



RESOLUTION:

Seek new dialogue with Poland on the preservation of the rule of law

Adopted at the YEPP Council Meeting in Belgrade, on 02.12.2017

Recognizing that:

- Article 2 of the Treaty on the European Union (TEU), which in particular enshrines that 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 belonging to minorities.¹
- The referendum on the Polish EU-Membership by the Polish people held in 2003, which approved the adherence of these values.
- That in the Addition, the EU treaties and in particular to Articles 3, 4, 6 and 7 of the TEU, the Charter of Fundamental Rights of the EU, the Constitution of the Republic of Poland, the European Convention on Human Rights (ECHR) and the related case law of the European Court of Human Rights (ECtHR).
- The adoption of four highly controversial laws reforming the judiciary by the Polish Parliament in June and July 2017.
- The law that entered into force since 13 July 2017 includes the Law on the National School of Judiciary. Additionally, the Law on the Ordinary Courts Organisation was signed by the President of the Republic on 25 July and is awaited to be published and entry force soon.
- That the Polish President vetoed the other two legislative acts on 27 of July; adopted by the Polish Parliament earlier that month. Both, the legislative acts on the National Council for the Judiciary and the Supreme Court expose a threat to the independency of the judicial system in Poland. Under one bill, the Council for the Judiciary, a body responsible for the nomination of new judges, would be dissolved, and parliament would be given the power to select all of its new members. Under the second bill, Poland justice minister would be empowered to nominate and remove the chairpersons and senior officials of regional and appeal courts.²

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF>

² <https://www.politico.eu/article/poland-parliament-backs-bill-tightening-political-control-over-supreme-court/>

- President of the European Commission Jean-Claude Juncker said: "The Commission is determined to defend the rule of law in all our Member States as a fundamental principle on which our European Union is built (...) If the Polish government goes ahead with undermining the independence of the judiciary and the rule of law in Poland, we will have no other choice than to trigger Article 7."³
- That the UN Special Rapporteur Mr. Diego Garcia-Sayan concludes after a four-day observation in a crushing judgment on 27 of October 2017: "Today, the independence of the judicial system and other crucial democratic standards, like separation of powers, are under threat in Poland. (...) Each of these laws presents a number of concerns as to its compliance with international legal standards relating to the independence of the judicial system. But taken together, the various legislative acts and measures adopted or proposed by the executive and legislative appear to be parts of a policy that has the effect, if not the aim, of severely undermining the independence of the judiciary and eroding the possibilities of checks and balances between crucial institutions of the State."⁴
- That for instance the OSCE pointed out that the proposed provisions were inherently incompatible with international standards and OSCE commitments.⁵

Acknowledge that:

- That in response, the European Commission has launched the infringement procedure on the 29th of July 2017, based on the Law on the National School of Judiciary and the Law on the Ordinary Courts Organisation. Concerns were related to the discrimination based on gender due to the introduction of a different retirement age, the empowerment of the Minister of Justice to prolong the mandate of judges who have reached retirement age and to dismiss and appoint Court Presidents.⁶ Followed by a reasoned opinion of the European Commission on the 12th of September 2017, as response to the response by the Polish authorities.⁷
- The President of the European Parliament Antonio Tajani has expressed the concerns of a vast majority of political group leaders regarding the laws adopted reforming the judicial system.⁸
- The Parliamentary Assembly of the Council of Europe adopted a resolution on the Polish judicial reform, saying that the Polish authorities shall "refrain from conducting any reform which would put a risk respect the rule of law, and in particular the independence of the judiciary".⁹

³ http://europa.eu/rapid/press-release_IP-17-2161_en.htm

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22313&LangID=E>

⁵ <http://www.osce.org/odihr/349916?download=true>

⁶ http://europa.eu/rapid/press-release_IP-17-2205_en.htm

⁷ http://europa.eu/rapid/press-release_IP-17-3186_en.htm

⁸ https://twitter.com/EP_President/status/887251429093761025

⁹ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24214&lang=en>

- Every State is entitled to reform its judicial system and the legal framework in which its courts and judges operate.¹⁰ However, any reform of the judicial system should aim at improving its effectiveness, not at undermining its independence and legitimacy.¹¹
- Article 9 of the Polish Constitution states that the Republic of Poland “shall respect international law binding upon it”. Furthermore, Article 10 of the Polish Constitution reflects the independence of the judiciary and “the separation of and balance between legislative, executive and judicial powers”.¹²
- The resolution on “The situation of the rule of law and democracy in Poland” was adopted by the European Parliament on 15 November.¹³

YEPP calls on:

- The European Commission to continue the assertive guardianship of the adherence of the shared values (outlined in Article 2 TEU) by the Member States and to act efficiently in case of continual violence, respecting at the same time the sovereignty of each EU member state.
- The European Institutions not to abate from upholding the importance of the rule of law and to insist on the independence of justice and the separation of and balance between legislative, executive and judicial powers in the Unions Member States.
- The European Institutions to maintain to work together with the Polish government, in order to accomplish a joint solution that on the one hand satisfies the need for reforms – claimed by the governing Party - in Poland as well as it must reflect the values of the European Union on the other hand

¹⁰ <http://www.osce.org/odihr/349916?download=true>

¹¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22313&LangID=E>

¹² <http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm>

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0442+0+DOC+PDF+V0//EN>