European Parliament
2019-2024

Committee on Civil Liberties, Justice and Home Affairs

2021/2180(INI)

21.1.2022

DRAFT REPORT

on the Commission's 2021 Rule of Law Report
(2021/2180(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Commission's 2021 Rule of Law Report
(2021/2180(INI))

The European Parliament,

– having regard to the Treaty on European Union (TEU), and in particular Article 2, Article 3(1), Article 3(3), second subparagraph, Article 4(3) and Articles 5, 6, 7, 11 and 49 thereof,

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the articles thereof relating to respect for and the protection and promotion of democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263 and 265,

– having regard to the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter'),

– having regard to the case-law of the Court of Justice of the European Union (CJEU),

– having regard to the Commission communication of 20 July 2021 on the 2021 Rule of Law Report – the rule of law situation in the European Union (COM(2021)0700),

– 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 budget[1] (the Rule of Law Conditionality Regulation),

– having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014[2],

– having regard to the Universal Declaration of Human Rights,

– having regard to the UN instruments on the protection of human rights and fundamental freedoms and the recommendations and reports of the UN Universal Periodic Review, as well as the case-law of the UN treaty bodies and the special procedures of the Human Rights Council,

– having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Representative on Freedom of the Media and other bodies of the Organization for Security and Co-operation in Europe (OSCE),

– having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the case-law of the European

[1] OJ L 433 I, 22.12.2020, p. 1.
[2] OJ L 156, 5.5.2021, p. 1.

Court of Human Rights and the European Committee of Social Rights, and the conventions, recommendations, resolutions, opinions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner, the European Commission Against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Venice Commission and other bodies of the Council of Europe,

– having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007 and the Council conclusions of 8 July 2020 on EU priorities for cooperation with the Council of Europe 2020-2022,

– 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 the EU Agency for Fundamental Rights' report of 22 September 2021 entitled 'Protecting civic space in the EU', and its other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),

– 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 rights[3],

– 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 Poland[4],

– having regard to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level[5],

– having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded[6],

– having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights[7],

– having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary[8],

– having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights[9],

[3] OJ C 215, 19.6.2018, p. 162.
[4] OJ C 129, 5.4.2019, p. 13.
[5] OJ C 390, 18.11.2019, p. 117.
[6] OJ C 433, 23.12.2019, p. 66.
[7] OJ C 363, 28.10.2020, p. 45.
[8] Texts adopted, P9_TA(2020)0014.
[9] Texts adopted, P9_TA(2020)0251.

– having regard to its resolution of 24 June 2021 on the Commission's 2021 Rule of Law Report[10],

– 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 budget[11],

– having regard to its resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament[12],

– having regard to its resolution of 14 September 2021 on LGBTIQ rights in the EU[13],

– having regard to its resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland[14],

– having regard to its resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law[15],

– having regard to its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society[16],

– having regard to its resolution of 11 November 2021 on the first anniversary of the de facto abortion ban in Poland[17],

– having regard to its resolution of 15 December 2021 on the evaluation of preventive measures for avoiding corruption, irregular spending and misuse of EU and national funds in case of emergency funds and crisis-related spending areas[18],

– having regard to its resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors[19],

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the opinions of the Committee on Budgetary Control, the Committee on Legal Affairs, the Committee on Budgets, the Committee on Constitutional Affairs and the Committee on Petitions,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2022),

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[10] Texts adopted, P9_TA(2021)0313.
[11] Texts adopted, P9_TA(2021)0348.
[12] Texts adopted, P9_TA(2021)0362.
[13] Texts adopted, P9_TA(2021)0366.
[14] Texts adopted, P9_TA(2021)0395.
[15] Texts adopted, P9_TA(2021)0439.
[16] Texts adopted, P9_TA(2021)0451.
[17] Texts adopted, P9_TA(2021)0455.
[18] Texts adopted, P9_TA(2021)0502.
[19] Texts adopted, P9_TA(2021)0512.

A. whereas the Union is founded on the common values enshrined in Article 2 TEU 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 (Article 2 TEU values) – values that are common to the EU Member States and to which candidate countries must adhere in order to join the Union; whereas democracy, the rule of law and fundamental rights are mutually reinforcing values which, when undermined, may pose a systemic threat to the Union;

B. whereas the annual rule of law review cycle is a welcome addition to the tools available to preserve the Article 2 TEU values by addressing the situation in all EU Member States in a report based on four pillars with a direct bearing on respect for the rule of law;

C. whereas without effective follow-up, the rule of law report may fail to prevent, detect and effectively address systemic challenges and backsliding on the rule of law, as witnessed in several EU Member States in recent years;

D. whereas it is necessary to strengthen and streamline existing mechanisms and to develop an effective EU mechanism on democracy, the rule of law and fundamental rights to ensure that Article 2 TEU values are upheld throughout the Union;

1. Welcomes the Commission's second annual rule of law report; regrets the fact that the Commission did not address in full the recommendations made by Parliament in its resolution of 24 June 2021 on the Commission's 2020 Rule of Law Report; considers that these recommendations remain valid and reiterates them;

2. Welcomes the fact that the functioning of justice systems, the anti-corruption framework, media pluralism and certain institutional issues related to checks and balances, including civic space to a certain extent, are all part of the Commission's annual report; regrets, however, that not all rule of law issues were covered in sufficient detail in the 2021 report; calls for the inclusion in the annual report of other important elements of the Venice Commission's 2016 Rule of Law Checklist; believes that civic space deserves a separate subheading in the report;

3. Notes with satisfaction that the report contains country-specific chapters; commends the Commission's efforts to engage with national governments and national parliaments, as well as civil society and other national actors; encourages the Commission to devote greater efforts to deepening the analysis, and invites the Commission to ensure proper resources for that; believes that more time should be devoted to the Commission's country visits, including on site;

4. Welcomes the fact that all Member States are scrutinised according to the same indicators and methodology; emphasises that presenting deficiencies or breaches of a different nature or intensity risks trivialising the most serious breaches of the rule of law; urges the Commission to differentiate its reporting by distinguishing between systemic breaches of the rule of law and isolated breaches;

5. Regrets the fact that the report fails to clearly recognise the deliberate process of the rule of law backsliding in Poland and Hungary; calls on the Commission to make clear that when the Article 2 TEU values are being deliberately, gravely, permanently and systematically violated over a period of time, Member States could fail to fulfil all the

criteria that define a democracy and become authoritarian regimes;

6. Regrets the fact that several Member States, in particular Hungary and Poland, had to be mentioned several times by the Commission as points of concern in the synthesis report; recalls that since June 2021 Parliament has also addressed the rule of law situation in Hungary, Poland and Slovenia in its plenary resolutions; further recalls that Parliament's Committee on Civil Liberties, Justice and Home Affairs' Democracy, Rule of Law and Fundamental Rights Monitoring Group has also addressed similar issues in Bulgaria, Greece, Malta, Slovakia and Slovenia;

7. Considers that the annual report should identify cross-cutting trends at EU level; asks the Commission to identify instances where certain measures or practices that undermine the rule of law in one Member State become blueprints for others, or when the gravity and scope of such deficiencies have the potential to affect the Union as a whole;

8. Commends the effort of the 2021 report to compare the situation with that of the 2020 report; believes that it is necessary to identify clearly positive and negative trends as regards the rule of law situation and provide an analysis of the underlying reasons for that;

9. Considers that the 2021 report could have provided clearer assessments, stating whether there were deficiencies, a risk of a serious breach or an actual breach of Article 2 TEU values in each of the pillars analysed in the country chapters; calls for a more integrated analysis on the interlinkages between the four pillars and of how combined deficiencies may amount to breaches or risks of a breach;

10. Welcomes the Commission's intention to include country-specific recommendations in the 2022 report; calls on the Commission to accompany such recommendations with deadlines for implementation, targets and concrete actions to be taken; calls on the Commission to include in subsequent reports indications on the implementation of its recommendations;

11. Recommends that the Commission indicate next to each of its recommendations the appropriate tools for the EU institutions to use if the shortcomings are not remedied; calls on the Commission not to hesitate in using those tools, especially when there is no trust in a quick implementation of the recommendations;

12. Regrets the fact that the 2020 report fails to fully encompass the Article 2 TEU values of democracy and fundamental rights, which are immediately affected when countries start backsliding on the rule of law; reiterates the intrinsic link between the rule of law, democracy and fundamental rights;

13. Underlines its concern at the fact that women and people in vulnerable situations, including persons with disabilities, children, religious minorities, particularly at a time of rising antisemitism and anti-Muslim hatred in Europe, Romani people and other persons belonging to ethnic and linguistic minorities, migrants, asylum seekers, refugees, LGBTI+ persons and elderly people, continue to see their rights not being fully respected across the Union; emphasises the obvious link between deteriorating rule of law standards and violations of fundamental rights and minority rights;

14. Calls on the Commission to strengthen the regular, inclusive and structured dialogue with governments and national parliaments, NGOs, national human rights institutions, ombudspersons, equality bodies, professional associations and other stakeholders; considers that civil society organisations should be closely involved in all phases of the review cycle; highlights that thematically structured consultations would make the process more efficient and increase the amount of valuable feedback; stresses that the consultation questionnaire should allow stakeholders to report aspects beyond the scope envisaged by the Commission;

15. Considers that the time limits for consultation with civil society is often too short and should be suitably adapted and flexible in order to allow for complete and comprehensive input; points out that this has made it more difficult for stakeholders to prepare and plan their contributions and awareness-raising activities, in particular if the consultation coincides with winter holidays; calls on the Commission to allow multilingual submissions; notes that consultation can be improved by ensuring follow-up with civil society actors on the input they provide;

16. Recalls that the Commission must take into account relevant information from pertinent sources and recognised institutions; recalls that the findings of relevant international bodies, such as those under the auspices of the UN, the OSCE and the Council of Europe, are of crucial importance; believes that EFRIS is a useful source of information in this regard;

17. Calls on the Commission to invite the EU Agency for Fundamental Rights (FRA) to provide methodological advice and conduct comparative research to add detail in key areas of the annual report, bearing in mind that the right to a fair trial, freedom of expression and other fundamental rights have intrinsic links with the rule of law;

18. Considers that cooperation with the Council of Europe and other international organisations is of particular relevance for advancing democracy, the rule of law and fundamental rights in the EU; calls on the Commission to analyse systematically data on non-compliance with judgments of the European Court of Human Rights and views of the UN Treaty Bodies concerning individual communications;

19. Regrets the reluctance of the Commission and the Council to respond positively to Parliament's call, in its resolution of 7 October 2020, for a joint EU mechanism on democracy, the rule of law and fundamental rights, which should cover the full scope of Article 2 TEU values; reiterates its call on the Commission and the Council to immediately enter into negotiations with Parliament on an interinstitutional agreement;

20. Recalls its position regarding the involvement of a panel of independent experts to advise the three institutions, in close cooperation with the FRA; asks its Bureau, in light of the reluctance of the Commission and the Council, to organise a public procurement procedure in order to create such a panel under the auspices of Parliament as a first step, in order to advise Parliament on compliance with Article 2 TEU values in different Member States;

21. Calls on the Commission to explore the full potential of developing the FRA in accordance with principles relating to the status and functioning of national institutions for the protection and promotion of human rights (the Paris Principles) in order for it to become a fully independent body providing impartial and publicly available positions

on country-specific situations in the field of democracy, the rule of law and fundamental rights; underlines that such development should go hand in hand with an increase in available resources;

22. Reiterates that the annual report should serve as a basis for deciding whether to activate one or several relevant tools such as Article 7 TEU, the Rule of Law Conditionality Regulation, the Rule of Law Framework or infringement procedures, including expedited procedures, applications for interim measures before the CJEU and actions regarding non-implementation of CJEU judgments; calls on the institutions to activate such tools without delay;

23. Recalls that infringement procedures are the core instrument to protect and defend EU law and the common values enshrined in Article 2 TEU; notes with concern that the number of infringement procedures launched by the Commission has plummeted since 2004; is surprised by the fact that infringement procedures are not triggered systematically as soon as the relevant infringement is documented in the annual report; deplores the Commission's reluctance to exhaust the possibilities of infringement procedures against Member States as the instrument most tailored to resolve the issues efficiently and without delay; notes that this reluctance resulted in calls on Member States to initiate inter-State cases in accordance with Article 259 TFEU; is concerned that without systematic and timely application the preventive capacity of infringement procedures declines;

24. Recalls the importance of the Rule of Law Conditionality Regulation where breaches of the principles of the rule of law affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union; considers that the annual report is the most appropriate place to have a dedicated section and conduct a relevant analysis; urges the Commission to launch the procedure enshrined in Article 6(1) of that regulation at least in the cases of Poland and Hungary; calls on the Commission to explore the full potential of the Common Provisions Regulation and the Financial Regulation to protect the rule law;

25. Strongly regrets the inability of the Council to make meaningful progress in ongoing Article 7(1) TEU procedures; urges the Council to ensure that hearings take place on a regular basis and also address new developments; reiterates its call on the Council to address concrete recommendations to the Member States in question, and to provide deadlines for the implementation of those recommendations; insists that Parliament's role and competences be respected;

26. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.