Ref. No. K 3/21

JUDGMENT
IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 7 October 2021

The Constitutional Tribunal, composed of:

Julia Przyłębska – Presiding Judge
Zbigniew Jędrzejewski
Mariusz Muszyński
Krystyna Pawłowicz
Stanisław Piotrowicz
Justyn Piskorski
Piotr Pszczółkowski
Bartłomiej Sochański – Judge Rapporteur
Michał Warciński
Rafał Wojciechowski
Jarosław Wyrembak
Andrzej Zielonacki,

Recording Clerks – Grażyna Szałygo, Krzysztof Zalecki,

having considered, at the hearings on 13 July, 31 August, 22 and 30 September, as well as 7 October 2021 – in the presence of the applicant, the President of the Republic of Poland, the Sejm, the Minister of Foreign Affairs, the Public Prosecutor-General, and the Polish Ombudsman [also referred to as the Polish Commissioner for Human Rights] – the Prime Minister's application lodged with the Constitutional Tribunal to assess the conformity of:

1) Article 1, first and second paragraphs, in conjunction with Article 4(3) of the Treaty on European Union (Journal of Laws – Dz. U. of 2004 No. 90, item 864/30, as amended) – construed in the way that it enables and/or compels a law-applying authority to refrain from applying the Polish Constitution or requires the said authority to apply provisions of law in the way that is inconsistent with the Constitution – to Article 2, Article 7, Article 8(1) in conjunction with Article 8(2), Article 90(1) and Article 91(2) as well as Article 178(1) of the Constitution of the Republic of Poland;

2) Article 19(1), second subparagraph, in conjunction with Article 4(3) of the TEU – construed in the way that, for the purpose of ensuring the effective legal protection, a law-applying authority is competent and/or obliged to apply provisions in the way that is inconsistent with the Constitution, including a provision which has, on the basis of a ruling by the Constitutional Tribunal, ceased to have effect due to being inconsistent with the Constitution – to Article 2, Article 7, Article 8(1) in conjunction with Article 8(2) and Article 91(2), Article 90(1), Article 178(1) as well as Article 190(1) of the Constitution of the Republic of Poland;

3) Article 19(1), second subparagraph, in conjunction with Article 2 of the TEU – construed in the way that it authorises a court to review the independence of judges appointed by the President of the Republic of Poland as well as to review the National Council of the Judiciary's resolution to refer a request to the President of the Republic to appoint a judge – to Article 8(1) in conjunction with Article 8(2), Article 90(1) and Article 91(2), Article 144(3)(17) as well Article 186(1) of the Constitution of the Republic of Poland,

adjudicates as follows:

1. Article 1, first and second paragraphs, in conjunction with Article 4(3) of the Treaty on European Union (Journal of Laws – Dz. U. of 2004 No. 90, item 864/30, as amended) – **insofar as the European Union, established by equal and sovereign states, creates "an ever closer union among the peoples of Europe", the integration of whom – happening on the basis**

of EU law and through the interpretation of EU law by the Court of Justice of the European Union – enters "a new stage" in which:

a) the European Union authorities act outside the scope of the competences conferred upon them by the Republic of Poland in the Treaties;

b) the Constitution is not the supreme law of the Republic of Poland, which takes precedence as regards its binding force and application;

c) the Republic of Poland may not function as a sovereign and democratic state

– is inconsistent with Article 2, Article 8 and Article 90(1) of the Republic of Poland.

2. Article 19(1), second subparagraph, of the Treaty on European Union – insofar as, for the purpose of ensuring effective legal protection in the areas covered by EU law – it grants domestic courts (common courts, administrative courts, military courts, and the Supreme Court) the competence to:

a) bypass the provisions of the Constitution in the course of adjudication – is inconsistent with Article 2, Article 7, Article 8(1), Article 90(1) and Article 178(1) of the Constitution;

b) adjudicate on the basis of provisions which are not binding, having been revoked by the Sejm and/or ruled by the Constitutional Tribunal to be inconsistent with the Constitution

– is inconsistent with Article 2, Article 7, Article 8(1), Article 90(1) and Article 178(1), and Article 190(1) of the Constitution.

3. Article 19(1), second subparagraph, and Article 2 of the Treaty on European Union – insofar as, for the purpose of ensuring effective legal protection in the areas covered by EU law and ensuring the independence of judges – they grant domestic courts (common courts, administrative courts, military courts, and the Supreme Court) the competence to:

a) review the legality of the procedure for appointing a judge, including the review of the legality of the act in which the President of the Republic appoints a judge – are inconsistent with Article 2, Article 8(1), Article 90(1) and Article 179 in conjunction with Article 144(3)(17) of the Constitution;

b) review the legality of the National Council of the Judiciary's resolution to refer a request to the President of the Republic to appoint a judge – are inconsistent with Article 2, Article 8(1), Article 90(1) and Article 186(1) of the Constitution;

c) determine the defectiveness of the process of appointing a judge and, as a result, to refuse to regard a person appointed to a judicial office in accordance with Article 179 of the Constitution as a judge – are inconsistent with Article 2, Article 8(1), Article 90(1) and Article 179 in conjunction with Article 144(3)(17) of the Constitution.

Moreover, the Tribunal decides:

to discontinue the proceedings as to the remainder.

The ruling was adopted by a majority vote.

Julia Przyłębska
Zbigniew Jędrzejewski
Mariusz Muszyński
Krystyna Pawłowicz
Stanisław Piotrowicz
Justyn Piskorski
Piotr Pszczółkowski (dissenting opinion)
Bartłomiej Sochański
Michał Warciński
Rafał Wojciechowski

Jarosław Wyrembak (dissenting opinion)
Andrzej Zielonacki

Article 194

1.The Constitutional Tribunal shall be composed of 15 judges chosen individually by the Sejm for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office.
2.The President and Vice-President of the Constitutional Tribunal shall be appointed by the President of the Republic from amongst candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

The Commission is deeply concerned by the decision of the Polish Constitutional Tribunal, which states that the interim measures ordered by the Court of Justice of the European Union in the area of the functioning of the judiciary, are inconsistent with the Polish Constitution. This decision reaffirms our concerns about the state of the rule of law in Poland.

The Commission has always been very clear on this matter and reaffirms once more:

- EU law has primacy over national law;
- All decisions by the European Court of Justice, including orders for interim measures, are binding on all Member States' authorities and national courts.

The rights of EU citizens and businesses must be protected in the same way across all Member States.

The European Commission expects Poland to ensure that all decisions of the European Court of Justice are fully and correctly implemented. This includes also yesterday's Court order to impose the interim measures on Poland to immediately suspend the application of certain provisions of the law of December 2019 on the judiciary, including on the functioning of the Disciplinary Chamber of the Supreme Court.

The Commission will not hesitate to make use of its powers under the Treaties to safeguard the uniform application and integrity of Union law.