Legislative Changes in Poland Undermine Separation of Powers and Threaten the Rule of Law Principles

Statement by the Steering Committee of the EU-Russia Civil Society Forum

In the run-up to the European Commission’s internal debate on the situation in Poland, scheduled for today, the Steering Committee of the EU-Russia Civil Society Forum expresses concern about recent controversial changes in Polish laws and urges the Polish government, the ruling “Law and Justice” Party, and President Andrzej Duda to reverse these changes and hold on to standards of rule of law and the democratic separation of powers.

On 25 October 2015, the “Law and Justice” Party won the general election in Poland. As a result, it possesses a majority in both chambers of the Parliament – the Sejm and the Senate – and has President Andrzej Duda, a former member of the party, as its ally. Unfortunately, the mandate granted by the Polish society to the “Law and Justice” Party in the elections seems to have been used to increase control of the government over the third branch of power, the judiciary, and the fourth, the media.

At an accelerated pace and just before the New Year holidays, both chambers of the Parliament passed an amendment to the Act on the Constitutional Tribunal and later another amendment to the Act on the Public Media. These changes were adopted without consultations with civil society and the expert community and despite protests by human rights groups and significant segments of the public.

The amendment to the Act on the Constitutional Tribunal was signed into law by President Andrzej Duda just after the Christmas holidays. According to the amended Act, the Tribunal must now adopt its rulings by a two-thirds majority instead of a simple majority and reserve a three- to six-month waiting period between the time a request for a ruling is submitted and the issuance of a verdict, compared with the period of two weeks earlier. Besides, any case must be reviewed now by a panel of at least 13 of 15 judges. The last norm is especially controversial in the current situation, as long as the “Law and Justice” Party insists on the inclusion in the Tribunal of five judges proposed by the Party and elected by the new Sejm under legally controversial circumstances, while three judges legally elected by the previous composition of the Sejm before the elections were turned down. These changes seem to be aimed at making it much more difficult for the Tribunal to issue opinions on constitutionality of legislative amendments and block reforms proposed by the ruling party, if they are recognised unconstitutional, thus tilting the balance of powers. These developments provoked mass public protests in Warsaw.

The new media law, signed by President Duda a few days after the New Year, which gives the Minister of State Treasury very broad powers in appointing and dismissing public broadcast officials without proper explanation of these decisions, seems not to improve the quality of functioning of public media but rather exacerbates existing problems by depriving public media institutions and their staff of independence. It appears that these changes are aimed at strengthening the control of the government over the functioning of the public media and the content of their broadcasts, based on political considerations.
Apart from these changes, other worrying moves of the new Polish government include draft amendments to the Police Act, which extend the rights of police to survey people’s telecommunication activity without effective control over the use of telecommunication data by police and other services. There are serious doubts that the proposed amendments are compliant with the Polish Constitution and EU law.

Like our Polish NGO colleagues – Citizens’ Network “Watchdog”, the Helsinki Foundation for Human Rights, and the Institute of Public Affairs, who are all members of our Forum, we do not deny that the ruling party in Poland, elected by the majority of voters, has the right to introduce changes to legislation aimed at improving the operation of the Polish state and its institutions. Civil society actors in Poland have also been demanding changes in such matters as the operation of the media, surveillance rights of the police, or efficiency of the Constitutional Tribunal. However, in our opinion, the adopted and proposed legislative changes go contrary to the proposals of Polish civil society and undermine standards of rule of law and the democratic separation of powers. Moreover, the lack of public consultations and the swiftness of the decision-making process weaken the democratic process in Poland.

We call on the Polish authorities to take steps to improve the situation through introducing further changes in line with the international rule of law standards. It is all the more important as it concerns the country, which is famous for bringing the change to the whole Eastern European region with the “Solidarność” Movement in the 1980s and which has been a leader in democratic transformation thereafter.

We call on the Venice Commission of the Council of Europe to issue its opinion on the reform initiatives as soon as possible and on the government of Poland to follow the Commission’s recommendations.

The Steering Committee also encourages Polish government to intensify dialogue and consultations on legal reforms with Polish civil society and make sure that its internationally recognised expertise is properly used and its clear voice is well heard. Polish civil society should be respected by the government and continue playing a key role in the democratic development of the country.

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The EU-Russia Civil Society Forum was established in 2011 by non-governmental organisations as a permanent common platform. At the moment, 154 NGOs from Russia and the European Union are members of the Forum. It aims at development of cooperation of civil society organisations from Russia and EU and greater participation of NGOs in the EU-Russia dialogue. The Forum has been actively involved, inter alia, in the questions of facilitation of visa regime, development of civic participation, protection of the environment and human rights, dealing with history, and civic education.