



31.1.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0345/2018 by W. P. K. (Polish) on the infringement of the principle of separation of powers in Poland**

### 1. Summary of petition

The petitioner denounces the provisions of a new piece of legislation, aimed at reforming the National Council of the Judiciary, the highest judicial self-regulating body, consisting of 25 members. According to this law, the 15 judges nominated by the self-governments (association of judges) would instead be elected by the lower house of the Polish parliament (Sejm). The petitioner argues that this change is unconstitutional, contrary to Union law and that it seriously undermines judicial independence.

### 2. Admissibility

Declared admissible on 18 July 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 31 January 2019

The Commission considers that there is a clear risk of a serious breach of the rule of law in Poland. The Commission has taken several steps in order to address the situation of the rule of law in Poland.

In particular, on 20 December 2017, the Commission adopted a reasoned proposal in accordance with Article 7(1) of the Treaty on European Union (TEU), inviting the Council to determine that there is a clear risk of a serious breach by Poland of the Rule of Law<sup>1</sup> which is one of the values referred to in Article 2 of the TEU. The Commission also issued a

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<sup>1</sup> COM(2017) 835 final.

complementary (fourth) Rule of Law Recommendation<sup>1</sup>, setting out clearly the steps that the Polish authorities can take to remedy the current situation. Furthermore, on 20 December 2017 the Commission decided to take the next step in its infringement procedure against Poland for breaches of EU law by the law on Ordinary Courts Organisation, referring Poland to the Court of Justice. This case is still pending before the Court of Justice.

The key consideration for the Commission to activate the Article 7(1) TEU procedure was that the cumulative effect of the different components of the reform limits the independence of the judiciary and infringes upon the separation of powers in Poland. The common pattern of these reforms is that the executive and legislative powers can now interfere with the entire structure of the justice system.

Under the Article 7(1) TEU procedure, so far three hearings of Poland took place on 26 June, 18 September, and 11 December 2018 in the General Affairs Council.

As regards the situation of the Supreme Court, on 24 September 2018, the Commission decided to refer Poland to the Court of Justice for violations of the principle of judicial independence by the new law on the Supreme Court. A hearing in the case will take place on 12 February 2019. The Commission also asked the Court of Justice to order interim measures until the final decision of the Court on the case is handed down. On 17 December 2018, the Court of Justice ordered interim measures to stop the implementation of the new Polish law on the Supreme Court. These interim measures take immediate effect and grant all the Commission's requests. The Court also ordered the Polish authorities to communicate to the Commission the measures they have taken to comply with the order within one month and then provide the Commission with updates on a monthly basis.

In view of implementing the order of the Court of Justice, the President of Poland signed on 17 December 2018 a law amending the law on the Supreme Court, which was subsequently published on 31 December 2018 and entered into force on 1 January 2019. The Commission is assessing the law in the light of its compliance with EU law and with the final order of the Court of Justice. The analysis will also take into consideration the report of the Polish authorities.

As regards in particular the National Council for the Judiciary, and as stated in the reasoned proposal of 20 December 2017, the Commission considers that the new rules on appointment of judges-members of the National Council for the Judiciary significantly increase the influence of the Parliament over the Council and adversely affect its independence in contradiction with European standards.

Furthermore, the Commission observes that the Supreme Court and the Supreme Administrative Court of Poland referred a set of requests for preliminary rulings to the Court of Justice, regarding *inter alia* the current composition of the National Council for the

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<sup>1</sup> C(2017) 9050 final.

Judiciary and its role in the process of appointment of judges. The Court of Justice will hold a hearing in the three cases concerned (C-585/18, C-624/18, C-625/18) on 19 March 2019.

The Commission will continue to follow closely the developments and remains strongly committed to upholding EU law and values in the interests of the citizens of Poland and of the rest of the European Union.