

Amendment 72

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 24***Motion for a resolution*

24. Recalls that it is up to the Member States to establish a council for the judiciary, ***but that, where such council is established, its independence must be guaranteed in line with European standards and the Member State's constitution; recalls that, following the reform of the National Council of the Judiciary, which is the body responsible for safeguarding the independence of the courts and judges in accordance with Article 186(1) of the Polish Constitution, by means of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts⁶³, the judicial community in Poland was deprived of the power to delegate representatives to the National Council of the Judiciary, and hence its influence on recruitment and promotion of judges; recalls that before the reform, 15 out of 25 members of the National Council of the Judiciary were judges elected by their peers, while since the 2017 reform, those judges are elected by the Polish parliament; strongly regrets that, taken in conjunction with the premature termination in early 2018 of the mandates of all the members appointed under the old rules, this measure led to a far-reaching politicisation of the National Council of the Judiciary⁶⁴;***

Amendment

24. Recalls that it is up to the Member States to establish a council for the judiciary, ***and that its independence in Poland is*** guaranteed in line with European standards and the constitution; ***recognises*** that, following the reform of the National Council of the Judiciary, the body responsible for safeguarding the independence of the ***judiciary*** and judges in accordance with Article 186(1) of the Polish Constitution, the judicial community in Poland ***did not lose its right*** to delegate representatives to the National Council of the Judiciary ***between 2017 and 2018, and thus is able to*** influence ***the*** recruitment and promotion of judges;

⁶³ Ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Dz.U. 2018 poz. 3).

⁶⁴ Consultative Council of European Judges, Opinions of the Bureau of 7 April 2017 and 12 October 2017; OSCE/ODIHR, Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary, 5 May 2017; Venice Commission, Opinion of 8-9 December 2017, p. 5-7; GRECO, Ad hoc Report on Poland (Rule 34) of 19-23 March 2018 and Addendum of 18-22 June 2018; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 42 and 61.

Or. en

Amendment 73

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Motion for a resolution**Paragraph 25***Motion for a resolution**Amendment*

25. *Recalls that the Supreme Court, implementing the criteria set out by the Court of Justice in its judgment of 19 November 2019, found in its judgment of 5 December 2019 and in its decisions of 15 January 2020⁶⁵, as well as in its resolution of 23 January 2020, that the decisive role of the new National Council of the Judiciary in the selection of the judges of the newly created Disciplinary Chamber undermines the latter's independence and impartiality⁶⁶; is concerned about the legal status of the judges appointed or promoted by the new National Council of the Judiciary in its current composition and about the impact their participation in adjudicating may have on the validity and legality of proceedings;* *deleted*

⁶⁵ *Decision of the Supreme Court of 15 January 2020, III PO 8/18. Decision of the Supreme Court of 15 January 2020, III PO 9/18.*

⁶⁶ *On this subject, see, as well, the following cases pending before the European Court of Human Rights: **Reczkowicz and two Others v. Poland** (application nos. 43447/19, 49868/19 and 57511/19), **Grzęda v. Poland** (no. 43572/18), **Xero Flor w Polsce sp. z o.o. v. Poland** (no.4907/18), **Broda v. Poland** and **Bojara v. Poland** (nos. 26691/18 and*

27367/18), Żurek v. Poland (no. 39650/18) and Sobczyńska and Others v. Poland (nos. 62765/14, 62769/14, 62772/14 and 11708/18).

Or. en

Amendment 74

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Motion for a resolution**Paragraph 26***Motion for a resolution**Amendment*

26. *Recalls that the European Network of Councils for the Judiciary suspended the new National Council of the Judiciary on 17 September 2018 because it no longer fulfilled the requirements of being independent of the executive and legislature and initiated the expulsion procedure in April 2020⁶⁷ ;* *deleted*

⁶⁷ *ENCJ, Letter of 21 February 2020 by the ENCJ Executive Board. See as well the letter of 4 May 2020 by the European Association of Judges in support of the ENCJ.*

Or. en

Amendment 75

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Motion for a resolution**Paragraph 27***Motion for a resolution**Amendment*

27. Calls on the Commission to start deleted
infringement proceedings regarding the
Act of 12 May 2011 on the National
Council of the Judiciary⁶⁸ , as amended
on 8 December 2017, and to ask the Court
of Justice to suspend the activities of the
new National Council of the Judiciary by
way of interim measures;

⁶⁸ Ustawa z dnia 12 maja 2011 r. o
Krajowej Radzie Sądownictwa (Dz. U.
2011 nr 126 poz. 714).

Or. en

Amendment 76

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Motion for a resolution**Paragraph 28***Motion for a resolution**Amendment*

28. *Regrets that the Minister of Justice, who is, in the Polish system, also the Prosecutor General, obtained the power to appoint and dismiss court presidents of the lower courts at his discretion during a transitional period of 6 months, and that in the 2017-2018 period, the Minister of Justice replaced over 150 court presidents and vice-presidents; notes that, after this period, the removal of court presidents remained in the hands of the Minister of Justice, with virtually no effective checks attached to that power; notes, furthermore, that the Minister of Justice also obtained other “disciplinary” powers vis-à-vis court presidents, and presidents of higher courts, who in turn, now have large administrative powers vis-à-vis presidents of lower courts⁶⁹ ; regrets this major setback for the rule of law and judicial independence in Poland⁷⁰ ;* *deleted*

⁶⁹ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 45.

⁷⁰ See also Council of Europe, Bureau of the Consultative Council of European Judges (CCJE-BU), CCJE-BU(2018)6REV, 18 June 2018.

Or. en

Amendment 77

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Motion for a resolution**Paragraph 29***Motion for a resolution*

29. ***Regrets that*** the Act of 20 December 2019 that entered into force on 14 February 2020 ***changed*** the composition of the assemblies of judges and ***moved*** some of the powers of those bodies of judicial self-government to the colleges of courts presidents appointed by the Minister of Justice⁷¹ ;

Amendment

29. ***Recognises that the Polish authorities, by way of*** the act of 20 December 2019 ***amending the act on the common courts and certain other acts*** that entered into force on 14 February 2020, ***were able, in accordance with the principle of the sovereignty of Member States in terms of the organisation of the judiciary, to change*** the composition of the assemblies of judges and ***move*** some of the powers of those bodies of judicial self-government to the colleges of courts presidents appointed by the Minister of Justice;

⁷¹ Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 46 to 50.

Or. en

Amendment 78

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Motion for a resolution**Paragraph 30***Motion for a resolution**Amendment*

30. *Recalls that, in its judgement of 5 November 2019⁷², the Court of Justice found that the provisions of the Act of 12 July 2017 amending the Act on the organisation of the common courts and certain other acts⁷³, which lowered the retirement age of judges of the common courts, whilst allowing the Minister of Justice to decide on the prolongation of their active service, and which set a different retirement age depending on their gender, were contrary to Union law;* *deleted*

⁷² *Judgment of the Court of Justice of 5 November 2019, Commission v Poland, C-192/18, ECLI:EU:C:2019:924.*

⁷³ *Ustawa z dnia 12 lipca 2017 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (Dz.U. 2017 poz. 1452).*

Or. en

Amendment 79

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Motion for a resolution**Paragraph 31***Motion for a resolution*

31. ***Denounces the new provisions introducing further disciplinary offences and sanctions in respect of judges and court presidents because they pose a serious risk to judicial independence⁷⁴ ; denounces the new provisions prohibiting any political activity of judges, obliging judges to disclose publicly their membership in associations and restricting substantively the deliberations of judicial self-governing bodies, which go beyond the principles of legal certainty, necessity and proportionality in restricting the judges' freedom of expression⁷⁵ ;***

Amendment

31. ***Acknowledges the relevance of new legislation prohibiting all political activities of judges, obliging them to disclose publicly their membership in associations and restricting substantively the deliberations of judicial self-governing bodies, in order to strengthen the effective separation of powers and ensure the functioning of apolitical and impartial courts;***

⁷⁴ OSCE/ODIHR, Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019), 14 January 2020, p. 23-26; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 44-45.

⁷⁵ OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 18-21; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 24-30;

Or. en

Amendment 80

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Motion for a resolution**Paragraph 32***Motion for a resolution**Amendment*

32. Is deeply concerned by the disciplinary proceedings initiated against judges and prosecutors in Poland in connection with their judicial decisions applying Union law or public statements in defence of judicial independence and the rule of law in Poland; condemns the smear campaign against Polish judges and the involvement of public officials therein; calls on the Polish authorities to refrain from the abusive use of disciplinary proceedings and from other activities undermining the authority of the judiciary;

deleted

Or. en

Amendment 81

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Motion for a resolution**Paragraph 33***Motion for a resolution*

33. ***Calls on*** the Polish authorities ***to remove the new provisions (on disciplinary offences and other)*** that prevent the courts from examining questions of independence and impartiality of other judges ***from the standpoint of Union law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), hence depriving judges from exercising their duty under Union law to set aside national provisions conflicting with Union law***⁷⁶ ;

Amendment

33. ***Recognises, in the light of the explanations provided by*** the Polish authorities ***aimed at ensuring the functioning of a judicial system characterised by stability and integrity, the legitimacy of introducing*** provisions that prevent the courts from examining questions of independence and impartiality of other judges;

⁷⁶ OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 13-17; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 31-43.

Or. en