



31.1.2019

NOTICE TO MEMBERS

Subject: Petition No 0512/2018 by J. S. (Polish) on non-compliance of the Polish judicial reforms with EU law

1. Summary of petition

The petitioner calls on the European Commission to stop the judicial reforms in Poland taking place over the last two and a half years. In his opinion, the changes to the judicial system introduced by the present government are contrary to EU law: the Constitutional Court has been rendered practically defunct, and the fundamental rights and freedoms guaranteed by Art. 3(3) TUE are being breached. Moreover, the separation of powers, the rule of law and the right to a fair trial are under threat because of the supremacy of the executive power. The petitioner refers to the Art. 47 of the Charter of Fundamental Rights and to the jurisprudence of the Court of Justice of the European Union (case C-64/16).

2. Admissibility

Declared admissible on 16 October 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 January 2019

The Commission's observations

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 Law¹ which is one of the values referred to in Article 2 of the TEU. The Commission also issued a complementary (fourth) Rule of Law Recommendation², 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.

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

¹ COM(2017) 835 final.

² C(2017) 9050 final.