

Amendment 102

Jadwiga Wiśniewska, Joachim Stanisław Brudziński, Elżbieta Kruk
on behalf of the ECR Group

Report**A9-0138/2020****Juan Fernando López Aguilar**

Determination of a clear risk of a serious breach by the Republic of Poland of the rule of law
2017/0360R(NLE)

Motion for a resolution**Paragraph 50***Motion for a resolution*

50. ***Calls on the Polish authorities to modify the Act of 15 September 2017 on the National Institute for Freedom - Centre for the Development of Civil Society⁹⁵,⁹⁶ in order to ensure access to state funding for critical civil society groups at local, regional and national levels, and a fair, impartial and transparent distribution of public funds to civil society, ensuring pluralistic representation⁹⁷; reiterates its call for adequate funding to be made available for the organisations concerned through different funding instruments at Union level, such as the Union values strand of the new Citizens, Equality, Rights and Values Programme and Union pilot projects; is deeply concerned that Polish Members of the European Economic and Social Committee are facing political pressure for the actions taken in the remit of their mandate⁹⁸;***

Amendment

50. ***Stresses that, within the framework of existing legislation, the fair, impartial and transparent distribution of public funds is fully ensured, and that the procedure for allocating funds is also regulated by the Act on the National Freedom Institute; notes that, in accordance with the procedure, each application for funding is assessed by two external experts, and that all conditions of each open competition are the subject of public consultations with non-governmental organisations and are also approved by the Council of the National Freedom Institute before each open competition is announced; stresses that all NGOs and NGO coalitions have the right to submit their comments and amendments to the chart; points out that the eligibility criteria are pluralistic and include everyone, and that all civil society groups and NGOs that meet the definition set out in Article 3 of the Act on public benefit and volunteerism can apply for grants;***

⁹⁵ Ustawa z dnia 15 września 2017 r. o Narodowym Instytucie Wolności - Centrum Rozwoju Społeczeństwa Obywatelskiego (Dz.U. 2017 poz. 1909).

⁹⁶ OSCE/ODIHR, Opinion on the Draft Act of Poland on the National Freedom Institute - Centre for the Development of

Civil Society, Warsaw, 22 August 2017.

⁹⁷ EESC, Report on Fundamental rights and the rule of law: national developments from a civil society perspective 2018-2019, June 2020, p. 41-42.

⁹⁸ EESC, Press Statement “Alarming pressure on civil society: Polish EESC member becomes a target of government retaliation and NGOs no longer able to choose their own candidates”, 23 June 2020.

Or. en

11.9.2020

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Amendment 103

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on behalf of the ECR Group

Report

A9-0138/2020

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2017/0360R(NLE)

Motion for a resolution

Subheading 22

Motion for a resolution

Amendment

Privacy and data protection

deleted

Or. en

Amendment 104

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Determination of a clear risk of a serious breach by the Republic of Poland of the rule of law 2017/0360R(NLE)

Motion for a resolution**Paragraph 51***Motion for a resolution*

51. ***Reiterates its conclusion set out in its resolution of 14 September 2016 that the procedural safeguards and material conditions laid down in the Act of 10 June 2016 on anti-terrorist actions and the Act of 6 April 1990 on the police⁹⁹, as amended, 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, including of opposition and civil society leaders¹⁰⁰; repeats its call on the Commission to carry out an assessment of that legislation as regards its compatibility with Union Law, and urges Polish authorities to fully respect the privacy of all citizens;***

Amendment

51. ***Stresses that the Act of 10 June 2016 on counter-terrorist activities provides a legal basis for systemic solutions adopted in Poland in the field of counter-terrorist activities, and the provisions contained therein are aimed, inter alia, at enabling the authorities and other entities to take effective and proportionate action against terrorist threats; points out, therefore, that the provisions adopted in that Act concerning the possibilities of carrying out operational monitoring refer only to a person who is suspected of being likely to engage in terrorist activity and who is not a Polish citizen; stresses, moreover, that in Poland the processing of information by the authorities, including personal data, is carried out in accordance with the principles set out in the provisions of the Act of 14 December 2018 on the protection of personal data processed in connection with preventing and combating crime and the Act of 5 August 2010 on the protection of classified information, as well as in the rules governing the individual authorities; points out that the rules laid down in the aforementioned Acts are in line with the standards of Union law established in this matter, including Directive (EU) 2016/680 of the European Parliament and of the Council^{1a}; states that, pursuant to Article 20 of the Acts of 4 April 1990 on police,***

the police have the right to process information, including personal data, in accordance with their statutory tasks and subject to regulatory restrictions; points out that operational monitoring (covert surveillance) may take place only with the consent of the court, provided that it aims to detect and identify the perpetrators, as well as to obtain and consolidate evidence seized by public prosecution, of intentional crimes set out in Article 19(1), points 1-9 of that Act, and provided that other measures have proved ineffective or will not be useful; points out that the Act allows that in urgent cases, if this could result in the loss of information or the obliteration or destruction of evidence of a crime, the police, with the written consent of the competent prosecutor, may exercise that right without the consent of the court; notes that they are nevertheless obliged to apply to the court at the same time for the issuance of an appropriate provision to that effect; points out that if the court does not give its consent within five days from the date of the operational control order, it must be suspended and the materials collected during the control must be recorded in the minutes, provided that their destruction is recorded; notes that the principle being applied is one of judicial and prosecutorial review;

^{1a} Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁹⁹ Ustawa z dnia 6 kwietnia 1990 r. o Policji (Dz.U. 1990 nr 30 poz. 179).

¹⁰⁰ UN Human Rights Committee (HRC),
Concluding observations on the seventh
periodic report of Poland, 23 November
2016, paras 39-40. See as well
Communication by UN Experts to urge
Poland to ensure free and full participation
at climate talks, 23 April 2018.

Or. en

Amendment 105

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2017/0360R(NLE)

Motion for a resolution**Paragraph 52***Motion for a resolution**Amendment*

52. *Is deeply concerned about the fact that the Ministry of Digital Affairs of Poland transferred personal data from the Universal Electronic System for Registration of the Population (hereinafter the ‘PESEL register’) to the postal services operator on 22 April 2020, in order to facilitate the organisation of the presidential elections on 10 May 2020 via postal ballot, without a proper legal basis to do so, as the Polish parliament did not adopt a bill allowing for an all-postal election until 7 May 2020; notes, furthermore, that the PESEL register is not identical to the electoral register and also includes the personal data of citizens of other Member States, and that, therefore, the above-mentioned transfer could constitute a potential breach of Regulation (EU) 2016/679; recalls that the European Data Protection Board stated that public authorities may disclose information on individuals included in electoral lists, but only when this is specifically authorised by national law¹⁰¹ ; notes that the Polish Commissioner for Human Rights filed a complaint with the Voivodeship Administrative Court in Warsaw on the basis of a possible breach of Articles 7 and 51 of the Polish Constitution by the Ministry of Digital Affairs of Poland;* *deleted*

¹⁰¹ *EDPB, letter on Polish presidential elections data disclosure, 5 May 2020.*

Or. en

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Amendment 106

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Determination of a clear risk of a serious breach by the Republic of Poland of the rule of law
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Motion for a resolution

Subheading 23

Motion for a resolution

Amendment

Comprehensive sexuality education

Education

Or. en

Amendment 107

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Motion for a resolution**Paragraph 53***Motion for a resolution*

53. *Reiterates its deep concern expressed in its resolution of 14 November 2019, also shared by the Council of Europe Commissioner for Human Rights¹⁰², over the draft law amending Article 200b of the Polish Penal Code, as submitted to the Polish parliament by the ‘Stop Paedophilia’ initiative, for its extremely vague, broad and disproportionate provisions, which de facto seek to criminalise the dissemination of sexual education to minors and whose scope potentially threatens all persons, in particular parents, teachers and sex educators, with up to three years in prison for teaching about human sexuality, health and intimate relations;*

¹⁰² Council of Europe Commissioner for Human Rights, Statement of 14 April 2020.

Amendment

53. *Stresses that the draft amendment to the Penal Code was drawn up by the citizens’ initiative ‘Stop Paedophilia’ and refers to the criminalisation of the promotion of paedophilic behaviour; emphasises that this does not constitute the criminalisation of education, but a ban on promoting paedophilia;*

Or. en

Amendment 108

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Determination of a clear risk of a serious breach by the Republic of Poland of the rule of law 2017/0360R(NLE)

Motion for a resolution**Paragraph 54***Motion for a resolution*

54. *Stresses that age-appropriate and evidence-based comprehensive sexuality and relationship education is key to building young peoples' skills to form healthy, equal, nurturing and safe relationships, free from discrimination, coercion and violence; believes that comprehensive sexuality education also has a positive impact on gender equality outcomes, including transforming harmful gender norms and attitudes towards gender-based violence, helping prevent intimate partner violence and sexual coercion, homophobia and transphobia, breaking the silence around sexual violence, sexual exploitation or abuse, and empowering young people to seek help; calls on the Polish parliament to refrain from adopting the proposed draft law amending Article 200b of the Polish Penal Code and strongly invites the Polish authorities to ensure access to scientifically accurate and comprehensive sexuality education for all school children in line with international standards and that those who provide such education and information are supported in so doing in a factual and objective manner;*

Amendment

54. *Recalls that, in accordance with TFEU, the Union must fully respect the 'responsibility of the Member States for the content of teaching and the organisation of education systems' and, at the same time, has the task of supporting, complementing and coordinating the development of education;*

Or. en

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Amendment 109

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Juan Fernando López Aguilar

Determination of a clear risk of a serious breach by the Republic of Poland of the rule of law
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Motion for a resolution

Subheading 24

Motion for a resolution

Amendment

Sexual and reproductive health and rights ***deleted***

Or. en

Amendment 110

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Motion for a resolution**Paragraph 55***Motion for a resolution*

55. Recalls that, *in accordance with the Charter, 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; recalls that Parliament strongly criticised, in its resolution of 15 November 2017, any legislative proposal that would prohibit abortion in cases of severe or fatal foetal impairment, thereby drastically limiting and coming close to banning in practice access to abortion care in Poland as most legal abortions are performed under that ground¹⁰³, and emphasised that universal access to healthcare, including sexual and reproductive healthcare and the associated rights, is a fundamental human right¹⁰⁴; regrets the proposed amendments¹⁰⁵ to the Act of 5 December 1996 on doctors' and dentists' professions¹⁰⁶, under which doctors would no longer be legally obliged to indicate an alternative facility or practitioner in case of denial of sexual and reproductive health services due to personal beliefs; is concerned about the use of the conscience clause including the*

Amendment

55. Recalls that *the resolution* of the European Parliament of 10 December 2013 on sexual and reproductive health and rights^{1a} *'notes that the formulation and implementation of policies on SRHR and on sexual education in schools is a competence of the Member States'*;

absence of reliable referral mechanisms and lack of timely appeals for women who are denied such services; calls on the Polish parliament to refrain from any further attempts to restrict women's sexual and reproductive health and rights; strongly affirms that the denial of sexual and reproductive health and rights services is a form of violence against women and girls; calls on the Polish authorities to take measures to implement fully the judgments handed down by the European Court of Human Rights in cases against Poland, which has ruled on several occasions that restrictive abortion laws and lack of implementation violates the human rights of women¹⁰⁷ ;

^{1a} *Texts adopted, P7_TA(2013)0548.*

¹⁰³ In 2017, abortion due to fetal defects accounted for 97.9 percent all treatments: Center for Health Information Systems, reports of the Statistical Research Program of Public Statistics MZ-29, as published on the website of the Polish Sejm. Sprawozdanie Rady Ministrów z wykonywania oraz o skutkach stosowania w 2016 r. ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży (Dz. U. poz. 78, z późn. zm.).

¹⁰⁴ See as well the issue paper of the Council of Europe's Commissioner for Human Rights of December 2017 entitled 'Women's sexual and reproductive health and rights in Europe'; Statement of 22 March 2018 by UN Experts advising the UN Working Group on discrimination against women, and Statement of 14 April 2020 by the Council of Europe's Commissioner for Human Rights.

¹⁰⁵ Ustawa z dnia 16 lipca 2020 r. o zmianie ustawy o zawodach lekarza i lekarza dentystry oraz niektórych innych ustaw (not yet published in the Official Journal).

¹⁰⁶ Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty (Dz.U. 1997 nr 28 poz. 152).

¹⁰⁷ Judgment of the European Court of Human Rights of 20 March 2007, *Tysi c v. Poland* (application no. 5410/03); Judgment of the European Court of Human Rights of 20 March 2007, *R. R. v. Poland* (application no. 27617/04); Judgment of the European Court of Human Rights of 30 October 2012, *P. and S. v. Poland* (application no. 57375/08).

Or. en

Amendment 111

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Motion for a resolution**Paragraph 56***Motion for a resolution*

56. Recalls that *previous attempts to further limit the right to abortion, which in Poland is already among the most restricted in the Union, were halted in 2016 and 2018 as a result of mass opposition from Polish citizens as expressed in the ‘Black Marches’; strongly invites the Polish authorities to consider repealing the law limiting women’s and girls’ access to the emergency contraceptive pill;*

Amendment

56. *Stresses that the proposal concerning abortion is a citizens’ initiative, and not a government one, and was submitted on 30 November 2017 by a group of at least 100 000 entitled persons and initiated by the ‘StopAbortion’ Legislative Initiative Committee; recalls that, in accordance with the regulations in force, the project was submitted for parliamentary action and has been on the agenda for over two and a half years;*

Or. en