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## TEXTS ADOPTED

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### **P8\_TA(2016)0344**

#### **Recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union**

**European Parliament 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 Union (2016/2774(RSP))**

*The European Parliament,*

- having regard to the Treaties, and in particular to Articles 2, 3, 4 and 6 of the Treaty on European Union (TEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the Constitution of the Republic of Poland,
- having regard to the European Convention on Human Rights (ECHR) and the related case law of the European Court of Human Rights,
- having regard to the Commission communication of 11 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014)0158),
- having regard to its debate of 19 January 2016 on the situation in Poland,
- having regard to its resolution of 13 April 2016 on the situation in Poland<sup>1</sup>,
- having regard to the adoption by the Commission on 1 June 2016 of an opinion on the rule of law in Poland,
- having regard to the Commission recommendation of 27 July 2016 regarding the rule of law in Poland,
- having regard to the opinion of Council of Europe experts of 6 June 2016 on the three draft Acts regarding Polish public service media,
- having regard to the Venice Commission opinion of 11 March 2016 on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland,

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<sup>1</sup> Texts adopted, P8\_TA(2016)0123.

- having regard to the Venice Commission opinion of 13 June 2016 on the Act of 15 January 2016 amending the Police Act and certain other acts,
  - having regard to the report of the Commissioner for Human Rights of the Council of Europe of 15 June 2016 following his visit to Poland from 9 to 12 February 2016,
  - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, whereas these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail and whereas these were approved by the Polish people on the occasion of the referendum held in 2003;
  - B. whereas Article 6(3) of the TEU confirms that fundamental rights, as guaranteed by the ECHR and as arising from the constitutional traditions common to the Member States, constitute general principles of EU law;
  - C. whereas the EU operates on the basis of the presumption of mutual trust that Member States conform with democracy, the rule of law and fundamental rights, as enshrined in the ECHR and in the Charter of Fundamental Rights;
  - D. whereas Article 9 of the Polish Constitution states that the Republic of Poland shall respect international law binding upon it;
  - E. whereas the rule of law is one of the common values on which the EU is founded, and whereas the Commission, together with Parliament and the Council, is responsible under the Treaties for guaranteeing respect for the rule of law as a fundamental value of our Union and making sure that EU law, values and principles are respected;
  - F. whereas the independence of the judiciary is enshrined in Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR, and is an essential requirement of the democratic principle of separation of powers, which is also reflected in Article 10 of the Polish Constitution;
  - G. whereas the separation of powers and the independence of the judiciary are core to the democratic system and must not be undermined;
  - H. whereas recent events in Poland, in particular the dispute concerning the composition and functioning of the Constitutional Tribunal, and the non-publication of judgments handed down by the Constitutional Tribunal, have given rise to concerns regarding guarantees of respect for the rule of law;
  - I. whereas, in its opinion on amendments to the Act on the Constitutional Tribunal, the Venice Commission called on Polish state organs to publish, fully respect and implement the judgments of the Tribunal, while at the same time stressing that the aforementioned amendments would seriously undermine the Tribunal's work and make it ineffective as a guardian of the Constitution;
  - J. whereas the paralysis of the Constitutional Tribunal has led the Commission to open a dialogue with the Polish Government under the Rule of Law Framework with a view to

ensuring full respect for the rule of law; whereas, following an intensive dialogue with the Polish authorities and in the light of the Polish Government's lack of progress in solving the constitutional crisis, the Commission has deemed it necessary to formalise its assessment of the current situation in an opinion;

- K. whereas, despite the further discussions held with the Polish authorities, the issues that threaten the rule of law in Poland have not been satisfactorily resolved and the Commission believes that there is a systemic threat to the rule of law in Poland; whereas it has therefore made concrete recommendations to the Polish authorities on how to address its concerns as a matter of urgency;
- L. whereas the Rule of Law Framework is intended to address systemic threats to the rule of law in any of the EU's Member States, particularly in situations which cannot be addressed effectively by infringement procedures and where the 'rule of law safeguards' which exist at national level no longer seem capable of addressing these threats effectively;
- M. whereas the EU is committed to respecting media freedom and pluralism as well as the right to information and freedom of expression enshrined in Article 11 of the Charter of Fundamental Rights and Article 10 of the ECHR, as is also reflected in Article 14 of the Polish Constitution;
- N. whereas the already adopted and newly suggested changes to Polish media law, especially regarding the governance, editorial independence and institutional autonomy of public service media, have given rise to concerns as to whether freedom of expression and media freedom and pluralism are respected;
- O. whereas Council of Europe experts, after holding an expert dialogue with the Polish authorities on the package of three draft bills concerning public service media, concluded that improvements are required, especially in the area of governance, content and the public mission and protection of journalists;
- P. whereas the rights to liberty and security and to respect for private life and protection of personal data are enshrined in Articles 6, 7 and 8 of the Charter of Fundamental Rights and Articles 5 and 8 of the ECHR, and also in Articles 31 and 47 of the Polish Constitution;
- Q. whereas the Venice Commission, in its opinion on amendments to the Police Act and certain other acts, concluded that the procedural safeguards and material conditions set out in the Police Act 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; recalls, in this connection, that both the Court of Justice and the European Court of Human Rights have stressed the need to introduce effective oversight mechanisms, and preferably judicial control, in order to guarantee supervision of such activities;
- R. whereas the new anti-terrorism law raises similar concerns as regards compliance with, in particular, Articles 5, 8, 10 and 11 of the ECHR and with the Polish Constitution;
- S. whereas the European Commission considers that, as long as the Constitutional Tribunal is prevented from fully ensuring an effective constitutional review, there will be no

effective scrutiny of compliance with the Constitution, including its provisions on fundamental rights, of legislative acts such as the particularly sensitive new legislative acts recently adopted by the Sejm;

- T. whereas the Venice Commission is composed of independent experts in constitutional law appointed by all members of the Council of Europe, including Poland, and whereas its opinion is the most authoritative interpretation of the obligations of Council of Europe member states concerning the rule of law and democracy; whereas the current Polish Government has directly sought the opinion of the Venice Commission;
  - U. whereas the right to a fair trial, the presumption of innocence and the right to defence are rights embedded in Articles 47 and 48 of the Charter of Fundamental Rights and Article 6 of the ECHR, and in Articles 41, 42 and 45 of the Polish Constitution;
  - V. whereas the Commissioner for Human Rights of the Council of Europe, in his report following his visit to Poland, concluded that the recently adopted changes to the Code of Criminal Procedure and the Prosecution Act may jeopardise the protection of the right to a fair trial in criminal proceedings, the presumption of innocence and the right to a defence, especially in cases where insufficient safeguards to avoid abuses of power have been established, and the principle of separation of powers;
  - W. whereas, according to the Charter of Fundamental Rights, 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;
  - X. whereas an efficient, impartial, professional and politically neutral civil service system constitutes a fundamental element of democratic governance, but whereas the new civil service law appears to undermine this principle as well as Article 153 of the Polish Constitution;
  - Y. whereas Poland's Constitutional Tribunal declared a number of provisions of the law adopted on 22 July 2016 still to be unconstitutional;
  - Z. whereas the Polish Environment Minister has approved a plan to increase wood extraction in the Białowieża Forest; whereas, when the National Council for Nature Conservation objected to the plan, the government replaced 32 of its 39 members; whereas the Commission initiated an infringement procedure on 16 June 2016 in respect of the Białowieża Forest;
1. Stresses that it is of fundamental importance to guarantee that common European values listed in Article 2 of the TEU and in the Polish Constitution are upheld in full and that fundamental rights as laid down in the Charter of Fundamental Rights are guaranteed;
  2. Reiterates its position as expressed in its resolution of 13 April 2016 on the situation in Poland, in particular concerning the paralysis of the Constitutional Tribunal, which is endangering democracy, fundamental rights and the rule of law in Poland;
  3. Expresses its regret and concern that so far no compromise solution has been found and that the Venice Commission's recommendations of 11 March 2016 have not been

implemented; regrets also the Polish Government's refusal to publish all the judgments of the Constitutional Tribunal, including those of 9 March 2016 and 11 August 2016;

4. Welcomes the Commission's determination to pursue a constructive and productive dialogue with the Polish Government with a view to finding swift and concrete solutions to the systemic threats to the rule of law set out above; stresses that such a dialogue needs to be conducted in an impartial, evidence-based and cooperative manner while also respecting the competences of the EU and its Member States as enshrined in the Treaties, and the principle of subsidiarity;
5. Takes note of the adoption of the Commission opinion and subsequent recommendation under the Rule of Law Framework, following an assessment of the situation in Poland; expects the Commission to afford Parliament access to this opinion, in line with Annex II to the Framework Agreement on relations between the European Parliament and the European Commission;
6. Calls on the Polish Government to cooperate with the Commission pursuant to the principle of sincere cooperation as set out in the Treaty, and urges it to use the three months afforded by the Commission to engage all parties represented in the Polish Sejm to find a compromise which would solve the ongoing constitutional crisis, fully respecting the Venice Commission opinion and the European Commission recommendation;
7. Calls on the Commission as guardian of the Treaties to monitor – as a next step – the follow-up given by the Polish authorities to the recommendations, while continuing to offer full support to Poland in finding adequate solutions to strengthen the rule of law;
8. Is concerned, in the absence of a fully functional Constitutional Tribunal, about the recent and rapid legislative developments taking place in other areas without proper consultations, and urges the Commission to carry out an assessment of the legislation adopted as regards its compatibility with primary and secondary EU law and with the values on which the Union is founded, taking into account the recommendations issued by the Venice Commission on 11 June 2016 and by the Commissioner for Human Rights of the Council of Europe on 15 June 2016 and the Commission's Rule of Law Recommendation of 27 July 2016, in particular:
  - the Act on Public Media, bearing in mind the need for a framework governing public service media which would ensure that they provide independent, impartial and accurate content that reflects the diversity of Polish society, as well as the relevant case law of the European Court of Human Rights and the EU *acquis* in the audiovisual media field;
  - the Act amending the Police Act and certain other acts, bearing in mind its disproportionate interference with the right to privacy and the incompatibility of blanket mass surveillance activities and bulk processing of citizens' personal data with the case law of the EU and of the European Court of Human Rights;
  - the Act amending the Code of Criminal Procedure and the Prosecution Act, bearing in mind the need to comply with the EU *acquis* in the field of procedural rights as well as the fundamental right to a fair trial;

- the Act amending the Civil Service Act, bearing in mind the serious risk of politicisation of the Polish administration, which would undermine the impartiality of the civil service;
  - the Act on Counter-terrorism, bearing in mind the serious threat to the right to privacy and the right to freedom of expression represented by the expansion of the powers of the Internal Security Agency without any appropriate judicial safeguards;
  - other issues that are of concern because they may constitute breaches of EU law, of ECtHR case law and of fundamental human rights, including women's rights;
9. Calls on the Commission to keep Parliament regularly and closely informed in a transparent manner of the progress made and the action taken;
10. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe and the President of the Republic of Poland.