

Brussels, 16 February 2017

Open Letter to the College of Commissioners regarding the situation in Poland

Dear Commissioner,

As the European Commission is set soon to examine Poland's response to its Recommendation of 21 December 2016¹, complementary to Commission Recommendation (EU) 2016/1374² regarding the rule of law in this Member State, we are writing in support of the Commission's assessment that there is a steady deterioration of the rule of law in Poland. We believe that this assessment, combined with concerns over the existence of a 'clear risk of a serious breach' by the Polish government of the values referred to in Article 2 TEU³, foremost among them respect for human rights, warrant you to resort to the procedure laid down in Article 7 of the Treaty on European Union (TEU).

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 Law⁴ (the Rule of Law Framework) against Poland and to engage in a dialogue with this Member State on the reforms impacting the Constitutional Tribunal. By activating the Rule of Law Framework up to the third and last stage in the procedure, the Commission has demonstrated its continued commitment to hold the Polish government to account for its attacks on the rule of law.

We share the Commission's assessment regarding these legislative changes. The reforms have adversely affected the Constitutional Tribunal's functioning, undermined its legitimacy and seriously reduced its ability to carry out its mandate effectively and function as the fundamental safeguard of rule of law in the country. They also infringed upon the Tribunal's independence and undermined legal certainty.

Regrettably, Poland has to date failed to provide a satisfactory solution to these concerns. Instead, the Polish government has continued to enact legislation in complete disregard for the Commission's recommendations, and in a way that further entrenches rather than correct the problems identified.

We also want to stress that the changes impacting the Constitutional Tribunal are part of a wider sequence of reforms which undermine checks and balances and restrict human rights in Poland. Since the current government came into power in October 2015, reforms were passed which 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. Attempts to restrict human rights, including freedom of expression and media freedom, freedom of assembly, the right to privacy and women's sexual and reproductive rights, particularly the right to abortion, have also multiplied and are a source of concern. 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.

Against this background, we support the Commission's conclusion that the attacks on the Constitutional Tribunal represent a systemic threat to the rule of law in Poland, which the Polish government has refused to satisfactorily address. We further observe a broader attack against the values enshrined in Article 2 TEU, which extends beyond the limits of the European Commission's assessment under the Rule of Law Framework.

1 European Commission, Commission Recommendation of 21.12.2016 regarding the rule of law in Poland complementary to Commission Recommendation (EU) 2016/1374, C(2016) 8950 final.

2 European Commission, Commission Recommendation of 27.7.2016 regarding the rule of law in Poland, C(2016) 5703 final.

3 Article 2 of the Treaty on European Union provides that: '*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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*'

4 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.

As the dialogue with the Polish government under the Rule of Law Framework has been inconclusive, despite an additional warning in December, and has not prevented Poland from further undermining the rule of law, we believe that a recommendation from the Commission to activate Article 7 TEU is at this stage the only way to continue to hold Poland to account for its failure to respect its obligations under the Treaties.

It is necessary for the Commission to prevent the situation from deteriorating even further. Past experiences with other Member States which faced similar threats have shown that time does not solve the problems but rather risks entrenching them. Further delaying resorting to Article 7 TEU would risk undermining the Commission's credibility. It would indicate to other Member States that they can undermine the founding values they signed on to respect and still expect no strong response by the EU.

On the other hand, recommending resort to the Article 7 TEU procedure would send a strong signal to Poland and other Member States, as well as the public, that the Commission is committed to ensuring compliance with the EU's founding values and that it is ready to do what is needed to preserve them from attacks. It would open up a new phase in which both the Polish government and all the EU institutions will have to face up to their own responsibilities to uphold these values. Finally, it would send a strong signal to civil society in Poland that the Commission 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.

As alarming tendencies threatening open societies' founding principles have emerged across the EU and beyond in recent years, it is important to be vigilant and counter any threat before it is too late. Recent developments in the US remind us how preserving a system based on effective checks and balances is vital to ensuring continued respect for those values that underpin democracies and human rights globally.

We therefore urge you to halt Poland's backsliding from the EU's founding values and move ahead to the next steps as laid out in Article 7 TEU.

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

Yours sincerely,

Amnesty International

FIDH (International Federation for Human Rights)

Human Rights Watch

Open Society European Policy Institute

Reporters without Borders

This letter remains open for endorsement by other organisations. It is supported by the following organisations at the time of publication:

ANTERIS Foundation (ANTERIS Fundacja Pomocy Prawnej)

Association for Development of Civil Society (Pro Humanum - Stowarzyszenie na Rzecz Rozwoju Społeczeństwa Obywatelskiego)

Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej)

Autonomy Foundation (Fundacja Autonomia)

Association pro memoria prof. Zbigniew Holda (Stowarzyszenie im. Profesora Zbigniewa Holdy)

Campaign Against Homophobia (Kampania Przeciw Homofobii)

Citizens Network Watchdog Poland (Sieć Obywatelska Watchdog Polska)

Diversity Workshop Association (Stowarzyszenie Pracownia Różnorodności)

Foundation of Local Activity (Fundacja Aktywności Lokalnej)

Helsinki Foundation for Human Rights (Helsińska Fundacja Praw Człowieka)

Institute for Law and Society (Instytut Prawa i Społeczeństwa)

Izabela Jaruga-Nowacka Foundation (Fundacja im. Izabeli Jarugi-Nowackiej)

Panoptykon Foundation (Fundacja Panoptykon)

Polish Society of Antidiscrimination Law (Polskie Towarzystwo Prawa Antydyskryminacyjnego)

Projekt: Polska association (Stowarzyszenie Projekt: Polska)

Queer May Association (Stowarzyszenie Queerowy Maj)

STER Foundation for Equality and Emancipation (Fundacja na rzecz Równości i Emancypacji STER)

The Association against Anti-Semitism and Xenophobia Open Republic (Stowarzyszenie przeciw Antysemityzmowi i Ksenofobii Otwarta Rzeczpospolita)

The Diversity Foundation Polistrefa (Fundacja na Rzecz Różnorodności Polistrefa)

Trans-Fuzja Foundation Poland (Fundacja Trans-Fuzja)

Volunteers of Equality Foundation (Fundacja Wolontariat Równości)