



TEXTS ADOPTED

P9_TA(2021)0439

The Rule of law crisis in Poland and the primacy of EU law

European Parliament resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law (2021/2935(RSP))

The European Parliament,

- having regard to the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’),
- having regard to Articles 1, 2, 4 and 19 of the Treaty on European Union (TEU),
- having regard to Article 49 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the European Convention on Human Rights and the related case-law of the European Court of Human Rights,
- having regard to the Universal Declaration of Human Rights,
- having regard to the case-law of the Court of Justice of the European Union (CJEU),
- having regard to the Commission’s reasoned proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, issued in accordance with Article 7(1) TEU (COM(2017)0835),
- having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget¹ (‘the Rule of Law Conditionality Regulation’),
- having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility²,
- having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights³,

¹ OJ L 433 I, 22.12.2020, p. 1.

² OJ L 57, 18.2.2021, p. 17.

³ OJ C 395, 29.9.2021, p. 2.

- having regard to its resolution of 24 June 2021 on the Commission’s 2020 Rule of Law report¹,
 - having regard to its 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 law²,
 - having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget³,
 - having regard to its resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland⁴,
 - having regard to the Commission communication of 30 September 2020 entitled ‘2020 Rule of Law Report – The rule of law situation in the European Union’ (COM(2020)0580),
 - having regard to the Commission communication of 20 July 2021 entitled ‘2021 Rule of Law Report – The rule of law situation in the European Union’ (COM(2021)0700),
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas as enshrined in Article 2 TEU, 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;
 - B. whereas on 29 March 2021, the Prime Minister of Poland lodged an application to the widely contested and illegitimate ‘Constitutional Tribunal’ to consider whether the provisions of the TEU relating to primacy of EU law and effective judicial protection are consistent with the Polish Constitution⁵;
 - C. whereas by order of 14 July 2021, the CJEU granted interim measures requested by the Commission under Article 279 TFEU and related to the functioning of the Disciplinary Chamber of the Polish Supreme Court and the suspension of further provisions of Polish law affecting judicial independence⁶;
 - D. whereas on 14 July 2021 the illegitimate Polish ‘Constitutional Tribunal’ ruled that the CJEU’s interim orders on the structure of courts in Poland were inconsistent with the Polish Constitution⁷;

¹ Texts adopted, P9_TA(2021)0313.

² OJ C 385, 22.9.2021, p. 317.

³ Texts adopted, P9_TA(2021)0348.

⁴ Texts adopted, P9_TA(2021)0395.

⁵ Application in case K 3/21.

⁶ Order of the Court of Justice of 14 July 2021, Case C-204/21 R, *Commission v Poland*, EU:C:2021:593.

⁷ Judgment of the Constitutional Tribunal of 14 July 2021, case P 7/20.

- E. whereas on 15 July 2021 the CJEU ruled in its judgment in case C-791/19¹ that the disciplinary regime for judges in Poland was not compatible with EU law;
- F. whereas, on 6 October 2021, the CJEU ruled that transfers without consent of a judge from one court to another or between two divisions of the same court are liable to undermine the principles of the irremovability of judges and judicial independence²;
- G. whereas on 6 October 2021, the Vice-President of the CJEU rejected the request from Poland to cancel the order of the Vice-President of the CJEU of 14 July 2021 requiring the suspension of the application of national provisions relating in particular to the powers of the Disciplinary Chamber of the Supreme Court³ ;
- H. whereas, on 7 October 2021 the illegitimate ‘Constitutional Tribunal’ presented its decision in case K 3/21, adopted with two dissenting opinions, on the request initiated by the Polish Prime Minister on 29 March 2021, finding the provisions of the TEU incompatible with the Polish Constitution on multiple grounds;
- I. whereas on 10 October 2021, more than 100 000 Polish citizens demonstrated peacefully all over Poland in order to show their support for Poland’s membership of the EU;
- J. whereas on 22 October 2020, the illegitimate ‘Constitutional Tribunal’ was also used politically to attack women’s rights;
- K. whereas on 12 October 2021 the decision in case K 3/21 was published in the Poland’s official gazette⁴, thus giving it legal force in the Polish legal system;
- L. whereas the Association of European Administrative Judges has also expressed the view that the judgment of the illegitimate ‘Constitutional Tribunal’ clearly goes against the basic principle of primacy of EU law⁵;
- M. whereas in a Flash Eurobarometer survey of August 2021, the vast majority of respondents agreed that the EU should only provide funds to Member States on the condition that their governments uphold and implement the rule of law and democratic principles; whereas this figure was also very high in Poland (72 %) ⁶;
- N. whereas according to different polls conducted in Poland in September 2021 and October 2021, only 5 % of respondents said they would like Poland to leave the EU⁷, 90 % positively assessed Poland’s membership of the EU⁸, and 95 % also said they

¹ Judgment of the Court of Justice of 15 July 2021, Case C-791/19, *Commission v Poland*, EU:C:2021:596.

² Judgment of the Court of Justice of 6 October 2021, Case C-487/19, *W.Ż.*, EU:C:2021:798.

³ Order of the Court of Justice of 6 October 2021, Case C-204/21 R-RAP, *Commission v Poland*, EU:C:2021:834.

⁴ DZIENNIK USTAW 2021 R. POZ. 1852.

⁵ <https://twitter.com/AEAJ2000/status/1450008198375686145?t=AY2yz-vezln6Mlq6ZwSDJQ&s=19&fbclid=IwAR3JNygjzCo9QR1R6RghaCOeM8diOQuzRQR48eAtEwPcmOQC1x5QWkFNrY>

⁶ Flash Eurobarometer – State of the European Union, IPSOS, August 2021.

⁷ Ipsos for OKO.press and Gazeta Wyborcza, 23-25 September 2021. Figures given in %.

⁸ Kantar, 21 September 2021.

thought that EU support had a positive impact on the development of their city or region, which is higher than the EU average¹;

1. Deeply deplores the decision of the illegitimate ‘Constitutional Tribunal’ of 7 October 2021² as an attack on the European community of values and laws as a whole, undermining the primacy of EU law as one of its cornerstone principles in accordance with well-established case-law of the CJEU; expresses deep concern that this decision could set a dangerous precedent; underlines that the illegitimate ‘Constitutional Tribunal’ not only lacks legal validity and independence³, but is also unqualified to interpret the Constitution in Poland;
2. Stresses that under Article 47 of the Charter, the fundamental right to an effective remedy requires access to an independent tribunal; notes the increasing challenges posed by national constitutional courts and some politicians in this regard and calls on the Member States to respect the crucial role of the CJEU and to comply with its rulings;
3. Deplores the fact that the initiative to question the primacy of EU law over national legislation was taken by the current Polish Prime Minister, further misusing the judiciary as a tool to achieve his political agenda; deplores this initiative as a unilateral decision to call into question the legal framework of the EU and Poland’s adherence to it; recalls that the accession of the Republic of Poland to the EU took place by ratification of the Accession Treaty, with the consent of the Polish nation expressed in a referendum; recalls further that the Republic of Poland has voluntarily committed itself to be bound by the provisions of the founding Treaties and the case-law of the CJEU; condemns the use of the judicial system for political purposes and calls on the Polish authorities to stop arbitrarily making use of its executive and legislative powers to undermine the separation of powers and the rule of law;
4. Affirms that a judicial system has to be examined in its entirety to determine whether it serves the purpose of effective and independent judicial control, and strongly rejects the repeated attempts of the current PiS Government to try to justify the legislative changes in the field of the judiciary in Poland, especially on the basis of individual, isolated examples in different Member States;
5. Deplores the fact that ruling K 3/21 has a negative impact on Polish and European citizens and businesses, as their basic fundamental right to an independent justice system that fully applies the EU *acquis* and legislation can no longer be guaranteed; is concerned about the effective protection of the fundamental rights of Polish and European citizens in this context;
6. Commends the tens of thousands of Polish citizens who took to the streets in peaceful mass protests, fighting for their rights and freedoms as European citizens; shares their desire for a strong democratic Poland at the heart of the European project;
7. Underlines the illegitimacy of the ruling of 22 October 2020 (K 1/20) and recognises that these severe restrictions on women’s reproductive health and rights are unlawful;

¹ Eurobarometer survey of October 2021, <https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=77331>

² Ruling K 3/21.

³ European Court of Human Rights Case *Xero Flor w Polsce sp. z o.o. v Poland*.

8. Fears that ruling K 3/21 will have a strong chilling effect on Polish judges, discouraging them from using their prerogatives on the application of EU law; reiterates its full support for Polish judges who still apply the primacy of EU law and refer cases to the CJEU for preliminary ruling, including after the K 3/21 ruling, despite the risk to their careers, including disciplinary removal from adjudication, dismissal or forced resignation;
9. Recalls that the EU Treaties cannot be modified by ruling of a national court and that the Polish Constitution in its Article 91 recalls that a ratified international agreement constitutes part of the domestic legal order, that it must be applied directly and that its laws have precedence in the event of a conflict of law; is deeply concerned that the Polish ‘Constitutional Tribunal’ has been transformed from an effective guardian of the Constitution into a tool for legalising the illegal activities of the authorities; recalls that CJEU rulings do not undermine the rights of Member States to make organisational changes within the judiciary;
10. Welcomes the initiatives of some national parliaments to debate and take clear positions on the recent actions taken by Poland’s PiS Government and its attacks on the primacy of EU law;
11. Reiterates its view that no EU taxpayers’ money should be given to governments that flagrantly, purposefully and systematically undermine values enshrined in Article 2 TEU;
12. Calls for the Commission and the Council to take urgent and coordinated action by:
 - launching infringement procedures in relation to the legislation on the illegitimate ‘Constitutional Tribunal’, its unlawful composition and its role in preventing compliance with the judgments of the CJEU, and asking the CJEU to impose interim measures as well as launching infringement proceedings in relation to the Extraordinary Control and Public Affairs Chamber of the Supreme Court, the National Council of the Judiciary and the State Prosecution Services of Poland;
 - triggering the procedure provided for in Article 6(1) of the Rule of Law Conditionality Regulation for Poland, on the part of the Commission, while recalling that Article 5 of the regulation protects access to funding for final recipients and beneficiaries and directing the Commission to do its utmost to ensure that payments are made;
 - refraining from approving the draft recovery and resilience plan of Poland until the Government of Poland implements the judgments of the CJEU and international courts fully and properly, and ensuring that the assessment of the plan guarantees compliance with the relevant country-specific recommendations, in particular on safeguarding judicial independence;
 - adopting unambiguous recommendations, which does not require unanimity, to address breaches of the rule of law by Poland, with a clear timeline, and declaring that there is a clear risk of a serious breach of the rule of law by Poland, in accordance with the procedure laid down in Article 7(1) TEU, on the part of the Council, and expanding the scope of this procedure to cover fundamental rights and democracy;

- using their powers, including interrupting or suspending payments or making financial corrections where necessary, in accordance with the applicable Common Provisions Regulation, given the risk of serious deficiencies in the effective functioning of the control systems in Poland due to the lack of judicial independence that puts at risk the legality and regularity of expenditure;
 - discussing the rule of law crisis in Poland in the presence of the President of the European Parliament and taking a clear position, issuing a joint declaration in the strongest possible terms on the matter signed by the EU heads of state and government at their upcoming summit on 21-22 October 2021, and having an urgent follow-up at the next General Affairs Council;
13. Underlines that these requests are not meant to be punitive measures against the people of Poland, but means by which to restore the rule of law in Poland in the light of its continued deterioration; calls on the Commission to use all the tools at its disposal to establish ways to ensure that Polish citizens and residents of Poland are not deprived of the benefits of EU funds due to the actions of the current government, and to establish avenues for these funds to be administered directly by the Commission to their final beneficiaries;
 14. Takes note of the vote of its Committee on Legal Affairs of 14 October 2021 in support of an action brought before the CJEU against the Commission over its failure to act to trigger the EU's rule of law conditionality mechanism;
 15. Instructs its President to forward this resolution to the governments and parliaments of the Member States, the Council, the Commission, the Committee of the Regions and the Council of Europe.