

Opening and closing remarks of First Vice-President Frans Timmermans on the Rule of Law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs

Opening Remarks

Last time we spoke about this issue in this Committee was on 22 March 2017. My task today is to update you about what has happened since.

Four laws have since that moment been adopted by the Polish Parliament: the law on the National School of Judiciary, the law on the Ordinary Courts Organisation, the law on the Supreme Court and the law on the National Council for the Judiciary.

Late July, the Commission determined after careful analysis that the four laws, as adopted by the Polish Parliament, would have a very significant negative impact on the independence of the Polish judiciary and would increase the systemic threat to the rule of law.

We acknowledge and welcome that, for now, two of the four laws have been vetoed by President Duda. However, the fact that two of the four laws have been signed and the future of the other two is unclear meant that we had to set out clearly our concerns in a new Rule of Law Recommendation.

This third Recommendation addressed to Poland on 26 July complements the previous ones and presents the grave concerns of the Commission on the planned reforms of the Polish judiciary. It also asks the Polish authorities to restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution. The Commission asked that the Polish authorities address these concerns within one month.

On 28 July, the Commission also launched an infringement procedure against Poland for breach of EU law by the law on the Ordinary Courts Organisation, following its publication on the same day. And we also asked for a reply within one month.

To summarise, the Commission has spent over a year laying out its concerns with regard to the Rule of Law in Poland. We have analysed, identified, recommended and warned. We have sent three Recommendations and have launched an infringement procedure on the Law on Ordinary Courts.

To complete the picture, you should also know that Polish government refuses to follow the interim measures issued by the European Court of Justice with regard to the logging in the Białowieża Forest and the Polish government has

announced further measures with regard to, what is called, 'deconcentration of the media'. Also, Commissioners Jourova and Thyssen sent a joint letter to the Polish authorities outlining the Commission's concerns as regards the Polish provisions introducing different pensionable ages for men and women. After years of progress with regard to equality between women and men Poland is now the only EU country on the verge of moving in the opposite direction.

On 28 August, we received a reply to our third recommendation. Before replying, the Polish government twice requested more clarifications on our concerns, which we promptly and elaborately provided. We are still analysing the reply carefully. However, also from Polish press statements, I can already inform you that the Polish reply does not announce any concrete measures to address the issues raised by the Commission. Our analysis will carefully focus on the motivations they have given. I cannot tell you today what will be the next step of the Commission. We will have to discuss that also in the College, and at some point also take it to the Council.

However, let me make some general remarks about where we stand. We have dedicated a large number of pages explaining in detail our concerns and have done so as meticulously and thoroughly as we could. Politically we are colour blind when it comes to the Rule of Law. Moreover, our concerns are shared widely – the Venice Commission, the Council of Europe, the United Nations, the Network of the Presidents of Supreme Courts and of the Councils for the Judiciary, lawyers associations and NGOs. On 16 May, we had a first extensive discussion in the General Affairs Council and there was broad agreement around the table that the rule of law is a common interest and a common responsibility of EU institutions and Member States. A very broad majority of Member States supported the Commission's role and efforts to address this issue. Member States called upon the Polish government to resume the dialogue with the Commission with a view to resolving the pending issues and looked forward to being updated as appropriate in the General Affairs Council.

Incidentally I have invited the Polish Ministers to come to Brussels to discuss these issues with me and I did not get an official reply but in the media I saw that the Foreign Minister says he sees no merit in coming to talk to us. So I've tried really to have this dialogue but on the other side there is apparently no wish to do so. But we remain open. Any moment they want to come and talk to us, I am open to that, obviously.

This Parliament – directly elected European Parliament – has an important role to play, and will continue to play an important role because if this Parliament has a fundamental role it is to uphold of our common European values, and the Rule of Law is pivotal in that.

The Polish government repeatedly has made clear that it does not accept these concerns, that it has won the elections and is fulfilling the will of the people. It has also resorted to attacking the messenger, questioning the Commission's professionalism, questioning the Commission's legitimacy, and claiming that it isn't doing anything that other Member States haven't done themselves. I honestly would beg to differ.

We have always said that our stated objective is not the imposition of

sanctions or resorting to Article 7. On the contrary, we are looking for a real, constructive dialogue in order to redress the Rule of Law situation in Poland. However, we have also made clear our determination to use all our tools, all the tools that we have at our disposal as guardians of the Treaties, when this is necessary. We remain open to dialogue; we remain open to finding constructive solutions. But at the same time we must discuss internally in the Commission, with the Member States in the Council and with you here in Parliament the new situation that has now arisen.

The reason we won't let go has to do with two fundamental issues. One, obviously, the Rule of Law is a value in itself, it is – so to say – who we. It is what defines us as Europeans; Rule of Law-based democracies. But two, it also has to do with the way the EU functions. First and foremost, the Internal Market. This market can only really function if there is trust and confidence between governments, between economic operators, between citizens. Trust and confidence that when doing business in Europe and when there is a conflict, we are all equal under the law, and we all have access to independent judges. As you know, national judges are EU judges. They apply EU law directly. They also have a direct unimpeded access to the European Court of Justice. And it just will not function if this direct access is blocked because there is a political filter or political interference by government. The independence of the judiciary is essential to make the whole EU system function. You have to rely on the fact that national judges are also EU judges. And if you can't rely on the fact- if you go back to situation where the ruling of a court is determined by a phone call from party central, then we have a serious problem. In that context I have to say independence of national judges is key for the effective cooperation between Member States in the area of Justice and Home affairs. Suffice to refer to the principle of mutual recognition of national Court decisions in the context of, for example, the European Arrest Warrant and the 'Brussels I' regulation.

Of course, of course, democratically-elected Governments are free to implement judicial reform. The Commission does not contest the right of the Polish government to introduce judicial reforms. That's not the point at all. But we do maintain that judicial reforms must respect the Rule of Law as one of the fundamental values which all Member States signed up to when they joined the EU, signed and ratified the European treaties. Everybody living in the EU has the right to rely on an independent national and European judicial system and deserves courts free from any form of interference, including by politicians.

As I said, we will discuss in the College the next steps and for this reason I'm very interested to hear what you have to say about this. Upholding Rule of Law is a shared responsibility of all EU institutions and of all Member States. Of course, I intend to discuss this matter in the Council of Ministers as agreed in May that I would come back and report to them. In conclusion I would to thank you, and in particular this Committee and its members, for the continuous efforts to uphold the rule of law in the EU and for supporting the Commission's actions concerning the situation in Poland.

Closing Remarks

I was a student in 1980 and I remember vividly seeing Lech Walesa stand up for common European values. I remember vividly in the 1980s through the years I was a student and I was a soldier afterwards, that we thought that the vision of Europe was eternal, that it could never be broken and we needed stability. But it was Solidarnosc and Charter 77 who kept the dream alive of a Europe undivided. And without them Europe might even be divided today, in different lines, different ways. Because regardless of who is in charge in Russia today or yesterday, they really liked a divided Europe. And they would like a divided Europe again in the future.

We fight for European unity. European unity based on common values. European unity based on law. European unity based on the respect for law, for treaties signed and ratified by sovereign parliaments. And if in those treaties it is the duty of the Commission to assure that Member States actually respect the treaties they have signed and ratified, this Commission will take this duty seriously even if politically this might be extremely difficult.

I maintain that Poland today is more sovereign, freer, has borders that are more secure, than for centuries in the past. It has been perhaps a thousand years since the Polish people have been as free to decide their own destiny. Poland was pushed around on the European map. If Germany was powerful Poland would be 300 km to the East, if Russia was powerful Poland would be 300km to the West. But Polish people did not get to the side where the country was. Now it does. And I just don't accept people saying that the European Union takes away sovereignty from Poland. No, it creates a sovereignty in Poland that Poland hasn't had for centuries.

This is good for all of us, for all of us. I for one cannot imagine a successful European Union without a prosperous, fully integrated Poland in that European Union.

When we talk about the Rule of Law in Poland today, we talk about the destiny of this continent, the destiny of Europe. This is not just about Poland. I wanted to say this as background because this is how I see the situation. This is how serious it is. And those who say that the Commission has got it all wrong – can I remind you that we are of exactly same view as for instance the Venice Commission, which made its analysis upon request of Polish government. So the Polish government asked for this analysis and when it got it but it didn't like it, it just decided to ignore it. If you say the Commission doesn't understand anything, please observe that we are not alone in this. Please also observe – let me just stress this very clearly – that when we discussed the issue in the Council in May – this sometimes get overlooked – an overwhelming majority of Member States supported the position of the Commission. This is not the Commission on her own. Parliament has been extremely clear about this. So I think the three institutions are doing their utmost to help Poland resolve the situation.

We had the answer of the Polish government and we will reply to them. But I want to say, because some of the issues related today, please don't accept the point that other Member States have identical solutions. We will elaborate on that when we respond but that is not the case. There is not one Member State where the Minister of Justice can arbitrarily fire a judge

without any conditions set. Fire judges, hire judges. Whenever we put issues on the table and somebody shouts this is not true, please look to the text, please look to the text. We did. We have written Recommendations in great detail. The Polish government over the summer sent two letters asking for clarifications. We immediately responded by given these clarifications. Please, let's stick to those texts and then we'll see how it comes.

What I find interesting or slightly ironic is this constant demand for respect – which I think we have given, I have always been very respectful – but it has not really been reciprocated may I say.

We are open for dialogue and I don't care if they want to continue to attack me personally and call me stupid, incompetent, etc. I will still be there for a dialogue because the matter is so important for the future of Europe.

But there comes a point where we will have to make a choice. Are we going to drop the issue because it is politically too difficult? Or are we going to use all the instruments we have at our disposal? And I will tell you here today, let there be no misunderstanding, there is no way we can drop the issue because this is politically too difficult, because the consequences for the EU as a whole, when the separation of powers is put into doubt, are too grave. And the Commission will use every instrument at its disposal when the separation of powers is at risk.

As I said in my introduction – and I really want to be very clear on that. Not just the principal issue of the Rule of Law but also the whole functioning of the EU in all its aspects depends on the independence of the judiciary and the clear separation of powers. If that is put into doubt, we have to react and help Member States not go that road. That is the issue, the core issue that is at hand today.

And let me be very clear on another issue as well. At the end of the day, the only ones who could determine the fate of the Polish nation are the Polish people. We cannot do that, none of us. But what we can do and what we must do, what we are obliged to do, is to say, when we are of the opinion that Treaties signed and ratified by Member States are being violated, we need to step in and say that this is the case. I think it would be a dereliction of duty on the part of the Commission if we were not to do that. It is my duty to do it, it is the Commission's duty to do it. And let me just say – for the sake of clarity because I have seen quite lot of that – this is not a personal issue. This is not me talking. When I speak, I speak on behalf of the Commission, and the Commission is united on this. And when I speak, I also speak on behalf of what I see is the thinking of many many Member States. And may I add today since I am here, that after having listened to you, I have the impression I also speak on behalf of a majority of the European Parliament when I talk about this.

Thank you very much.