

28 April 2020

Dear Mr López Aguilar,
Dear Vice-President Jourová,
Dear Commissioner Reynders,

Recently the LIBE Committee held an exchange of views on the state of rule of law in Poland. I am taking the liberty to address some of the concerns in this letter.

First of all, let me assure you that preserving the rule of law in Poland is exactly what the government is trying to do in this difficult situation. The pandemic has caught us all by surprise, and in different moments of electoral calendars. In Poland the term of the current President ends on 6 August 2020. According to Article 128.2 of the Polish Constitution, the presidential elections shall be held 'no sooner than 100 days and no later than 75 days before expiry of the term of office of the serving President of the Republic'. Hence, the constitutional deadline of 100-75 days falls within the period between 10 and 23 May 2020. Holding the presidential elections in this time frame is, therefore, a duty that stems directly from the Constitution - the supreme legal act.

There are two ways to alter this scenario. One would be to amend the Constitution and change the provisions pertaining to the presidential elections, be it by extending the term or by allowing for postponement. However, a bill to amend the Constitution shall be adopted by the Parliament by a majority of at least two-thirds of votes. At the moment, there is no majority to pass such a bill because the opposition parties do not want to support it.

The second scenario, which would allow for avoidance of holding the elections in the period 10-23 May and which the opposition is demanding, would be to apply Article 228 of the Constitution. This provision would introduce an extraordinary measure wherein no elections for the Presidency may be held, namely the state of natural disaster. It shall be imposed in situations of particular threat, if ordinary constitutional measures are insufficient. This premiss does not apply, because the government is effective in fighting the pandemic by applying the following laws:

- The Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans;
- The Act of 2 March 2020 on specific solutions related to the prevention and eradication of COVID-19, other infectious diseases and the emergencies caused by them;
- The Act of 16 April 2020 on specific support instruments in connection with the spread of SARS-CoV-2 virus.

Nonetheless, the opposition is demanding the introduction of a state of emergency in order to defer the elections. One must not forget that introducing constitutional

extraordinary measures implies limiting the civil liberties of the citizens, which is what is being criticised in other countries and is something the government wants to avoid.

Bearing all this in mind, as well as having the highest regard for the health and safety of citizens, the government has proposed the safest solution – a postal vote. It shall be conducted with all possible safety measures – including *inter alia* ozonation of the ballots – in order to minimise any risk of spreading the virus. This will allow the constitutional obligation to be fulfilled.

As regards abortion and sexual education in Poland, I would like to underline that the Polish government is not working on any bill in this regard. The draft bill restricting abortion regulations that has been recently debated is not a government or party initiative. It is one of the five civic proposals that were received by the Parliament in the previous parliamentary term and which gathered the support of over 100,000 citizens. Pursuant to the Act on citizens' legislative initiative, a draft bill that the Parliament did not manage to consider before the end of the term, must be advanced by the next Parliament within 6 months of its first sitting. This 6 months was due on 12 May, therefore the reading of the legislative proposal was imposed by the parliamentary agenda, as it was the last possible date.

I hope that the arguments put forward above clarify the situation of the rule of law in Poland and that we can continue to work together on the better future of the European Union and its Member States.

Yours sincerely,

Jadwiga Wiśniewska

MEP