

Brussels, 11 May 2017

Open Letter to the General Affairs Council and Member States regarding the situation in Poland

On 16 May, the General Affairs Council is set to debate the situation in Poland upon request from the European Commission. We are writing to call on you to act to protect the rule of law and human rights in Poland. Despite repeated warnings by the European Commission, the Council of Europe's Commission for Democracy through Law (Venice Commission), other international bodies and civil society organisations, the Polish government has continued on its course of undermining the rule of law, tightening its grip on media and backsliding on human rights protection. These actions violate the EU's founding principles as enshrined in Article 2 of the Treaty on European Union (TEU). We therefore urge you to resort to the procedure laid down in Article 7 TEU and ensure Poland respects the principles on which the EU is founded.

A year ago, we welcomed the Commission's decision to activate, for the first time since its creation, the EU Framework to Strengthen the Rule of Law¹ (the Rule of Law Framework) and to engage in a dialogue with the Polish government on the legislative revisions impacting the Constitutional Tribunal and on the annulment of the appointment of several of its members. These revisions and the dispute on the membership of the Tribunal have undermined the Tribunal's independence and reduced its ability to act as the fundamental safeguard of the rule of law in the country². However, the Polish government has to date disregarded the European Commission's recommendations, failing to provide a solution to these concerns. Instead, it selectively refused to publish and implement rulings of the Constitutional Tribunal and adopted additional legislation, which further exacerbates the problems identified.

The changes impacting the Constitutional Tribunal are part of a wider sequence of actions undermining checks and balances and respect for human rights in Poland since October 2015. These actions have significantly expanded the powers of the executive at the expense of the judiciary, thus undermining the separation of powers, an essential component of the rule of law. Media freedom, freedom of expression and assembly, the right to asylum, the right to privacy and women's sexual and reproductive rights have also been restricted. Although reforms have been met with a strong response by civil society, the government's reaction to protests further confirms its resolve to silence critical voices and hold a grip on democratic counter-powers.

In this context, we call on the Council to hold Poland to account for its failure to respect its

1 Communication from the Commission to the European Parliament and the Council, A new EU Framework to strengthen the Rule of Law, COM(2014) 158/final 2.

2 These concerns have recently been confirmed by the Network of the Presidents of the Supreme Judicial Courts of the European Union in a statement which affirms that the Polish government's interventions in court appointments 'appear to indicate a threat to the independence of the Supreme Court as well as the Polish judiciary as a whole' and that Warsaw's actions 'will not only have the effect of undermining the rule of law, but also mutual trust in the administration of justice.' Statement of the Network of the Presidents of the Supreme Judicial Courts of the European Union on the Situation in Poland, available at the following link: <http://network-presidents.eu/sites/default/files/StatementPoland.pdf>.

obligations under the Treaties and to prevent the situation from further deteriorating. As the dialogue with the Polish government under the Rule of Law Framework has been inconclusive, it is time for the EU to move on to the next steps and take action under Article 7 TEU.

Launching the Article 7 TEU procedure would send a strong signal to Poland and other Member States, as well as the public, that the EU is committed to ensuring compliance with the EU's founding values and that it is ready to do what is needed to preserve them. It would also signal to civil society in Poland that the EU stands by its side in its fight for a society in which democracy, the rule of law, human rights and the other values protected under Article 2 TEU are upheld.

We therefore urge the Council and Member States to conclude their debate on Poland with an official stance that condemns and proposes action to halt Poland's backsliding from the EU's founding principles as enshrined in Article 2 TEU.

We in particular urge you to:

- Move ahead to the next steps and activate the procedure laid out in Article 7 TEU to address breaches by the Polish government of Article 2 TEU, in the next General Affairs Council session on 16 May;
- During the session, raise and condemn the many issues which threaten the rule of law, media freedom and human rights in Poland, as some Member States did recently during the Universal Periodic Review (UPR)'s 27th session at the United Nations Human Rights Council in Geneva;
- Adopt Council conclusions urging the Polish authorities to comply with the recommendations issued by the European Commission under the Rule of Law Framework and including further recommendations to the Polish government in order to address concerns;
- Commit to monitoring the situation in Poland, assessing progress and holding a follow-up discussion in the Council in the next three months;
- Commit to addressing developments in other Member States, which threaten the principles enshrined in Article 2 TEU.

We look forward to your response and we stand ready to provide any further information you may require.

Yours sincerely,

AEDH (European Association for the Defence of Human Rights)

Amnesty International

FIDH (International Federation for Human Rights)

Human Rights Watch

Open Society European Policy Institute

Reporters without Borders