



Plenary sitting

B9-0319/2023

5.7.2023

MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the electoral law, the investigative committee and the rule of law in Poland
(2023/2747(RSP))

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on behalf of the S&D Group

Michal Šimečka, Moritz Körner, Sophia in 't Veld, Anna Júlia Donáth, Katalin Cseh

on behalf of the Renew Group

Tineke Strik, Daniel Freund, Terry Reintke

on behalf of the Verts/ALE Group

Konstantinos Arvanitis, Malin Björk, Nikolaj Villumsen

on behalf of The Left Group

B9-0319/2023

European Parliament resolution on the electoral law, the investigative committee and the rule of law in Poland (2023/2747(RSP))

The European Parliament,

- having regard to the Treaty on European Union (TEU), in particular Articles 2, 4(3) and 7(1) thereof,
- having regard to the Charter of Fundamental Rights of the European Union (the Charter),
- having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility¹,
- having regard to the European Convention on Human Rights and the protocols thereto,
- 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 resolutions of 16 January 2020 and 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary³,
- having regard to its resolution of 9 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF)⁴,
- having regard to its resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law⁵,
- having regard to its resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland⁶,
- having regard to the letter from the leaders of five political groups in the European Parliament of 6 June 2023 on the need for a full-scale election observation mission for the parliamentary elections in Poland,
- having regard to the country chapters on Poland in the Commission’s annual rule of law reports,
- having regard to the Council of Europe Committee of Ministers interim resolution of

¹ OJ L 57, 18.2.2021, p. 17.

² OJ C 385, 22.9.2021, p. 317.

³ OJ C 270, 7.7.2021, p. 91; OJ C 465, 6.12.2022, p. 147.

⁴ OJ C 493, 27.12.2022, p. 108.

⁵ OJ C 184, 5.5.2022, p. 154.

⁶ OJ C 117, 11.3.2022, p. 151.

7 June 2023 on the execution of the judgment of the European Court of Human Rights in the case of *Xero Flor w Polsce sp. z o.o. v Poland*,

- having regard to Rule 132(2) of its Rules of Procedure,
- 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 TEU, and as reflected in the Charter and embedded in international human rights treaties;
- B. whereas, in line with Article 49 TEU, the EU is composed of states that have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU;
- C. whereas a Member State's compliance with the values enshrined in Article 2 TEU is a condition for the enjoyment of all the rights derived from the application of the Treaties to that Member State; whereas Poland itself has subscribed to the values enshrined in Article 2 TEU; whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not only concern that individual Member State, but also has a huge impact on the other Member States, on the mutual trust between them and on the very nature of the Union and its citizens' fundamental rights;
- D. whereas, for several years, the rule of law has been deteriorating in Poland as a result of the systematic actions of its government; whereas this situation has not been sufficiently addressed, many concerns remain and many new issues continue to arise; whereas this is having a negative impact on the EU's image, as well as its effectiveness and credibility in the defence of fundamental rights, human rights and democracy globally; whereas this problem must be addressed through concerted EU action;
- E. whereas, on 26 January 2023, the Sejm, the lower chamber of the Polish Parliament, adopted amendments to the country's Electoral Code, which entered into force on 31 March 2023, less than six months before parliamentary elections are expected to be called; whereas this is in violation of the Code of Good Practice in Electoral Matters adopted by the Venice Commission and the case-law of the Polish Constitutional Tribunal;
- F. whereas, on 14 April 2023, the Sejm adopted the Act on the State Committee for the Investigation of Russian Influence on the Internal Security of the Republic of Poland between 2007 and 2022 (Investigative Committee Act); whereas, on 8 June 2023, the Commission opened an infringement procedure, considering that the new law violates the principle of democracy, the principles of the legality and non-retroactivity of sanctions, the general principles of legal certainty and *res judicata*, the rights to effective judicial protection and not to be prosecuted twice for the same cause of action, and the protection of professional secrecy, as well as the requirements of EU law relating to data protection; whereas, on 16 June 2023, the Sejm adopted amendments to the Investigative Committee Act without changing it substantially;
- G. whereas, on 13 January 2023, the Sejm adopted amendments to the Act on the Supreme Court and certain other laws; whereas the Polish President decided, before signing the bill containing those amendments, to refer it to the 'Constitutional Tribunal' for a judgment on its conformity with the country's constitution; whereas, on

15 February 2023, the Commission decided to refer Poland to the Court of Justice of the EU (CJEU) for violations of EU law by the ‘Constitutional Tribunal’ and its case-law; whereas, on 5 June 2023, the CJEU reaffirmed once again in Case C-204/21 that the Polish national provisions on the judiciary violate the rule of law;

- H. whereas, on 17 June 2022, the Council adopted its Implementing Decision on the approval of the assessment of the recovery and resilience plan for Poland, which set out several milestones that should be effectively implemented before the submission of the first payment request;
1. Reiterates the findings, concerns and recommendations expressed in its previous resolutions on Poland; condemns the deliberate and systematic efforts of the Polish Government to undermine the founding values of the EU enshrined in Article 2 TEU, especially the rule of law; recalls that the Polish Government is responsible for restoring compliance with EU law and the values enshrined in Article 2 TEU;
 2. Expresses deep concerns about the amendments to the Polish Electoral Code adopted shortly before the country’s forthcoming 2023 parliamentary elections and with the elections to the European Parliament in 2024 on the horizon; indicates that the amendments may have a discriminatory effect with regard to the limits for the counting of votes cast by voters abroad, which risk invalidating such votes; recalls that the Extraordinary Control and Public Affairs Chamber of the Polish Supreme Court, which has electoral disputes within its jurisdiction, cannot be considered an independent and impartial tribunal previously established by law within the meaning of the Charter and the European Convention on Human Rights; urges the Polish authorities to bring their conduct of elections into line with the commitments undertaken by members of the Organization for Security and Co-operation in Europe (OSCE) and other international obligations and standards for democratic elections; calls for domestic provisions to be brought into compliance with the recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) limited election observation mission in 2019 and the recommendations on electoral legislation of the Venice Commission; calls on the OSCE ODIHR to organise a full-scale election observation mission for the upcoming parliamentary elections in Poland; calls on the Commission to urgently assess whether the recent amendments to the Polish Electoral Code comply with EU law, to share the outcome of this assessment with the European Parliament and to take appropriate enforcement action in the event that the amendments are found to be non-compliant;
 3. Welcomes the Commission’s fast-track infringement procedure on the Investigative Committee Act; urges the Polish authorities to repeal the act or at least to suspend its effect until the Venice Commission has delivered its urgent opinion requested by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and the act has been amended in accordance with that opinion; calls on the Commission to pursue the infringement procedure as soon as possible if the act remains in force, in particular by using an expedited infringement procedure and applying to the CJEU for interim measures;
 4. Recalls its position that Poland’s current ‘Constitutional Tribunal’ is illegitimate, lacks legal validity and independence and is unqualified to interpret the country’s

constitution, and that its opinion on the amendments to the Act on the Supreme Court and certain other laws should therefore be considered null and void; calls on the Commission to progress with its litigation as soon as possible and to also apply to the CJEU for interim measures in the pending case regarding the ‘Constitutional Tribunal’; reiterates its call on the Commission to urgently launch an infringement procedure regarding the illegitimate National Council of the Judiciary (NCJ) and all judges appointed by it, in particular those appointed to the Extraordinary Control and Public Affairs Chamber of the Supreme Court, which examines electoral disputes;

5. Expresses deep concern that the amendments to the Act on the Supreme Court and certain other laws, if enacted as proposed, would give the Supreme Administrative Court a new mandate to deal with disciplinary cases involving judges without making a distinction between judges appointed legally and those appointed by the illegitimate NCJ; considers that these amendments do not resolve the problem of the disciplinary system for judges in Poland not complying with EU law;
6. Reiterates its regret about the failure of the Council to make meaningful progress in the ongoing Article 7(1) TEU procedure in relation to Poland; notes that the Commission’s reasoned proposal of 20 December 2017 has a limited scope, namely being confined to the rule-of-law situation in Poland in the strict sense of the independence of the judiciary; reiterates its call on the Commission to widen the scope of the reasoned proposal regarding Poland by including clear risks of serious breaches of other basic values enshrined in Article 2 TEU, especially democracy and respect for human rights; reiterates its call on the Council to address all new developments affecting the rule of law, democracy and fundamental rights; reiterates its call on the Council to address recommendations in the framework of this procedure;
7. Reiterates its call on the Commission to make full use of all the tools available to address the existing and potential breaches of the values enshrined in Article 2 TEU;
8. Urges the Commission to refrain from any actions or statements that might indicate that there have been any non-transparent negotiations or agreements prejudging the official position of the institutions; underlines that the Commission is tasked with independently and objectively assessing Poland’s compliance with the milestones and conditions, without compromising on democracy, the rule of law and fundamental rights; regrets the lack of information made available to Parliament regarding the Commission’s assessment of the Polish authorities’ compliance with the milestones and conditions, hampering Parliament’s ability to exercise its role as the budgetary and discharge authority; calls on the Commission to respect Parliament’s role;
9. Reiterates its call on the Polish authorities to fulfil the milestones and targets linked to the Recovery and Resilience Facility and implement all relevant judgments of the CJEU and the European Court of Human Rights, so that EU funds reach people in Poland;
10. Calls on the Commission to present a proposal to establish an EU tech lab to monitor the possible use of spyware in the run-up to or during parliamentary elections;
11. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations.

