



Rule of Law: Commission launches infringement procedure against Poland for violations of EU law by its Constitutional Tribunal

Brussels, 22 December 2021

Today, the European Commission has decided to launch an [infringement procedure](#) against Poland because of **serious concerns with respect to the Polish Constitutional Tribunal and its recent case law**. The Constitutional Tribunal, in its rulings of 14 July 2021 and 7 October 2021, considered the provisions of the EU Treaties incompatible with the Polish Constitution, expressly challenging the primacy of EU law. Poland has two months to reply to the letter of formal notice.

The Commission considers that these rulings of the Constitutional Tribunal are in **breach of the general principles of autonomy, primacy, effectiveness and uniform application of Union law and the binding effect of rulings of the Court of Justice of the European Union**. In particular, in its July ruling, the Constitutional Tribunal denied the binding effect of any interim measures orders of the Court of Justice issued under Article 279 TFEU to guarantee the effective judicial review by an independent and impartial tribunal established by law. In its October ruling, the Constitutional Tribunal disregarded its obligations under EU law by considering unconstitutional - and thus not having effects in the Polish legal order - the Court of Justice's interpretation of Article 19(1) TEU according to which a national court may be called upon to review the legality of the procedure for appointing a judge and pronouncing itself on any irregularity in the appointment process to verify whether that judge, or the court in which the judge adjudicates, meets the requirements of Article 19(1) TEU.

Furthermore, the Commission considers that these rulings are in **breach of Article 19(1) TEU, which guarantees the right to effective judicial protection**, by giving it an unduly restrictive interpretation. Thereby it deprives individuals before Polish courts from the full guarantees set out in that provision.

Finally, the Commission has **serious doubts on the independence and impartiality of the Constitutional Tribunal** and considers that it **no longer meets the requirements of a tribunal previously established by law, as required by Article 19(1) TEU**. As also highlighted by the Commission in its reasoned proposal under Article 7(1) TEU of 2017 and as held by the European Court of Human Rights in its judgment of 7 May 2021, the process of appointment to the Constitutional Tribunal of three judges in December 2015 occurred in breach of fundamental rules forming an integral part of the establishment and functioning of the system of constitutional review in Poland. The gravity of this breach gives rise to a reasonable doubt in the minds of individuals as to the independence and the impartiality of the judges concerned. This is also shown by other irregularities and deficiencies such as the election of the President and Vice-President of the Constitutional Tribunal, which raised serious concerns as to the impartiality of judges of the Constitutional Tribunal when handling individual cases. Whereas the Constitutional Tribunal is called upon to rule on questions relating to the application or interpretation of EU law, the Commission considers that it can therefore no longer ensure effective judicial protection by an independent and impartial tribunal previously established by law, as required by Article 19(1) TEU, in the fields covered by EU law.

Background

The rule of law is one of the fundamental values of the European Union. It is enshrined in Article 2 of the Treaty on European Union. It is also essential for the functioning of the EU as a whole, for example, with regard to the Internal Market, cooperation in the area of Justice and Home Affairs, and to ensure that national judges who are also 'EU judges' can fulfil their role in the application of EU law and can properly interact with the Court of Justice of the European Union (CJEU). The European Commission, together with other institutions and the Member States, is responsible under the Treaties for guaranteeing the rule of law as a fundamental value of the Union and making sure that EU law, values and principles are respected.

On [20 December 2017](#), the Commission triggered the [Article 7\(1\) TEU procedure](#) for the first time against Poland. The Commission has also frequently made use of its tools as guardian of the Treaties

to address rule of law issues in Poland through infringement proceedings under Article 258 TFEU.

On [3 April 2019](#), the Commission launched an infringement procedure on the grounds that the new disciplinary regime for judges undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control, as required by the Court of Justice of the EU. On 15 July 2021, the Court of Justice ruled in its judgment in case C-791/19 that the disciplinary regime for judges in Poland is not compatible with EU law. The Court upheld all the claims brought forward by the Commission. The Polish disciplinary regime undermines the judicial independence of Polish judges and it does not ensure the necessary guarantees to protect judges from political control. In particular, the Disciplinary Chamber of the Supreme Court, to which competence is granted to deal with disciplinary cases against judges, cannot be considered an independent and impartial court as required under Article 19(1) TEU.

On [29 April 2020](#), the Commission launched an infringement procedure on the law of 20 December 2019 amending a series of legislative acts governing the functioning of the justice system in Poland. On 31 March 2021, the Commission decided to refer Poland to the Court of Justice and asked for interim measures (C-204/21). On 14 July 2021, the Court of Justice imposed interim measures on Poland, granting the request of the Commission on all points. The Court ordered Poland in particular to immediately:

- Suspend the provisions by which the Disciplinary Chamber of the Supreme Court can decide on requests for the lifting of judicial immunity, as well as on matters of employment, social security and retirement of Supreme Court judges;
- Suspend the effects of decisions already taken by the Disciplinary Chamber on the lifting of judicial immunity; and
- Suspend the provisions preventing Polish judges from directly applying EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice.

In relation to the abovementioned rulings of the Court of Justice of 14 and 15 July 2021, the Commission considers that Poland has failed to take the necessary measures to fully comply with them. On 7 September 2021, the Commission, therefore, took two decisions.

First, the Commission decided to request the Court of Justice to impose financial penalties on Poland to ensure compliance with the Court's interim measures order requested under Article 279 TFEU (of 14 July 2021). On 27 October 2021, the Court of Justice imposed €1 million as a daily penalty payment on Poland for as long as the interim measures order of 14 July 2021 has not been fully complied with.

Second, the Commission also decided to send a letter of formal notice under Article 260(2) TFEU to Poland, for not taking the necessary measures to comply fully with the judgment of the Court of Justice (of 15 July 2021) finding that Polish law on the disciplinary regime against judges is not compatible with EU law. The Polish authorities submitted their reply on 8 November 2021. This reply is currently being analysed in detail in view of deciding on the next steps.

For More Information

[Press release - Commission asks European Court of Justice for financial penalties against Poland](#)

[Rule of law framework](#)

[Infringement procedures](#)

[Infringement Database](#)

IP/21/7070

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