

Amendment 60

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 12***Motion for a resolution**Amendment*

12. Is concerned that the new Chamber of Extraordinary Control and Public Matters of the Supreme Court (hereinafter the ‘Extraordinary Chamber’), the majority of whose members are individuals nominated by the new National Council of the Judiciary and which risks not qualifying as an independent tribunal in the assessment of the Court of Justice of the European Union (hereinafter the ‘Court of Justice’), is to ascertain the validity of elections and to examine electoral disputes; notes that this raises serious concerns as regards the separation of powers and the functioning of Polish democracy, in that it makes judicial review of electoral disputes particularly vulnerable to political influence and is capable of creating legal uncertainty as to the validity of such review⁴² ; *deleted*

⁴² Venice Commission, Opinion of 8-9 December 2017, CDL-AD(2017)031, para. 43; Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146 (OJ L 228, 2.9.2017, p. 19), para. 135.

Or. en

Amendment 61

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Motion for a resolution**Paragraph 13***Motion for a resolution**Amendment*

13. Notes that, in its 2002 Code of Good Practice in Electoral Matters⁴³, the Venice Commission provides clear guidelines on the holding of general elections during public emergencies, including epidemics; notes that, while the Code provides for the possibility of exceptional voting arrangements, any amendments to introduce such arrangements may only be considered to be in accordance with European best practices 'if the principle of free suffrage is guaranteed'; considers that this is not the case with the amendments to the electoral framework for the presidential elections that were to take place on 10 May 2020, since they could impede the elections from taking a fair, secret and equal course, with full respect for the right to privacy⁴⁴ and in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁵; notes moreover that those amendments run counter to the case law of the Polish Constitutional Tribunal that was developed when constitutional review was still effective, and which stated that the electoral code is not to be modified 6 months before any elections; notes with concern that the announcement to postpone the presidential elections came only 4 days before the scheduled date;

deleted

⁴³ *Venice Commission, CDL-AD (2002) 23, Opinion no. 190/2002, Code of good practice in electoral matters. Guidelines and explanatory report, 30 October 2002; See, as well, Venice Commission, CDL-PI(2020)005rev-e, Report on Respect for Democracy Human Rights and Rule of Law during States of Emergency - Reflections, p. 23.*

⁴⁴ *See, as well, OSCE/ODIHR, Opinion on the draft act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Senate Paper No. 99), 27 April 2020.*

⁴⁵ *Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

Or. en

Amendment 62

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Motion for a resolution**Paragraph 14***Motion for a resolution*

14. Recognises that, *while* the organisation of the justice system is a national competence, *the Court of Justice has repeatedly held that Member States are required to comply with their obligations under Union law when exercising that competence*; reiterates that national judges are also European judges, applying Union law, *which makes their independence a common concern for* the Union, including the Court of Justice, *which has to enforce respect for the rule of law as laid down in Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the ‘Charter’) in the field of application of Union law; calls on the Polish authorities to uphold and maintain* the independence of *Polish courts*;

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14. Recognises that the organisation of the justice system is a national competence; reiterates that national judges are *essentially* also European judges, applying Union law, *whilst* the Union, including the Court of Justice, *has no competence to speak out regarding* the independence of *the judiciary in the Member States*;

Or. en

Amendment 63

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Motion for a resolution**Paragraph 15***Motion for a resolution*

15. ***Recalls*** that the *Acts* concerning the Constitutional Tribunal ***adopted on 22 December 2015 and 22 July 2016, as well as the package of three acts adopted at the end of 2016⁴⁶, seriously undermined the Constitutional Tribunal's independence and legitimacy*** and that ***the Acts of 22 December 2015 and of 22 July 2016 were declared unconstitutional by the Constitutional Tribunal on 9 March 2016 and 11 August 2016, respectively; recalls that those judgments were not published at the time or implemented by the Polish authorities; seriously deplores the fact that the constitutionality of Polish laws can no longer be effectively guaranteed in Poland since the entry into force of the aforementioned legislative changes⁴⁷; invites the Commission*** to consider launching an infringement procedure in ***relation to the legislation on the Constitutional Tribunal, its unlawful composition and its role in preventing compliance with the preliminary ruling of the Court of Justice of 19 November 2019⁴⁸***;

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15. ***Considers*** that the ***assessment of the legal nature of the Constitutional Tribunal's statements of 9 March 2016 and 11 August 2016 on the unconstitutionality of the laws*** concerning the Constitutional Tribunal ***remain outside the Union's competence*** and that, ***in the light of subsequent legislative developments and the case law*** of the Constitutional Tribunal, those ***statements are of historical value, making it superfluous*** to consider launching an infringement procedure in ***respect of the provisions concerning*** the Constitutional Tribunal;

⁴⁶ Ustawa z dnia 30 listopada 2016 r. o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym (Dz.U. 2016 poz. 2072); ustawa z dnia 30 listopada 2016 r. o statusie sędziów Trybunału Konstytucyjnego (Dz.U. 2016 poz. 2073);

Ustawa z dnia 13 grudnia 2016 r. -
Przepisy wprowadzające ustawę o
organizacji i trybie postępowania przed
Trybunałem Konstytucyjnym oraz ustawę
o statusie sędziów Trybunału
Konstytucyjnego (Dz.U. 2016 poz. 2074).

⁴⁷ Venice Commission Opinion of 14-15
October 2016, para. 128; UN, Human
Rights Committee, Concluding
observations on the seventh periodic report
of Poland, 31 October 2016, paras 7-8;
Commission Recommendation (EU)
2017/1520.

⁴⁸ Judgment of the Court of Justice 19
November 2019, A.K. and Others v Sąd
Najwyższy, C-585/18, C-624/18 and C-
625/18, ECLI:EU:C:2019:982.

Or. en

Amendment 64

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Motion for a resolution**Paragraph 16***Motion for a resolution*

16. ***Recalls that, in 2017, changes in the method of nomination of candidates for the office of the First President of the Supreme Court (hereinafter the ‘First President’) effectively rendered the participation of the Supreme Court judges in the selection procedure meaningless; denounces the fact that the Act of 20 December 2019 amending the Act on the organisation of the common courts, the Act on the Supreme Court and certain other acts⁴⁹ (the ‘Act of 20 December 2019’) even further reduces the participation of the judges in the selection process for the First President by introducing a position of Acting First President of the Supreme Court (hereinafter the ‘Acting First President’) appointed by the President of the Republic of Poland and by reducing the quorum in the third round to 32 out of 125 judges only, thereby effectively abandoning the model of power-sharing between the President of the Republic of Poland and the judicial community enshrined in Article 183(3) of the Polish Constitution⁵⁰***
;

Amendment

16. ***Recognises that the changes in the method of nomination of candidates to the position of the First President of the Supreme Court take into account the participation of Supreme Court judges in the selection procedure, while the role of the President of the Republic of Poland in that procedure is consistent with the principle of governmental checks and balances; recognises that the introduction of the post of Supreme Court judge ad interim holding the office of First President of the Supreme Court is a systemic solution aimed at ensuring the effective conduct of the election of the First President of the Supreme Court without undue delay;***

⁴⁹ Ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Dz.U. 2020 poz. 190).

⁵⁰ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, CDL-PI(2020)002, paras 51-55.

Or. en

Amendment 65

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Motion for a resolution**Paragraph 17***Motion for a resolution**Amendment*

17. Notes with concern the irregularities surrounding the nomination of the Acting First President and his further actions; is deeply concerned that the process of electing the candidates for the office of First President did not comply with Article 183 of the Polish Constitution or the Rules of Procedure of the Supreme Court and violated basic standards of deliberation among the members of the General Assembly of the Judges of the Supreme Court (hereinafter the 'General Assembly'); notes with regret that doubts concerning the validity of the election process in the General Assembly as well as the impartiality and independence of the Acting First Presidents during the election process could undermine further the separation of powers and the legitimacy of the new First President nominated by the President of the Republic of Poland on 25 May 2020, and could thus call into question the independence of the Supreme Court; recalls that similar violations of law by the President of the Republic of Poland occurred when nominating the President of the Constitutional Tribunal;

deleted

Or. en