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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the interim report by Juan Fernando LÓPEZ AGUILAR (S&D, ES) 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.

Legal base

Future Member States are vetted for their compliance with 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 before they accede to the Union. The so-called 'Copenhagen criteria' ensure that all new EU Member States are in line with the Union's common principles before joining the EU. However, no similar method exists to supervise adherence to these foundational principles after accession. This has been referred to as the 'Copenhagen dilemma'.

According to Article 7 of the Treaty of the EU, the Council may determine that there is a clear risk of a serious breach of common EU values laid down in Article 2. It may also act in the event of a breach in an area where the Member States act autonomously.

On 20 December 2017, the European Commission issued its reasoned proposal based on Article 7(1) TEU 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. The European Parliament expressed its concerns regarding the rule of law situation in Poland in several resolutions adopted during the past years.

This interim report focuses on the continuing deterioration of the situation in Poland as regards the functioning of the legislative and electoral system, the independence of the judiciary and the rights of judges, and the protection of fundamental rights.

Since the situation of the rule of law in Poland has not only not been addressed but has seriously deteriorated since the triggering of the Article 7(1) TEU, Members stressed the importance of this interim report, which aims to take stock of the developments as regards:

The rule of law, democracy and fundamental rights in Poland

Changes to the country's judiciary, enacted during the last few years, ranging from the way appointments are made, to disciplinary procedures, pose a serious risk to judicial independence according to Members.

As regards the rule of law in the strict sense of independence of the judiciary, the situation is far from improving. Issues such as the composition and behaviour of the new National Council of the Judiciary; the tight grip of the Minister of Justice, who is also the Prosecutor-General, on the prosecution services; the creation of the disciplinary chamber and the chamber of extraordinary appeal inside the Supreme Court; the systematic intimidation of judges and disciplinary proceedings against judges who speak out on these reforms was highlighted in the report.

The functioning of the legislative and electoral system

Members deplored 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 community.

They also stressed the recent developments pertaining to changes to the electoral law and elections organised during a public emergency.

The protection of fundamental rights, including rights of persons belonging to minorities

Poland is urged 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 and 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 discrimination;

- improve the freedom of expression, media freedom and pluralism, academic freedom, freedom of assembly and association;

- refrain from any further attempts to restrict women's sexual and reproductive health and rights;

- improve the situation regarding the increase in intolerance and violence towards LGBTI persons.

Widening of the scope of the Article 7(1) TEU procedure

This interim report should give a new impulse in the Article 7(1) TEU procedure, by including not only the most recent controversial changes to the Polish judicial system, but by including an analysis of the situation of democracy and fundamental rights in Poland, which require specific attention.

Call for action by the Polish authorities, the Council and the Commission

Members called 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;

- swiftly and fully implement the rulings of the Court of Justice and to respect the primacy of Union law.

The Council and the Commission are called on 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;

- keep Parliament regularly informed and closely involved.

The Council is urged 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 report.

Lastly, the Commission is called upon to make full use of the tools available 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.