



Helsinki Foundation for Human Rights



Civil Liberties Union for Europe

September, 22, 2017, Warsaw-Brussels

Dear Mr Matti Maasikas
Deputy Minister for European Affairs of Estonia
Chairman of the General Affairs Council

In view of the discussion concerning the situation in Poland during the upcoming meeting of the General Affairs Council, we would like to bring to your attention recent developments in Poland.

In 2016, we took note of the European Commission's understandable decision to activate its framework on the rule of law. However, after a year and a half of dialogue we regret to note that the Polish government has not only ignored the Commission's recommendations, but has also continued to press forward with retrogressive measures. The current government has not only undermined the independence of the judiciary. It has also dismantled key components required for a properly functioning rights-respecting democracy.

We expect that you are aware that the presidential veto, which was exercised in July after unprecedented public and international pressure, has not brought the threat to Poland's judiciary to an end. The Act amending the Act on the Common Courts, which was approved by the President of Poland and came into force in August 2017, gives the Minister of Justice discretion to replace all the presidents of the common courts over the next six months. Furthermore, the President is currently elaborating new versions of the two pieces of legislation that he vetoed.¹ However, so far there has been no public information concerning the draft and no public consultation. The draft legislation will be presented by the President on 25th September and it may be directed straight to the Parliament. This suggests that the government will continue its practice of pressing ahead with major reforms in bad faith leaving little or no opportunity for public debate.

Like an independent judiciary, the rule of law relies on a properly functioning democratic process to ensure that laws are made in accordance with general public interest. The democratic process relies on freedom and pluralism of the media, able to inform a balanced public debate. As a result of reforms in 2016, public service media in Poland are now under strong government influence. The ruling party has also announced its intention to regulate private media ownership, suggesting that, as in Hungary, it will attempt to extend its influence across the whole media landscape.² This would afford the government undue sway over public opinion.

¹ Stankiewicz A., Prezydent przytuli sądy, Onet.pl, available at: <http://wiadomosci.onet.pl/tylko-w-onecie/prezydent-andrzej-duda-przytuli-sady-ustawy-sadowe/twdprlx>

² Gazetaprawna.pl, Szydło: Chcemy pluralizmu w mediach, którego w tej chwili nie ma, available at: <http://serwis.gazetaprawna.pl/media/artykuly/1069830,dekoncentracja-mediow-pluralizmy-szydlo-krynica-wywiad.html>

Civil society forms yet another pillar of support for the rule of law. NGOs, like the media, help inform the public about current events. They also interact with the judiciary to hold governments accountable for their legal obligations. In addition, they allow the public to participate in democracy in an organised and concerted manner, through public protest and by representing the interests of the general public to the lawmakers. The government has already adopted restrictions on the right to public protest.³ Furthermore, like in Hungary, the Polish government has shown increasing hostility towards NGOs promoting the rule of law, democratic participation and fundamental rights. In 2016 a number of organisations critical of retrogressive reforms to the Constitutional Tribunal were subject to smear campaigns in the public media. Public funding was also discontinued for NGOs working with women victims of domestic violence and on the integration of migrants. Furthermore, a significant change to the way that public, EU and possibly also EEA/Norway grants funding is distributed to NGOs is imminent.⁴ A new law would create a National Institute of Freedom that, in effect, would place complete discretion for the distribution of these funds with a government appointee. The draft law contains no express guarantees to ensure compliance with certain requirements relating to the use of the EU cohesion funds (such as the promotion of gender equality and sustainable development). Worse than this, however, is the likely course of events that funding will shift away from NGOs working to promote the EU's fundamental values to NGOs close to the ruling party, as has happened in Hungary.⁵

Past, current and expected developments in Poland do nothing other than point to the complete unravelling of the Polish state as a rights-respecting pluralistic democracy under the rule of law. It is in full knowledge of the ire we are likely to draw from the Polish government in making this plea, that we urge the Member States of the European Union to stand up for the fundamental values designed to protect the well-being of ordinary Europeans. For the good of the Polish people, we call on you to activate Article 7 of the Treaty on European Union.

We would be grateful if you could convey this letter, together with the attached briefing that sets out the growing difficulties being faced by civil society in Poland, to other Member State representatives ahead of the General Affairs Council.

Yours sincerely,

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President of board
Helsinki Foundation for Human Rights

Balazs Denes
Executive Director
Civil Liberties Union for Europe

³ Helsinki Foundation for Human Rights, Constitutional Tribunal: amendments to Assemblies Act constitutional despite all objections, available at: <http://www.hfhr.pl/en/constitutional-tribunal-amendments-to-assemblies-act-constitutional-despite-all-objections/>

⁴ Helsinki Foundation for Human Rights, Information on the recent challenges faced by human rights defenders and civil society in Poland, available at: <http://www.hfhr.pl/wp-content/uploads/2016/11/HRD-report-30112016-FIN.pdf>

⁵ Helsinki Foundation for Human Rights, HFHR opinion on National Freedom Institute Bill, available at: <http://www.hfhr.pl/en/hfhr-opinion-on-national-freedom-institute-bill/>