and the case law of the European Court of Human Rights, 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 health care, the right to privacy, the right to education and the prohibition of discrimination, as is also reflected in the Polish Constitution; recalls that Parliament strongly criticised, in its resolution of 15 November 2017, any legislative proposal that would prohibit abortion in cases of severe or fatal foetal impairment, thereby drastically limiting and coming close to banning in practice access to abortion care in Poland as most legal abortions are performed under that ground¹, and emphasised that universal access to healthcare, including sexual and reproductive healthcare and the associated rights, is a fundamental human right²; regrets the proposed amendments³ to the Act of 5 December 1996 on doctors' and dentists' professions⁴, under which doctors would no longer be legally obliged to indicate an alternative facility or practitioner in case of denial of sexual and reproductive health services due to personal beliefs; is concerned about the use of the conscience clause including the absence of reliable referral mechanisms and lack of timely appeals for women who are denied such services; calls on the Polish parliament to refrain from any further attempts to restrict women's sexual and

¹ In 2017, abortion due to fetal defects accounted for 97.9 percent all treatments: Center for Health Information Systems, reports of the Statistical Research Program of Public Statistics MZ-29, as published on the website of the Polish Sejm. Sprawozdanie Rady Ministrów z wykonywania oraz o skutkach stosowania w 2016 r. ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży (Dz. U. poz. 78, z późn. zm.).

² See as well the issue paper of the Council of Europe's Commissioner for Human Rights of December 2017 entitled 'Women's sexual and reproductive health and rights in Europe'; Statement of 22 March 2018 by UN Experts advising the UN Working Group on discrimination against women, and Statement of 14 April 2020 by the Council of Europe's Commissioner for Human Rights.

³ Ustawa z dnia 16 lipca 2020 r. o zmianie ustawy o zawodach lekarza i lekarza dentysty oraz niektórych innych ustaw (not yet published in the Official Journal).

⁴ Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty (Dz.U. 1997 nr 28 poz. 152).

reproductive health and rights; strongly affirms that the denial of sexual and reproductive health and rights services is a form of violence against women and girls; calls on the Polish authorities to take measures to implement fully the judgments handed down by the European Court of Human Rights in cases against Poland, which has ruled on several occasions that restrictive abortion laws and lack of implementation violates the human rights of women¹;

57. Recalls that previous attempts to further limit the right to abortion, which in Poland is already among the most restricted in the Union, were halted in 2016 and 2018 as a result of mass opposition from Polish citizens as expressed in the ‘Black Marches’; strongly invites the Polish authorities to consider repealing the law limiting women’s and girls’ access to the emergency contraceptive pill;

Hate speech, public discrimination, violence against women, domestic violence and intolerant behaviour against minorities and other vulnerable groups, including LGBTI persons

58. Urges the Polish authorities to take all necessary measures to firmly combat racist hate speech and incitement to violence, online and offline, and publicly condemn and distance itself from racist hate speech by public figures, including politicians and media officials², to address prejudices and negative sentiments towards national and ethnic minorities (including Roma), migrants, refugees and asylum seekers and to ensure effective enforcement of the laws outlawing parties or organisations that promote or incite racial discrimination³; calls on the Polish authorities to comply with the 2019 recommendations of the United Nations Committee on the Elimination of Racial Discrimination⁴;
59. Is deeply concerned by the recent decision⁵ by the Polish Minister of Justice to officially start Poland’s withdrawal from the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); encourages the Polish authorities to give practical and effective application to that Convention, including by ensuring application of the existing legislation across the country, as well as the provision of a sufficient number and quality of shelters for women who are victims of violence and their children; is afraid that this step could be a serious setback with regards to gender equality and women’s rights;

¹ Judgment of the European Court of Human Rights of 20 March 2007, *Tysi c v. Poland* (application no. 5410/03); Judgment of the European Court of Human Rights of 20 March 2007, *R. R. v. Poland* (application no. 27617/04); Judgment of the European Court of Human Rights of 30 October 2012, *P. and S. v. Poland* (application no. 57375/08).

² EP Resolution of 15 November 2017, para. 18; PACE, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 14; UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, CCPR/C/POL/CO/7, paras 15-18.

³ United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland, August 2019.

⁴ Ibid.

⁵ Ministry of Justice, Press release ‘Proposal for the denunciation of the Istanbul Convention’, 25 July 2020, <https://www.gov.pl/web/sprawiedliwosc/ministerstwo-sprawiedliwosci-konwencja-stambulska-powinna-zostac-wypowiedziana-poniewaz-jest-sprzeczna-z-prawami-konstytucyjnymi>.

60. Notes that the May 2020 LGBTI Survey II conducted by the European Union Agency for Fundamental Rights highlights an increase in intolerance and violence in Poland towards LGBTI persons or persons who are perceived to be LGBTI persons and complete disbelief in the government's combat against prejudice and intolerance by Polish LGBTI respondents, recording the lowest percentage across the Union (only 4 %), and the highest percentage of respondents avoiding going to certain places for fear of being assaulted, harassed or threatened (79 %);
61. Recalls, also in the context of the 2020 presidential campaign, its stance as expressed in its resolution of 18 December 2019, when it strongly denounced any discrimination against LGBTI people and the violation of their fundamental rights by public authorities, including hate speech by public authorities and elected officials, the banning of and inadequate protection against attacks on Pride marches and awareness-raising programmes, the declarations of zones in Poland free from so-called 'LGBT ideology' and the adoption of 'Regional Charters of Family Rights', discriminating in particular against single-parent and LGBTI families; notes the lack of any improvement in the situation of LGBTI persons in Poland since the adoption of that resolution and that mental health and physical safety of Polish LGBTI people are particularly at risk; recalls the condemnation of such actions by the Polish Commissioner for Human Rights, who filed nine complaints to administrative courts arguing that the LGBTI-free zones violate Union law, and by the Commission and international organisations; recalls that spending under cohesion funds must not discriminate on the basis of sexual orientation and that municipalities acting as employers must respect Council Directive 2000/78/EC¹, which prohibits discrimination and harassment on the ground of sexual orientation in employment²; in light of that, expresses its serious concerns about the fact that the Minister of Justice has granted financial support to the municipalities that were excluded from the European twinning programme due to the adoption of 'LGBT-free zone' declarations; furthermore, is deeply concerned that that financial support will be granted from the Ministry's Justice Fund, which was created to support victims of crimes; calls on the Commission to continue rejecting Union funding applications by authorities who have adopted such resolutions; calls on the Polish authorities to implement the relevant case law of the Court of Justice and the European Court of Human Rights and in that context to address the situation of same sex spouses and parents with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact³; condemns the law suits against the civil society

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

² European Commission, DG REGIO, letter to the authorities of the Polish regions of Lublin, Łódź, Lesser Poland, Podkarpackie and Świętokrzyskie, 27 May 2020. See, as well, Judgment of the Court of Justice of 23 April 2020, Associazione Avvocatura per i diritti LGBTI, C-507/18, ECLI:EU:C:2020:289.

³ Judgment of the Court of Justice of 5 June 2018, Coman, C-673/16, ECLI:EU:C:2018:385; Judgment of the European Court of Human Rights of 2 March 2010, Kozak v. Poland (application no. 13102/02); Judgment of the European Court of Human Rights of 22 January 2008, E.B. v. France (application no. 43546/02); Judgment of the European Court of Human Rights of 19 February 2013, X and Others v. Austria (application no. 19010/07); Judgment of the European Court of Human Rights of 30 June 2016, Taddeucci and McCall v. Italy (application no. 51362/09); Judgment of the European Court of Human Rights of 21 July 2015, Oliari and Others v. Italy (applications nos. 18766/11 and 36030/11); Judgment of the European Court of Human Rights of 14 December 2017, Orlandi and Others v. Italy (applications nos. 26431/12, 26742/12,

activists who published the so-called “Atlas of Hate” that documents cases of homophobia in Poland; strongly invites the Polish government to ensure the legal protection of LGBTI people against all forms of hate crime and hate speech;

62. Strongly deplores the “Polish Stonewall” mass arrest of 48 LGBTI activists on 7 August 2020, which sends a worrying signal regarding the freedom of speech and assembly in Poland; deplores the way in which detainees were treated, as reported by the National Preventive Mechanism for the Prevention of Torture¹; calls for an immediate condemnation by all European institutions of police violence against LGBTI persons in Poland;

63. Strongly deplores the Polish Episcopate’s official position² calling for “conversion therapy” for LGBTI persons; reiterates the position of the Parliament³ encouraging Member States to criminalise such practices and recalls the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which calls on Member States to adopt bans on practices of “conversion therapy”⁴;

64. Notes that the lack of independence of the judiciary in Poland has already begun affecting mutual trust between Poland and other Member States, especially in the field of judicial cooperation in criminal matters, given that national courts have refused or hesitated to surrender Polish suspects under the European Arrest Warrant procedure due to profound doubts about the independence of the Polish judiciary; considers the threat to the uniformity of the Union legal order posed by the deterioration of the rule of law in Poland to be particularly serious; points out that mutual trust between the Member States can be restored only once respect for the values enshrined in Article 2 TEU is ensured;

65. 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, the ECHR and international human rights standards, and to engage in an honest dialogue with the Commission; stresses that such dialogue needs to be conducted in an impartial, evidence-based and cooperative manner; calls on the Polish government to cooperate with the Commission pursuant to the principle of sincere cooperation as set out in the TEU; calls on the Polish government to swiftly and fully implement the rulings of the Court of Justice and to respect the primacy of Union law; urges the Polish government to take full account of the

44057/12 and 60088/12); Judgment of the European Court of Human Rights of 14 January 2020, *Beizaras and Levickas v. Lithuania* (application no. 41288/15).

¹ Polish Commissioner for Human Rights, Press release, ‘The National Preventive Mechanism for the Prevention of Torture (KMPT) visits police places of detention after overnight detentions in Warsaw’, 11 August 2020, <https://www.rpo.gov.pl/en/content/national-preventive-mechanism-prevention-torture-kmpt-visits-police-places-detention-after-overnight>.

² Position of the Polish Episcopate on LGBT + issues, August 2020, <https://episkopat.pl/wp-content/uploads/2020/08/Stanowisko-Konferencji-Episkopatu-Polski-w-kwestii-LGBT.pdf>.

³ Texts adopted, P8_TA(2019)0032.

⁴ UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Report on conversion therapy, May 2020, <https://undocs.org/A/HRC/44/53>.

recommendations of the Venice Commission in the organisation of the justice system, including when carrying out further reforms of the Supreme Court;

66. Calls on the Council and the Commission to refrain from narrowly interpreting the principle of the rule of law, and to use the procedure under Article 7(1) TEU to its full potential by addressing the implications of the Polish government's action for all the principles enshrined in Article 2 TEU, including democracy and fundamental rights as highlighted in this report;
67. Calls on the Council to resume the formal hearings - the last of which was held as long ago as December 2018 - as soon as possible and to include in those hearings all the latest and major negative developments in the areas of rule of law, democracy and fundamental rights; urges the Council to finally act under the Article 7(1) TEU procedure by finding that there is a clear risk of a serious breach by the Republic of Poland of the values referred to in Article 2 TEU, in the light of overwhelming evidence thereof as displayed in this resolution and in so many reports of international and European organisations, the case law of the Court of Justice and the European Court of Human Rights and reports by civil society organisations; strongly recommends that the Council address concrete recommendations to Poland, as provided for in Article 7(1) TEU, as a follow-up to the hearings, and that it indicate deadlines for the implementation of those recommendations; calls furthermore on the Council to commit to assessing the implementation of these recommendations in a timely manner; calls on the Council to keep Parliament regularly informed and closely involved and to work in a transparent manner, to allow for meaningful participation and oversight by all European institutions and bodies and by civil society organisations;
68. Calls on the Commission to make full use of the tools available to it, to address a clear risk of a serious breach by Poland of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice, as well as budgetary tools; calls on the Commission to continue to keep Parliament regularly informed and closely involved;

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69. Instructs its President to forward this resolution to the Council and the Commission and to the President, government and parliament of the Republic of Poland, the governments and parliaments of the Member States, the Council of Europe and the Organisation for Security and Cooperation in Europe.