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P9_TA(2021)0395

Media freedom and further deterioration of the Rule of law in Poland

European Parliament resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland (2021/2880(RSP))

(2022/C 117/16)

The European Parliament,

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

— having regard to Article 2 of the Treaty on European Union (TEU),

— having regard to Article 49 of the Treaty on the Functioning of the European Union (TFEU),

— having regard to the European Convention on Human Rights and the related case-law of the European Court of Human Rights,

— having regard to the Universal Declaration of Human Rights,

— having regard to the case-law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights,

— having regard to the Commission's reasoned proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, issued in accordance with Article 7(1) TEU (COM(2017)0835),

— having regard to Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services ('Audiovisual Media Services Directive') in view of changing market realities ([1]),

— having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget ([2]) ('the Rule of Law Conditionality Regulation'),

— having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility ([3]),

— having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI-free zones ([4]),

— having regard to its resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone ([5]),

— having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary ([6]),

([1]) OJ L 303, 28.11.2018, p. 69.
([2]) OJ L 433 I, 22.12.2020, p. 1.
([3]) OJ L 57, 18.2.2021, p. 17.
([4]) OJ C 255, 29.6.2021, p. 7.
([5]) Texts adopted, P9_TA(2021)0089.
([6]) Texts adopted, P9_TA(2020)0014.

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— having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights ([7]),

— having regard to its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law ([8]),

— having regard to its resolution of 24 June 2021 on the Commission's 2020 Rule of Law Report ([9]),

— having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget ([10]),

— having regard to the Commission communication of 30 September 2020 entitled '2020 Rule of Law Report — The rule of law situation in the European Union' (COM(2020)0580),

— having regard to the Commission communication of 20 July 2021 entitled '2021 Rule of Law Report — The rule of law situation in the European Union' (COM(2021)0700),

— having regard to the letter of 8 March 2021 from the Commissioner for Human Rights of the Council of Europe to the Polish Prime Minister concerning two draft laws on the media sector in Poland ([11]),

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

A. whereas, as enshrined in Article 2 TEU, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;

B. whereas under Article 47 of the Charter, the fundamental right to an effective remedy requires access to an 'independent' tribunal; whereas political influence or control of the judiciary and similar barriers to the independence of individual judges have often resulted in the judiciary being unable to fulfil its role as an independent check on the arbitrary use of power by the executive and legislative branches of government;

C. whereas media freedom is one of the pillars and guarantees of a functioning democracy and the rule of law; whereas media freedom, pluralism and independence and the safety of journalists are crucial components of the right of freedom of expression and information, and are essential to the democratic functioning of the EU and its Member States; whereas public authorities should adopt a legal and regulatory framework which fosters the development of free, independent and pluralistic media;

D. whereas Poland, along with some other Member States, has not yet implemented all the requirements of the Audiovisual Media Services Directive (Directive (EU) 2018/1808), and in particular those regarding independence of the national media market regulator;

E. whereas the European Audiovisual Observatory of the Council of Europe concluded in 2019 that the independence of the Polish media regulatory authorities was raising concerns regarding the implementation of the appointment procedures and accountability to the National Broadcasting Council (KRRiT); whereas, it also concluded that the National Media Council (RMN) had 'no adequate safeguards for the functional independence from political parties and the government' ([12]);

([7]) Texts adopted, P9_TA(2020)0251.
([8]) Texts adopted, P9_TA(2020)0225.
([9]) Texts adopted, P9_TA(2021)0313.
([10]) Texts adopted, P9_TA(2021)0348.
([11]) Ref: CommHR/DM/sf 007-2021.
([12]) Cappello M. (ed.), The independence of media regulatory authorities in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2019.

F. whereas in February 2021 a project to impose an advertisement tax was proposed and then withdrawn due to strong criticism on its negative impact on media freedom and plurality of media; whereas on 10 February 2021 about 45 private media outlets went off the air in Poland, running black front pages with slogans for 24 hours in protest against the proposed media advertising tax, and around 40 broadcasters wrote in an open letter to Polish authorities that the new tax would weaken and perhaps force the closure of some media outlets operating in Poland, limiting choice for their audiences;

G. whereas on 11 August 2021 the Polish Sejm voted in favour of a draft bill that proposes only to allow companies which are majority-owned by entities from the European Economic Area to hold broadcast licences; whereas this draft bill was voted down by the Polish Senate on 9 September 2021, which does not mean the end of the legislative process given the possibility of the Polish Sejm to overrule this decision;

H. whereas TVN24, an independent media outlet belonging to the US-based Discovery group, would be directly targeted by this draft bill; whereas a decision on the renewal of TVN24's licence is still pending in Poland, despite the broadcaster requesting the renewal in February 2020; whereas the Polish national media regulator (KRRiT) should issue its decision regarding a new broadcasting licence before the expiry of the current licence, i.e. before 26 September 2021;

I. whereas, given the inaction of KRRiT, the Discovery group applied to the Dutch authorities for a broadcasting licence for its TVN24 channel and was given one;

J. whereas Reporters Without Borders' World Press Freedom Index 2021 ranks Poland in 64th place, its lowest-ever ranking, dropping from 18th place in 2015;

K. whereas on 7 May 2021 the European Court of Human Rights ruled that the actions of the authorities in appointing one of the judges who had been on the panel of the Constitutional Tribunal in the applicant company's case had meant that the panel that had tried the case had not been a 'tribunal established by law' and that the applicant's 'right to a fair trial' had been violated ([13]);

L. whereas on 2 March 2021 the CJEU ruled that successive amendments to the Law on the National Council of the Judiciary, which led to the abolition of effective judicial control of the Council's decisions to present proposals for the appointment of candidates for Supreme Court judges to the president, are liable to infringe EU law ([14]);

M. whereas on 29 March 2021 the Prime Minister of Poland lodged an application to the widely contested and illegitimate 'Constitutional tribunal' to consider whether the provisions of the TEU related to primacy of EU law and effective judicial protection are consistent with the Polish Constitution ([15]);

N. whereas by order of 14 July 2021, the CJEU granted interim measures requested by the Commission under Article 279 TFEU and related to the functioning of the Disciplinary Chamber of the Polish Supreme Court and the suspension of further provisions of Polish law affecting judicial independence ([16]);

O. whereas on 14 July 2021 the illegitimate Polish 'Constitutional Tribunal' ruled that the CJEU's interim orders on the structure of courts in Poland were inconsistent with the Polish Constitution ([17]);

P. whereas on 15 July 2021 the CJEU ruled in its judgment in case C-791/19 ([18]) that the disciplinary regime for judges in Poland was not compatible with EU law;

([13]) Judgment of 7 May 2021, *Xero Flor w Polsce sp. z o.o.* v *Poland*.
([14]) Judgment of the Court of Justice of 2 March 2021, *A.B. and Others*, C-824/18, ECLI:EU:C:2021:153.
([15]) Application in pending case K 3/21; judgment of the illegitimate 'Constitutional Tribunal' expected on 22 September 2021.
([16]) Order of the Court of Justice of 14 July 2021, *Commission* v *Poland*, C-204/21 R, ECLI:EU:C:2021:593.
([17]) Judgment of the Constitutional Tribunal of 14 July 2021, case P 7/20.
([18]) Judgment of the Court (Grand Chamber) of 15 July 2021, *European Commission* v *Republic of Poland*, C-791/19, ECLI:EU:C:2021:596.

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Q. whereas on 20 July 2021 the Commission sent a letter to Poland on all the measures taken or envisaged to fully comply with the Court's order and all the measures necessary to fully comply with the judgment; whereas Polish authorities replied to the Commission on 16 August 2021;

R. whereas on 22 July 2021 the European Court of Human Rights ruled that the Disciplinary Chamber of the Supreme Court was not an 'independent and impartial tribunal established by law' and did not meet the standard of a 'right to a court established by law' guaranteed under Article 6 § 1 of the European Convention on Human Rights ([19]);

S. whereas on 7 September 2021 the Commission decided to send Poland a letter of formal notice under Article 260(2) TFEU for not taking the necessary measures to comply fully with the judgment of the CJEU of 15 July 2021 finding that Polish law on the disciplinary regime against judges was not compatible with EU law;

T. whereas on 7 September 2021 the Commission requested that the CJEU impose financial penalties on Poland to ensure compliance with the Court's interim measures order of 14 July 2021 related to the functioning of the Disciplinary Chamber of the Polish Supreme Court and the suspension of further provisions of Polish law affecting judicial independence;

U. whereas in June 2021 Poland's Deputy Justice Minister announced that the ruling coalition was currently working on a bill aimed at banning 'LGBT propaganda';

V. whereas on 14 July 2021 the Commission decided to launch infringement procedures against Hungary and Poland related to equality and the protection of fundamental rights, and in particular in response to the declaration of 'LGBT-ideology free zones'; whereas in a letter ([20]) of September 2021, the Commission's services considered that the principle of non-discrimination in the implementation of European Structural and Investment Funds was not ensured and therefore decided to put on hold the REACT-EU programme amendments in relation to the regional operational programmes of five local Polish authorities;

W. whereas in a Flash Eurobarometer survey of August 2021, the vast majority of respondents agreed that the EU should only provide funds to Member States conditional upon their government's implementation of the rule of law and of democratic principles; whereas this figure was also very high in Poland (72 %) ([21]);

Media freedom

1. Recalls that in its previous resolutions the European Parliament has expressed its concern about previously adopted and newly suggested changes to Polish media law, a re-shaping of the public broadcaster into a pro-government broadcaster; recalls the fact that Article 54 of the Polish Constitution guarantees freedom of expression and forbids censorship;

2. Criticises in the strongest possible terms the so-called 'Lex TVN' draft bill adopted by the Sejm; believes it is an attempt to silence critical content and a direct attack on media pluralism, and that it also violates fundamental rights under the Charter and the Treaties, EU internal market legislation and international human rights and trade law, such as the Audiovisual Media Services Directive; strongly encourages the Sejm to take into account the deliberations and subsequent rejection of the draft bill by the Senate;

3. Is deeply concerned by the further deterioration of media freedom in Poland and the different reforms put in place by the ruling coalition in order to reduce diversity and critical voices within the media; is deeply concerned by the confirmation of the acquisition of Polska Press Group by a state-controlled oil company, PKN Orlen, even before the final outcome of the Polish Ombudsman appeal against the Competition Authority; is deeply concerned by the editorial changes

([19]) Judgment of the European Court of Human Rights of 22 July 2021, *Reczkowicz* v *Poland* (application no 43447/19).
([20]) Ares(2021)5444303 — 03/09/2021.
([21]) Flash Eurobarometer — State of the European Union, IPSOS, August 2021.

undertaken within Polska Press Group by the PKN Orlen management in spite of an ongoing appeal that temporarily bars the right of PKN Orlen to exercise its stakeholder rights; strongly condemns the statements of PKN Orlen officials dismissing the court ruling as irrelevant ([22]);

4. Is deeply concerned about the deteriorating situation in Polish public media and their failure to perform their public mission, characterised by pluralism, impartiality, balance and independence, a legal obligation under Article 21.1 of the 1992 Broadcasting Act;

5. Strongly condemns the continuous smear campaigns in public media against judges, journalists and politicians critical of the current government, including SLAPP (strategic lawsuit against public participation) lawsuits initiated by government agencies, government officials, state-owned companies or individuals with close ties to the government coalition; calls on the Polish authorities, in cooperation with journalists' organisations, to monitor and report on attacks against journalists, as well as on lawsuits intended to silence or intimidate independent media, and to guarantee access to the appropriate legal remedies;

6. Believes that EU binding rules providing robust and consistent protection for the independent media and journalists from vexatious lawsuits intended to silence or intimidate them in the EU are much needed in order to help end this abusive practice, and highlights that the European Parliament is currently working on an own-initiative report on the subject of SLAPPs;

7. Welcomes the Commission's recent initiative to issue a Recommendation on Ensuring Safety of Journalists in the European Union; calls on the Commission to deliver on the Media Freedom Act ([23]) without delay;

8. Calls on the Commission to ensure proper implementation of the Audiovisual Media Services Directive, in particular with reference to the independence of media regulators, transparency of media ownership and media literacy; calls on the Commission to make effective use of infringement procedures in situations where Member States implement these provisions incorrectly or incompletely;

9. Reiterates its call on the Polish authorities to fully implement the Council of Europe's Recommendation of 13 April 2016 on the protection of journalism and safety of journalists and other media actors ([24]);

10. Expresses its full support for the peaceful protests against the Polish Government led reforms further undermining media freedom in Poland;

Primacy of EU law and the independence of the judiciary and of other institutions

11. Welcomes the Commission's latest initiatives as regards the independence of the judiciary; believes, however, that faster action, as repeatedly called for by the European Parliament, would have helped to avoid the continuous erosion of the independence of the judiciary in Poland; reiterates its call on the Commission to launch infringement procedures in relation to the legislation on the illegitimate 'Constitutional Tribunal' and its unlawful composition, the Extraordinary Chamber of the Supreme Court and the National Council of the Judiciary;

12. Is deeply concerned by the fact that the Polish authorities recently have deliberately and systematically violated rule of law-related judgments and orders of the CJEU; calls on the Polish authorities to comply with the various CJEU and European Court of Human Rights rulings regarding the composition and organisation of the illegitimate 'Constitutional Tribunal' and the Disciplinary Chamber of the Supreme Court in order to comply with the standards of judicial independence that Poland committed to;

([22]) *Poland: Purge of editors begins despite court ruling suspending purchase of Polska Press*, International Press Institute, 30 April 2021.

([23]) *For a 'European Media Freedom Act'*, speech delivered to the European Parliament's Committee on Culture and Education, 19 April 2021.

([24]) Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.

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13. Reiterates its condemnation of the practice of prosecuting and harassing judges who are critical of the Polish Government; calls on the Disciplinary Chamber in its current composition to stop all of its activities and cases, including legal cases, and to reinstate all judges who have been removed from their positions as adjudicators by this Chamber, including those judges who continue to be prevented from adjudicating despite them having successfully appealed their suspension by the Chamber in a court of law, as the final verdicts on appeal are subsequently and continuously disregarded by the presidents of the courts in which they serve;

14. Calls for the offices of the Prosecutor General and that of the Minister of Justice to be separated as per the Venice Commission's recommendations ([25]); highlights the opinion of the CJEU Advocate General in the pending case and asks the Commission to be more pro-active in launching an infringement procedure related to the independence of the prosecutor services;

15. Reiterates the fundamental nature of primacy of EU law as a cornerstone principle of EU law in accordance with well established case-law of the CJEU; recalls that all Member States agreed to attach a declaration concerning primacy to the Treaty of Lisbon; recalls that the effects of this principle are binding on all the bodies of a Member State, without provisions of domestic law, including constitutional provisions, being able to prevent that; denounces any attempt to undermine this principle;

16. Calls on the Polish Prime Minister not to question the primacy of EU law over national legislation and to withdraw his motion, pending before the illegitimate 'Constitutional Tribunal', to review the constitutionality of certain parts of the EU Treaties;

17. Calls on the Prosecutor General to withdraw his motion before the illegitimate 'Constitutional Tribunal' related to the constitutionality of Article 6 of the European Convention on Human Rights;

18. Calls on the Commission to continue monitoring all the issues already identified and ask for interim measures whenever referring cases to the CJEU in the field of the judiciary and to request financial penalties in cases of non-compliance with the CJEU rulings;

Further assessment of the rule of law situation in Poland

19. Regrets the lack of progress and the deterioration of the rule of law situation in Poland since its resolution of 17 September 2020, and that the recommendations thereof have not been taken into consideration by the Polish Government; reiterates those recommendations;

20. Takes note of the announcement of the state of emergency by Poland and other Member States bordering Belarus; notes with concern the humanitarian situation at the border and condemns the attempt by the Belarusian authorities to instrumentalise migrants, including asylum applicants, as a political tool and hybrid threat against Poland and other Member States in response to their support for the democratic opposition in Belarus; calls for a united EU response to find solutions to this situation; calls on the authorities of Poland and other affected Member States to ensure that EU asylum and return law and international human rights law are fully respected also during the emergency situation, including access to asylum and access of media and civil society organisations to the border area, and to take into account the guidance by the UN Refugee Agency (UNHCR) and bodies of the Council of Europe; calls on the Commission as the guardian of the Treaties to ensure compliance with relevant EU law; calls on other Member States to demonstrate solidarity and provide assistance to the affected Member States, including relocation of the asylum applicants;

21. Reiterates its deep concerns expressed in its resolutions over the attempts to criminalise the dissemination of sexuality education in Poland and insists 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;

([25]) Opinion No 892/2017 of 11 December 2017.

22. Is alarmed by the proposed draft amendments to the Education Law and certain other acts as well as the adopted amendments to the Regulation on Pedagogical Supervision of 1 September 2021 ([26]) which would limit the autonomy of education by shifting powers from the local government to the central authorities, exercising control over school principals and tightening oversight of NGOs contributing to school education;

23. Reiterates its deep concerns about the attacks on women's rights in Poland, in particular the setback to women's sexual and reproductive health and rights after the ruling of the illegitimate 'Constitutional Tribunal' which was published in the Official Gazette (Dziennik Ustaw) on 27 January 2021;

24. Welcomes the appointment of a new Polish Commissioner for Human Rights in July 2021 after the expiry of the term of his predecessor in September 2020;

25. Is concerned by the fact that since December 2018 the Council has held only one Article 7(1) hearing on the rule of law in Poland; urges the Council to issue concrete recommendations to Poland, as stipulated in Article 7(1) TEU, and to provide deadlines for the implementation of those recommendations; calls on the current and upcoming Council presidencies to keep hearings on Poland on the Council agenda; is concerned about the attitude of successive Council presidencies to no longer report back to the appropriate committee in the European Parliament on the Article 7(1) procedures, and urges the Council to do so at the earliest opportunity;

26. Reiterates its call on the Council and Commission to expand the scope of Article 7(1) TEU hearings in order to also cover issues related to fundamental rights and democracy, and to include new developments and assess risks of breaches of the independence of the judiciary, freedom of expression, including media freedom, freedom of the arts and sciences, freedom of association and the right to equal treatment, as requested by the European Parliament;

27. Welcomes the steps taken by the Commission related to the declaration of some 'LGBT-ideology free zones' by some local and regional authorities in Poland and their incompatibility with EU values and the importance of non-discrimination in the implementation of European Structural and Investment Funds; calls on the Commission to use all legal grounds in the infringement procedures; calls on the state, local and regional authorities of Member States to halt all cooperation with the Polish authorities declaring 'LGBT-ideology free zones'; calls on the Commission to continue rejecting EU funding applications by authorities who have adopted such resolutions and to consider ways of ensuring the protection of the final beneficiaries and the continuity of their work, including by considering alternatives to regional managing authorities such as direct granting to civil society organisations that are dependent on EU funding to operate;

28. Strongly condemns the fact that SLAPPs are also being used against activists who are acting against and informing the public about the resolutions on being free from so-called LGBTI ideology and the 'Regional Charters of Family Rights';

29. Reiterates its position on the Rule of Law Conditionality Regulation, which entered into force on 1 January 2021 and is directly applicable in its entirety in the European Union and all its Member States for all funds of the EU budget, including resources allocated through the EU Recovery Instrument since then;

30. Recalls that the Rule of Law Conditionality Regulation provides a clear definition of the rule of law, which must be understood in relation to the other values of the Union, including fundamental rights and non-discrimination; expresses disappointment at the Commission's response to the European Parliament in its letter of 23 August 2021; calls on the Commission to immediately trigger the procedure provided for in Article 6(1) of the Rule of Law Conditionality Regulation for Poland;

31. Expresses serious concerns regarding the compliance of the draft Polish Recovery and Resilience Plan with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility ([27]) and with the Charter; calls on the Commission and the Council to carefully analyse every measure

([26]) Dz.U. 2021 poz. 1618.
([27]) OJ L 57, 18.2.2021, p. 17.

outlined in the draft Polish Recovery and Resilience Plan and to only approve the plan if it is established that the Polish authorities have implemented all CJEU rulings, and in particular as regards the independence of the judiciary, and that it would not subsequently lead to the EU budget actively contributing to breaches of fundamental rights in Poland;

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32. Instructs its President to forward this resolution to the governments and parliaments of the Member States, the Council, the Commission, the Committee of the Regions and the Council of Europe.