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

2017/0360R(NLE) - 17/09/2020 - Text adopted by Parliament, single reading

The European Parliament adopted by 513 votes to 148, with 33 abstentions, a resolution 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.

Parliament expressed its concerns regarding: (1) the functioning of the legislative and electoral system, (2) the independence of the judiciary and the rights of judges and (3) the protection of fundamental rights. It reaffirmed its position, expressed in several of its resolutions on the situation of the rule of law and democracy in Poland, that the facts and trends mentioned in the resolution, taken together, represent a systemic threat to the values of Article 2 of the Treaty on European Union (EU Treaty) and constitute a clear risk of serious breach of these values.

Council to resume Article 7 proceedings against Poland

Members called on the Council and the Commission to ‘refrain from narrowly interpreting the principle of the rule of law, and to use the procedure under Article 7(1) TEU for all the principles enshrined in Article 2 of the EU Treaty’. Noting that the last hearing was held in December 2018, they urged the Council to resume the formal hearings as soon as possible and to ‘finally act’ under the procedure of Article 7 TEU in the light of the ‘overwhelming evidence’ provided in the Resolution and in numerous reports by international and European organisations.

Functioning of the legislative and electoral system in Poland

Parliament denounced the use of constitutional review powers by the Polish Parliament, as well as the frequent use of expedited legislative procedures for the adoption of crucial legislation reshaping the organisation and functioning of the judicial system, without meaningful consultation of stakeholders. It also deplored recent developments concerning amendments to the Electoral Law and elections held in cases of public emergency.

Judicial independence and other institutions and the rights of judges in Poland

According to Members, the changes made to the country's judicial system in recent years, ranging from the way appointments are made to disciplinary proceedings against judges and prosecutors in Poland, pose a serious threat to judicial independence by allowing the legislative and executive powers to interfere in the overall structure and decisions of the judicial system in a manner incompatible with the principles of the separation of powers and the rule of law.

Concerns about the composition and conduct of the new National Council of the Judiciary, the assessment of the Minister of Justice, who is also the Prosecutor General, over the prosecution service, the establishment of the disciplinary and extraordinary chamber within the Supreme Court, the rules governing the organisation of the common courts, the appointment of courts presidents and the retirement regime for judges of the ordinary courts were highlighted in the resolution.

Protection of fundamental rights in Poland

Poland is invited to take all necessary measures to:

- ensure the right to a fair trial;

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

- carry out an assessment of the legislation adopted in the field of data protection and privacy as regards its compatibility with Union law;

- combat racist hate speech and incitement to violence, both online and offline;

- combat prejudice and negative feelings towards national and ethnic minorities (including the Roma), migrants, refugees and asylum seekers;

- ensure the effective enforcement of laws prohibiting parties or organisations which promote or incite racial discrimination;

- refrain from de facto criminalising the provision of sex education to minors and ensure access for all students to scientifically accurate and comprehensive sex education in accordance with international standards;

- ensure that legislation to prevent and combat violence against women and domestic violence is applied throughout the country (Members deplored the withdrawal process by Poland of the Istanbul Convention);

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

- improve the situation with regard to the increase in intolerance and violence against LGBTI persons. In this regard, Members deplored the mass arrest of 48 LGBTI activists on 7 August 2020 (the Polish ‘Stonewall’) which sends a worrying signal regarding the freedom of speech and assembly in Poland.

The Commission is invited to make full use of the tools available to it, 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, as well as budgetary tools. The Commission is invited to keep the Parliament regularly informed and closely involved.