



PRESS RELEASE No 157/25

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Judgment of the Court in Case C-448/23 | Commission v Poland (*Ultra vires* review of the case-law of the Court – Primacy of EU law)

Rule of law: The Polish Constitutional Court infringed several fundamental principles of EU law in disregard of the case-law of the Court of Justice

The Court also holds that the Polish Constitutional Court does not constitute an independent and impartial tribunal, on account of serious irregularities vitiating the appointment of three of its judges and of its President

In two judgments, the Polish Constitutional Court declared certain provisions of the Treaties, as interpreted by the Court of Justice, to be contrary to the national Constitution and expressly described the Court's case-law on the right to effective judicial protection ¹ as exceeding the powers conferred on it (*ultra vires*). Taking the view that those judgments disregarded several fundamental principles of EU law, including its primacy, the European Commission brought an action against Poland for failure to fulfil obligations. The Court upheld the action and ruled that Poland had failed to fulfil its obligations because the Polish Constitutional Court had infringed the principle of effective judicial protection and disregarded the primacy, autonomy, effectiveness and uniform application of EU law, as well as the binding effect of the Court's decisions. The Court also upheld the Commission's action in so far as it concerned serious irregularities vitiating the appointment of three judges of the Polish Constitutional Court and of its President, calling into question the status of that Constitutional Court as an independent and impartial tribunal established by law within the meaning of EU law.

In two judgments delivered on 14 July and 7 October 2021, the Polish Constitutional Court declared certain provisions of the Treaties, as interpreted by the Court of Justice ('the Court'), to be incompatible with the national constitution. These judgments were delivered in the context of the Court's case-law on the independence of the Polish judiciary.

Those two judgments reject, in essence, the jurisdiction recognised by the Court of Justice of national courts to review the lawfulness of procedures for the appointment of judges, including resolutions of the Polish National Council of the Judiciary ('the KRS') and to rule on whether those procedures are defective. ² Moreover, they reject the interim measures imposed by the Court relating to the organisation and jurisdiction of the Polish courts and procedure before those courts. ³

Considering that the judgments of the Polish Constitutional Court undermine the principle of effective judicial protection, the principles of autonomy, primacy, effectiveness and the uniform application of EU law, as well as the principle of the binding effect of the Court's case-law, the European Commission ⁴ brought an action for failure to fulfil obligations against Poland before the Court of Justice.

In its action, the Commission also indicates irregularities vitiating the appointment of three judges ⁵ and of the President of the Polish Constitutional Court. ⁶ It maintains that that court does not constitute an independent and impartial tribunal, previously established by law.

In its judgment, **the Court upholds the Commission's action in its entirety and finds that Poland has failed to**

fulfil its obligations.

The Court points out that the judgment delivered by the Polish Constitutional Court on 7 October 2021 is contrary to the principle of effective judicial protection in that, in disregard of the Court's case-law, it rejects the jurisdiction of national courts to review the lawfulness of procedures for appointing judges, including the resolutions of the KRS proposing candidates for such appointment, and to rule on the defective nature of those procedures. Similarly, in its judgment of 14 July 2021, the Polish Constitutional Court disregarded that principle by refusing to recognise the binding effect of the interim measures imposed by the Court relating to the organisation and jurisdiction of Polish courts and the procedure before those courts.

The judgments at issue also call into question the essential characteristics of the legal order of the European Union, since they reject the principles of autonomy, primacy, effectiveness and the uniform application of EU law, as well as the principle of the binding effect of the Court's case-law by preventing Polish public authorities from applying rules of EU primary law.

The Court recalls that **Poland may not rely on its constitutional identity** to avoid compliance with the shared values enshrined in Article 2 TEU, such as the rule of law, effective judicial protection and the independence of the judiciary. Those values form the very basis of the identity of the European Union, to which Poland freely acceded.

After accession, those values are given concrete expression by legally binding obligations, which the Member States may not escape.

Furthermore, **national courts cannot unilaterally determine the scope and limits of the powers conferred on the European Union**. Those questions necessarily involve an interpretation of EU law and, in the judicial system of the European Union established by the Treaties, fall exclusively within the jurisdiction of the EU Courts. In particular, the autonomy and effectiveness of the EU legal order preclude any external review of the Court's decisions in the exercise of its exclusive jurisdiction to give a definitive and binding interpretation of EU law and to review the legality of EU acts. Any doubts on the part of the national courts as to the scope of the European Union's competences or as to the validity of an act of EU law on account of the fact that it exceeds the scope of competences of the European Union or the fact that it disregards the requirement for the European Union to respect the national identity of Member States,⁷ may be raised only in the context of a dialogue with the Court, by means of a preliminary ruling procedure. The same is true where those doubts concern an interpretation of EU law by the Court.

Finally, the Court concludes that the appointments of three judges of the Polish Constitutional Court in December 2015 and of its President in December 2016 were vitiated by infringements of fundamental rules relating to appointment procedures in Poland. Accordingly, **the Polish Constitutional Court does not meet the requirements of an independent and impartial tribunal established by law, within the meaning of EU law.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Enshrined in the second subparagraph of Article 19(1) TEU.

² Judgments of the Court of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, [C-824/18](#) (see press release No [31/21](#)) and of 6 October 2021, *W. Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, [C-487/19](#) (see press release No [173/21](#)).

³ The order of the Court of 8 April 2020, *Commission v Poland (Disciplinary regime for judges)*, [C-791/19 R](#) (see press release No [47/20](#)), required Poland to suspend the application of the provisions conferring on the Disciplinary Chamber of the Supreme Court jurisdiction to rule on disciplinary cases involving judges. That measure was intended to preserve the right to effective judicial protection, given that the independence and impartiality of the Disciplinary Chamber were called into question.

⁴ See Commission [press release](#).

⁵ In December 2015, during the eighth parliamentary term, the Sejm elected three persons to replace judges whose terms of office had expired, even though, during the seventh term, it had already elected three other judges to the same positions in October 2015. In its judgments of 3 and 9 December 2015, the Polish Constitutional Court ruled that the election of the three judges during the eighth term was unconstitutional. However, the three persons elected in December 2015 were sworn in before the President of Poland and were allowed to sit as judges, while the judges elected in October 2015 were unable to take up their duties.

⁶ The General Assembly in order to nominate candidates for that post was convened on the same day as it was scheduled to take place and did not include all the judges of the Constitutional Court (one of whom was absent). Of the 14 judges present, eight refused to participate in the vote, seeking a postponement to allow for the presence of a 15th member. However, the presentation of candidates not supported by a majority of judges was held to be contrary to the Polish Constitution.

⁷ Under Article 4(2) TEU.