Thursday 14 November 2019

P9_TA(2019)0058

Criminalisation of sexual education in Poland

European Parliament resolution of 14 November 2019 on the criminalisation of sexual education in Poland (2019/2891(RSP))

(2021/C 208/05)

The European Parliament,

— having regard to the Universal Declaration of Human Rights of 10 December 1948,

— having regard to the United Nations Sustainable Development Goals (SDGs),

— having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which opened for signature on 11 May 2011,

— having regard to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) of 25 October 2007,

— having regard to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 18 December 1979,

— having regard to the Convention on the Rights of the Child (CRC) of 20 November 1989,

— having regard to the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter'),

— having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995 and to the subsequent outcome documents adopted at the United Nations Beijing+5 (2005), Beijing + 15 (2010) and Beijing + 20 (2015) special sessions,

— having regard to the International Conference on Population and Development held in Cairo in 1994 and its programme of action,

— having regard to UNESCO's 2018 International Technical Guidance on Sexuality Education,

— having regard to the 2014 Operational Guidance for Comprehensive Sexuality Education of the United Nations Population Fund (UNFPA),

— having regard to the Standards for Sexuality Education in Europe developed by the World Health Organisation (WHO) Regional Office for Europe and the German Federal Centre for Health Education,

— having regard to the Council of Europe's Human Rights Commissioner's report of 4 December 2017 entitled 'Women's sexual and reproductive health and rights in Europe',

— having regard to the judgment of the European Court of Human Rights (ECHR) of 20 June 2017 in the case *Bayev and Others* v. *Russia*,

— having regard to Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography ([1]), and replacing Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ([2]),

— having regard to the 'European Union lesbian, gay, bisexual and transgender survey' published by the European Union Agency for Fundamental Rights (FRA) in 2019,

— having regard to its previous resolutions on Poland, and, in particular, its resolution adopted on 15 November 2017 on the situation of the rule of law and democracy in Poland ([3]),

— having regard to the mission report of 10 July 2017 by the Committee on Women's Rights and Gender Equality following its mission to Poland of 22 — 24 May 2017,

— having regard to the mission report of 3 December 2018 by the Committee on Civil Liberties, Justice and Home Affairs following the sending of an ad hoc delegation to Poland on the situation of the rule of law (19 — 21 September 2018),

— having regard to its resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU ([4]),

— having regard to Rule 132(2) of its Rules of Procedure,

A. whereas on 17 July 2019, a citizens' initiative for a law amending Article 200b of the Polish Penal Code was submitted to the Sejm by the 'Stop Paedophilia' initiative;

B. whereas on 15 October 2019, following the parliamentary election and resumption of a suspended parliamentary session, the Sejm debated the draft law at first reading and on 16 October 2019 voted down a motion to reject the bill; whereas legislative consideration of the draft law is expected to resume following the opening session of the newly elected Sejm on 12 November 2019;

C. whereas the purported purpose of the bill is to amend the existing laws on preventing and tackling paedophilia; whereas the equation of promoting paedophilia with providing comprehensive sexuality education for young people is alarming, misguided and detrimental;

D. whereas the new provisions of the draft law provide that anyone who publicly promotes or approves minors engaging in sexual intercourse would be subject to a penalty of up to two years in prison;

E. whereas the above provisions also apply to instances of using mass communication to promote or approve minors engaging in sexual intercourse or other sexual activity, and in the context of occupations related to the education, treatment or care or guardianship of minors, with a penalty of up to three years in prison; whereas proposals have been made to further increase this penalty to five years;

F. whereas such provisions would effectively criminalise the provision of comprehensive sexuality education to minors under the guise of preventing paedophilia, which would have an impact on, *inter alia*, educators, activists, healthcare providers, psychologists, publishers and journalists and even parents or legal guardians;

G. whereas the constitutional principle of proportionality implies that lawmakers do not have unfettered discretion to lay down rules of criminal law and that the criminal law should only be used as a last-resort measure, thus complying with the *ultima ratio* principle; whereas this draft law would violate that principle;

([1]) OJ L 335, 17.12.2011, p. 1.
([2]) OJ L 13, 20.1.2004, p. 44.
([3]) OJ C 356, 4.10.2018, p. 44.
([4]) Texts adopted, P8_TA(2019)0111.

Thursday 14 November 2019

H. whereas Poland has ratified the Istanbul Convention, the Lanzarote Convention, CEDAW and the CRC, and is obliged under international human rights law to provide access to comprehensive sexuality education and information, including on the risks of sexual exploitation and abuse, and to challenge gender stereotypes in society;

I. whereas providing some form of sexuality and health education is already mandatory in 20 Member States; whereas some Member States, including Poland, have failed to comply with the Standards for Sexuality Education in Europe developed by the WHO;

J. whereas comprehensive sexuality education is a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality, and aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to safeguard their health, wellbeing and dignity; whereas comprehensive sexuality education would allow children and young people to develop respectful social and sexual relationships while considering how their choices affect their own wellbeing and that of others; whereas it would also allow children and young people to understand and secure the protection of their rights throughout their lives;

K. whereas providing comprehensive sexuality education is one of the main instruments for achieving the commitments of the 25th anniversary of the International Conference on Population and Development (ICPD25), namely zero unmet need for family planning, zero preventable maternal deaths, and zero gender-based violence and harmful practices against women, girls and young people;

L. whereas, according to 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 to access healthcare, the right to privacy, the right to education and the prohibition of discrimination, as is also reflected in the Polish Constitution;

M. whereas the draft law can be seen as an additional attempt to limit sexual and reproductive rights in Poland in recent years; whereas the attempt to further limit the right to abortion was halted in 2018 as a result of mass opposition from Polish citizens as expressed in the 'Black Friday' marches;

N. whereas the ECHR has indicated that in sensitive matters, such as during the public discussion of sexuality education, where parental views, educational policies and the right of third parties to freedom of expression must be balanced, the authorities have no choice but to resort to the criteria of objectivity, pluralism, scientific accuracy and, ultimately, the usefulness of a particular type of information to the young audience;

O. whereas many children and teenagers are first learning about intimate relations from pornography, especially online, and from conflicting messages from their peers; whereas in this context, sexuality education becomes even more essential in order to provide the tools needed for young people to safely navigate the internet and social media and not to fall victim to online grooming, to help them make sense of the content seen, and to identify fact-based information and the presence of gender stereotypes and sexism;

P. whereas minors can face barriers to accessing contraception, such as restrictive laws and policies regarding the provision of contraceptives, in addition to a lack of knowledge; whereas even where adolescents are able to obtain contraceptives, they can be prevented from doing so due to stigma surrounding non-marital sexual activity and/or contraceptive use, fear of side-effects, or lack of knowledge as to how to correctly use contraceptives; whereas under Polish law regarding the age of consent, teenagers over the age of 15 are legally competent to consent to sexual acts; whereas they still require their guardian's consent in order to receive a prescription for contraceptives;

Q. whereas sexual violence is widespread, affecting minors in particular, and should be eradicated; whereas teenage pregnancy remains a major social issue and can contribute to maternal and child mortality; whereas comprehensive sexuality education helps to deconstruct gender stereotypes and prevent gender-based violence;

1. Recalls that sexual health is fundamental to the overall health and wellbeing of individuals, couples and families, in addition to the social and economic development of communities and countries, and that access to health, including sexual and reproductive health, is a human right;

2. Expresses its deep concern over the extremely vague, broad and disproportionate provisions in the draft law, which de facto seeks to criminalise the dissemination of sexuality education to minors and whose scope potentially threatens all persons and in particular sex educators, including teachers, healthcare providers, authors, publishers, civil society organisations, journalists and parents or legal guardians, with up to three years in prison for teaching about human sexuality, health and intimate relations; remains concerned that this draft law would have a chilling effect on educators and that one of the main barriers to sexuality education is the fact that educators are not supported;

3. Strongly reiterates that access to comprehensive and age-appropriate information about sex and sexuality and access to sexual and reproductive healthcare, including sexuality education, family planning, contraceptive methods and safe and legal abortion, is essential for the creation of a positive and respectful approach to sexuality and sexual relationships, in addition to the possibility of having safe sexual experiences, free from coercion, discrimination and violence; encourages all Member States to introduce comprehensive age-appropriate sexuality and relationship education for young people in schools;

4. Recalls that such education is a necessary part of the school curriculum to meet the WHO standards for Europe to educate and protect young people; affirms that such education should include topics like sexual orientation and gender identity, sexual expression, relationships and affirmative consent, and information about negative outcomes or conditions such as sexually transmitted infections (STIs) and HIV, unintended pregnancy, sexual violence and harmful practices such as grooming and female genital mutilation;

5. Recalls that education, in addition to being a standalone fundamental right, is a precondition for the enjoyment of other fundamental rights and freedoms as guaranteed by Article 2 of the Treaty on European Union (TEU), the Polish Constitution and the Charter; stresses that rather than protecting young people, a lack of information and education about sex and sexuality puts the safety and wellbeing of young people at risk by leaving them more vulnerable and less equipped to identify sexual exploitation, abuse and violence, including domestic violence and online forms of abuse such as cyber violence, online harassment and revenge porn; 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, breaking the silence around sexual violence, sexual exploitation or abuse, and empowering young people to seek help;

6. Stresses the importance of health and sexuality education, in particular for girls and young LGBTI people, who are particularly impacted by inequitable gender norms; stresses such education must include teaching young people about relationships based on gender equality, consent and mutual respect as a way of preventing and combating gender stereotypes, homophobia, transphobia and gender-based violence; notes that sexuality education does not result in earlier sexual activity;

7. Recalls that Article 23 of Directive 2011/93/EU calls on the Member States, including Poland, to take appropriate measures with relevant civil society organisations in order to raise awareness and reduce the risk of children becoming victims of sexual abuse or exploitation;

8. Recognises the important role of civil society in providing sexuality education; calls for adequate funding to be available for the organisations concerned through different funding instruments at EU level, such as the Multiannual Financial Framework 2021 — 2027 Rights and Values programme and other EU pilot projects that could have an impact on this field;

9. Condemns the recent developments in Poland that set out to misinform, stigmatise and ban sexuality education, and in particular the harsh, inappropriate and erroneous content of the justification provided for by the draft law; calls on the Polish Parliament to refrain from adopting the proposed draft law and to ensure that young people have access to comprehensive sexuality education and that those who provide such education and information are supported in so doing in a factual and objective manner;

10. Calls on the Council to address this matter and other allegations of violations of fundamental rights in Poland in the context of its current hearings on the situation in Poland, in accordance with Article 7(1) TEU;

11. Instructs its President to forward this resolution to the Commission and the Council, the President, Government and Parliament of Poland and the governments and parliaments of the Member States.