Council of the
European Union

Brussels, 5 November 2018
(OR. en)

12970/18

LIMITE

JAI 984
FREMP 167
POLGEN 173
AG 27

PUBLIC

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Rule of Law in Poland / Article 7(1) TEU Reasoned Proposal - Report of the hearing held by the Council on 18 September 2018

As a follow-up to 12060/18 (paragraph 15), delegations will find in the annex the formal report of the hearing of Poland held on 18 September 2018 in accordance with Article 7(1) TEU.

ANNEX

On 18 September 2018, Poland was heard by the Council in accordance with Article 7(1) TEU. The hearing was conducted during the meeting of the General Affairs Council and took approximately two and a half hours.

At the start, the Presidency briefly reminded the participants of how the procedure would be conducted (12060/18) and then the Commission was given the floor. It stated that since the last hearing on 26 June 2018, the rule of law situation in Poland had been deteriorating as outlined in the Commission assessment (12034/18).

The Polish delegation expressed gratitude for the first hearing on 26 June 2018, and stressed that it had been a very good opportunity to exchange views and hold a fact-based, substantial and fair debate. It stated that the Council was a place for a neutral, fact-based debate about reform of the justice system in a Member State and that the hearing should be limited to facts, giving the opportunity to present any missing aspects of the analysis of the situation in Poland. Poland was aware of the concerns raised by the EU institutions, some Member States and other international bodies. However, it was necessary to underline that, according to Article 67 TFEU, regulation of the judicial system was a competence of the individual Member State, and the EU respected the different legal systems and constitutional traditions of the Member States. That did not exclude a debate such as this on whether the implementation of such regulation was in accordance with the rule of law. Recent reforms of the judiciary, and in particular of the law on the Supreme Court (SC) and the National Council of the Judiciary (NCJ), had only been implemented in the last few months and more time and experience were needed to assess their performance. Article 7(1) TEU gave the Council the power to decide by a vote or by consensus whether there was a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU or to issue recommendations.

The dialogue between Poland and the Commission had led to significant amendments to the Polish legal system. Poland had equalised the retirement age for men and women as per the Commission recommendations and the arguments in the Commission complaint to the CJEU. Competence to appoint trainee judges had been transferred from the Minister for Justice to the President of the Republic, who had competence for the appointment of all other judges. All judgments of the Constitutional Tribunal had been published as judgments. Therefore, Poland believed that the Article 7 process needed to be concluded in a way that was acceptable to all, and encouraged all Member States to facilitate an acceptable resolution through an open-minded approach.

Following this announcement, the Polish representatives gave a PowerPoint presentation, set out in Attachment 1. This presentation took approximately 45 minutes. First, it explained the SC reforms, in particular the lowering of the retirement age. This was followed by an explanation of the role and election of the NCJ. The subsequent part of the presentation concerned the extraordinary appeal and in particular the criteria for lodging one. The next part of the presentation concerned the Constitutional Tribunal and focused, among other things, on guarantees of its impartiality and the publication of judgments following the Commission recommendation. Finally, the delegation explained that the retirement age provisions that had been introduced were binding on ordinary court judges. At the end of the presentation, the delegation summarised additional improvements introduced by the reform of the judiciary, such as the random allocation of cases, a strict limitation on transferring judges without their consent, and the stipulation that no changes may be made to adjudicating panels during trial. The Polish delegation also explained the role of court presidents and gave an assurance that the reforms concerning them would have no impact on judicial tenure. The information provided on the disciplinary procedure included an explanation that disciplinary judgments remained in the hands of the judiciary and the Minister for Justice could not influence them. At the end, the presentation gave a summary of the amendments introduced in 2018 as a consequence of the dialogue with the Commission and cases filed with the CJEU by the Commission. With regard to further steps, it was noted that the Article 7(1) TEU procedure in the Council needs to remain objective and fact-based and take into account not only the legal text but also its practical application. Poland concluded by stating its openness to a dialogue with the Council, the Member States and the Commission.

The Luxembourg delegation asked about the guarantees protecting judges from political pressure and about follow-up to the possible CJEU judgment concerning the retirement of SC judges.

The Polish delegation replied that any risk of interference had been eradicated with the adoption of last month's amendments, according to which the Minister of Justice would not make decisions on extending the term of judges who had reached retirement age. On CJEU judgments, it was stressed that the level of transposition of EU law in Poland was currently one of the highest in the country's history. There were no Polish cases among infringement cases concerning follow-up by a Member State to a judgement of the CJEU.

The Luxembourg delegation asked for clarification about follow-up in the specific case of the reform of the judiciary in Poland once there had been a CJEU judgment.

The Polish delegation stressed that this possible judgment would be of systemic importance for all Member States, creating an unknown situation for the EU and Member States in terms of the organisation of the judicial system. Therefore, all Member States should give this case their closest attention.

The German delegation, also speaking on behalf of France, asked why new SC judges were currently being recruited while there were pending infringement proceedings lodged by the Commission concerning the retirement of SC judges. It asked whether Poland would comply with the ruling once it had been made.

The Polish delegation referred to its presentation (see Attachment 1), explaining that according to the Polish constitution an ordinary statute could define the retirement age for judges. In addition, new judges were not selected to the vacancies left by retiring judges but only to newly created posts. Therefore, there was no link with the pending preliminary question nor with Commission infringement proceedings.

The Swedish delegation asked about the role of the NCJ as a safeguard of impartiality and the compliance of its composition with standards of independence.

The Polish delegation replied that of the NCJ's 25 members, 17 remained judges. NCJs in the different Member States had different models and compositions and the Commission had not criticised cases which were similar to the current one in Poland. Moreover, a transparent and open parliamentary selection process, as it was now, was better than the former practice of co-opting behind closed doors. It was also recalled that the retirement age was to be defined by a statute in accordance with the Polish constitution. It was stressed that the independence of judges was not at risk because of the NCJ reform or the new regulation of the retirement age.

The Danish delegation asked whether the ongoing urgent appointment procedure at the SC did not create irreversible facts on the ground, especially given that the CJEU had been seised of this issue.

The Polish delegation referred to the information provided on NCJ equivalents in other Member States, making clear that some degree of interference between powers exists in almost every Member State. The situation in Poland, where parliament could elect judges, was therefore not an isolated case, and the proportion of judges among members was still high. The retirement of SC judges was not forced, but a result of implementing law passed in accordance with the constitution, which obliged the parliament to define the retirement age. There was no urgency in filling the vacancies created with the last reform. The new vacancies did not constitute irrevocable change; they were new posts, which did not relate in any way to the vacant posts created by retiring judges. This part of the reform, which was intended to increase the number of SC judges, had never been contested. There was a readiness to amend, which had already been demonstrated by the adoption of two packages of amendments. Poland had the right to reform its judiciary.

The Danish delegation asked how Poland would respond to the possible CJEU judgment on SC judges. Would the newly appointed judges need to be dismissed and the old ones reinstated? It also asked why judge-members of the NCJ needed to be appointed by parliament, since there were already members of the NCJ who were members of parliament.

The Polish delegation replied that none of the issues currently before the CJEU referred to the newly created posts: 44 vacant posts were new, and uncontested, and there was no link with the CJEU. With regard to the NCJ, there was a perception that there had been an imbalance of powers before the reforms. The practice of the judiciary electing its members had been criticised by judges, too: in 2014 most of the Assembly of Representatives of Judges had criticised the procedure as undemocratic.

The Dutch delegation asked if any disciplinary investigations had been opened against ordinary judges who had referred questions to the CJEU. It wondered whether the criteria for the extraordinary appeal were too broad and whether the possible use of this appeal would be difficult to reconcile with the supremacy of EU law over national law.

The Polish delegation replied that the most recent amendment had introduced limitations on the extraordinary appeal, narrowing its scope. It was intended to protect Poland's international obligations, making it impossible to repeal a judgment affecting an international obligation. Extraordinary appeals existed in almost every Member State. They were a necessary safeguard of balance in the justice system in extraordinary situations. There were no disciplinary proceedings against judges who had initiated a request to the CJEU.

The Dutch delegation asked about other criticisms of the extraordinary appeal formulated by the Commission.

The Polish delegation replied that institutions of extraordinary appeal existed in many Member States and that there was no intention to make improper use of it or to undermine legal stability. Poland had wanted to find a way to respond to extraordinary situations and had tried to make things more predictable, and it remained to be seen how it would work in practice. Merely triggering the extraordinary appeal did not necessarily lead to a judgment. There were currently two inheritance law cases in the preliminary stage.

The French delegation reiterated the question asked by the German and Danish delegations on Poland's follow-up to the possible CJEU judgment concerning the retirement of judges. Following the Dutch question, Poland was asked how the disciplinary proceedings might affect the independence of judges, in particular in the light of the CJEU ruling of 25 July stating that disciplinary proceedings had to guarantee that no political control would be imposed on judicial decisions.

The Polish delegation repeated that there were no disciplinary procedures against any of the judges who had filed prejudicial questions. The CJEU judgment of 25 July was a careful judgment, confirming that general doubts about a justice system did not justify non-implementation of European Arrest Warrants (EAWs). Otherwise, it might put an end to the EAW since a lack of proper protection in the Member State's judicial system concerned at least 30 other cases too.

The Portuguese delegation asked how a new appointment would be accepted in view of internal and external controversies surrounding the replacement of the first SC president, and whether it would weaken the future Presidency of the SC's credibility.

The Polish delegation made a distinction between the early retired judges and the new posts created for the Disciplinary Chamber and the Extraordinary Appeal Chamber. Regarding the first issue, the Polish delegation replied that the constitution was clear on how to define retirement age. The solution chosen was fully in line with the constitution. The appointment of the judges last August was to fill the new posts created and allow the new Chamber to start working.

The Irish delegation referred to the July CJEU ruling on the EAW, in which it was stressed that the independence of national courts required judges to be able to exercise their functions autonomously without constraints, and asked how Poland was going to ensure that placing the disciplinary chamber in the SC above other chambers would not create hierarchical structures in the SC. Had Poland considered the introduction of any further measures to be assured of legal certainty?

The Polish delegation replied that the balance of powers was an important issue in every Member State. The safeguard in the case of the disciplinary chamber was that the procedure was under the full control of high-ranking judges. It was the standard where disciplinary cases depended on impartial and transparent judicial control. But the independence of judges did not mean a lack of responsibility or impunity.

The Irish delegation asked what steps Poland is taking to alleviate the sense of uncertainty among Member States concerning the recent reforms.

The Polish delegation replied that it had proven that it was being attentive to the concerns of all parties, and was open to discussion and understanding. That did not mean, however, that Poland would accept any conclusion made at executive or political level. The EU's values were common but their implementation was in the hands of the Member States. There was no clash of values here, but a fundamental problem with their practical implementation. The current procedure was fundamental for the future of the EU and could create systemic changes for it.

The Spanish delegation asked about the distribution of competences between the NCJ, the President of Poland and the Minister for Justice as regards nominating judges, ending their mandates and the disciplinary regime. Who took the final decision in those cases? What were the objective criteria on the basis of which the President of Poland decided to extend judges' terms? Was it possible for judges to seek judicial review?

The Polish delegation replied that the Polish and Spanish NCJs are not so different from each other (e.g. in both cases parliaments decide on the NCJ members). When Poland had been an accession country the Polish Minister for Justice had been entitled to select presidents of the courts. During the accession process there had been positive feedback from the Commission on this. It was difficult to understand why this assessment had changed now. According to the Polish constitution, the Polish president was the only entity entitled to nominate judges, and now also to extend their terms of office. There was no ordinary judicial control; however, the extraordinary control measure might be possible. The Polish president could initiate the disciplinary procedure, taking into account the public interest as regards the judiciary and based on clear criteria.

The Belgian delegation asked why it had been impossible to organise a transition for the existing judges before applying the new provision on the retirement age. Why had Poland applied these rules immediately? Why had the designation of the new SC president been accelerated? Would it not have been better to wait and organise a transition for judges affected by the reform?

The Polish delegation replied that there had been a transitional period in the SC in the form of an extension mechanism. Many judges had decided to use it and five had already been granted an extension. The SC president had to be elected; there had been no acceleration of anything. Regarding the nomination of judges: in the process of filling vacancies, candidates were first assessed by the college of the court, then the assembly of the court, then the designated judge (rapporteur) checking 50 random rulings issued by the candidate. Three judges' opinions had to be submitted of the candidate wishing to apply. Then there was a transparent hearing in the NCJ, broadcast on the internet and based on specific criteria describing what should be assessed. None of these bodies had discretionary power, therefore there is no risk of abuse.

The Finish delegation asked why the new law on the NCJ removed the suspensive effect of appeals by judges applying for vacancies at the SC.

The Polish delegation replied that under the previous system, when there had been suspensive effect, some proceedings had taken two years for a single vacancy. Now there was a possibility to appeal to the court but it did not block a positive opinion on the candidate. As a result, such a person was entitled to apply for vacant positions at the same level in the court and recruitment would not be blocked, e.g. currently there were 44 judges applying, 40 had received positive opinions, four posts were still free, and candidates with pending appeals could run for those positions.

The Cypriot delegation asked about the role of the Polish president in the appointment procedures and the possible risk of political control over the behaviour of judges.

The Polish delegation replied that such a risk did not exist since one could not know who would be elected as the next president. Moreover, the president's prerogatives – including the nomination of judges and extension of their terms – were based on the opinion of the NCJ.

The Commission underlined that the Commission and the Council had a collective responsibility to look into the situation in Poland. The Commission never wanted to be prescriptive as to how a Member State reformed its justice system. But Member States had clear obligations under the Treaties and the Commission was the guardian of those Treaties. The Commission was worried about the question the Minister for Justice had asked the Constitutional Court regarding the question the SC had asked the CJEU. Direct access to the CJEU was a cornerstone of the EU's legal order and a national judge was a European judge when ruling on national law based on EU law. The Commission should therefore use all instruments now to ensure that Poland stayed within its obligations under the Treaties, including infringement procedures.

The Polish delegation replied that the Minister for Justice had queried the Constitutional Court but not about the SC's right to refer questions to the CJEU, just about the right to suspend national legislation by the decision of a judge, without making a specific link to the case in question. Poland, like every government, had the right to implement necessary reforms supported by the vast majority of society and to defend the sovereign rights of parliament. It preferred to find a smooth and conciliatory solution. It counted on the Council to be of great help on this, or there would be no solution to this fundamental controversy. It thanked participants for the debate.

The Presidency concluded that it would come back to the issue as part of preparations for the next meeting of the General Affairs Council.


Rule of law in Poland
Institutional & legal guarantees
STATE OF PLAY – SEPTEMBER 2018

TABLE OF CONTENTS



Issues already discussed during previous hearing in June 2018:

- Supreme Court
- National Council of the Judiciary
- Extraordinary appeal
- Constitutional Tribunal
- Judicial retirement age
- Court presidents
- Disciplinary regime

New element:

- Developments concerning the Supreme Court

SUPREME COURT

The reform:

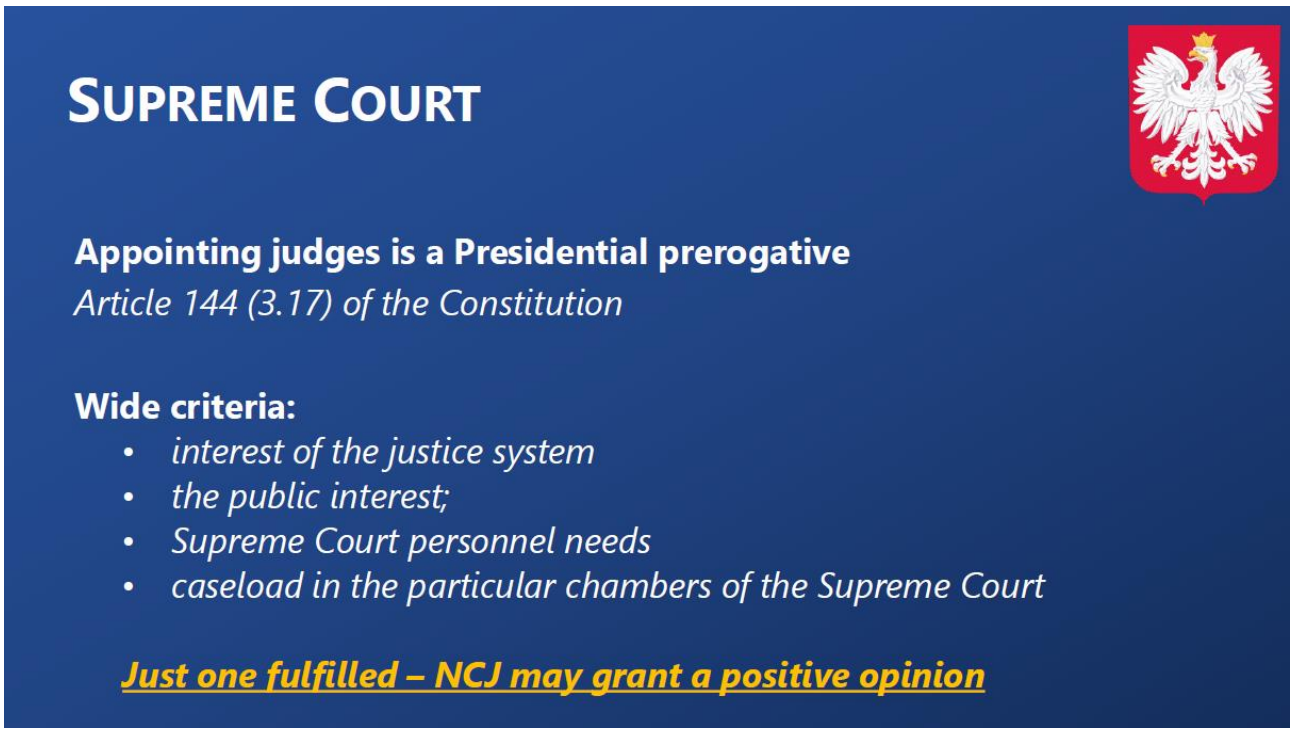
- *80 → 120 judges*
- *Two new chambers (Disciplinary; Extraordinary Control and Public Affairs)*
- *New retirement age*

Transitional period:

12 judges declared their intention to adjudicate after reaching retirement age, 5 were granted consent of the President of the Republic

New First President Election Procedure:

The General Assembly of Judges of the Supreme Court elects candidates for the position immediately after 2/3 of all judicial posts in the Supreme Court [80] are filled. → **judges already sitting in the Supreme Court keep majority**


SUPREME COURT
Appointing judges is a Presidential prerogative
Article 144 (3.17) of the Constitution
Wide criteria:
• interest of the justice system
• the public interest;
• Supreme Court personnel needs
• caseload in the particular chambers of the Supreme Court
Just one fulfilled – NCJ may grant a positive opinion

LOWER RETIREMENT AGE



"Originally established term"?

Article 179:

*"Judges shall be **appointed for an indefinite period** by the President of the Republic on the motion of the National Council of the Judiciary."*

Article 180 (4):

*"**A statute shall establish an age limit** beyond which a judge shall proceed to retirement."*


UNCONSTITUTIONAL?
Judgment of the Constitutional Tribunal of 24 June 1998, K 3/98
"the Constitution obliges the legislator to set an age limit, beyond which judges have to retire. According to the law on composition of common courts, this age limit was – and remains 70 years of age; beyond this limit no one can exercise judicial duties in courts referred to in Article 175 of the Constitution. It does not mean, however, that the legislator is not allowed to set other, additional limits, beyond which judges may be retired, even without their consent."
[the law of 17 December 1997 on amending the law on common courts lowered the retirement age from 70 to 65 – also for the judges already in office – with the possibility to prolong judicial tenure for 5 years]

FIRST PRESIDENT OF THE SUPREME COURT



Fixed term of office

Article 183 (3):

"The First President of the Supreme Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court."

Exceptions?

"The analyzed norm of the Article 183 (3) of the Constitution introduces a term of office for the function of the First President of the Supreme Court. It was established at 6 years (...) The Constitution and the law on the Supreme Court do not foresee any limitation as to a number of terms, which means that a Supreme Court judge may hold the office of the First President of the Supreme Court for several terms, until the expiration of the last of these terms, ***until the judge reaches retirement age*** *or retires for health reasons".*

– **M. Safjan, L. Bosek**, *Constitution of the Republic of Poland. Volume II. Commentary*, Warsaw 2016

NATIONAL COUNCIL OF THE JUDICIARY



European Standard – in theory, in practice?

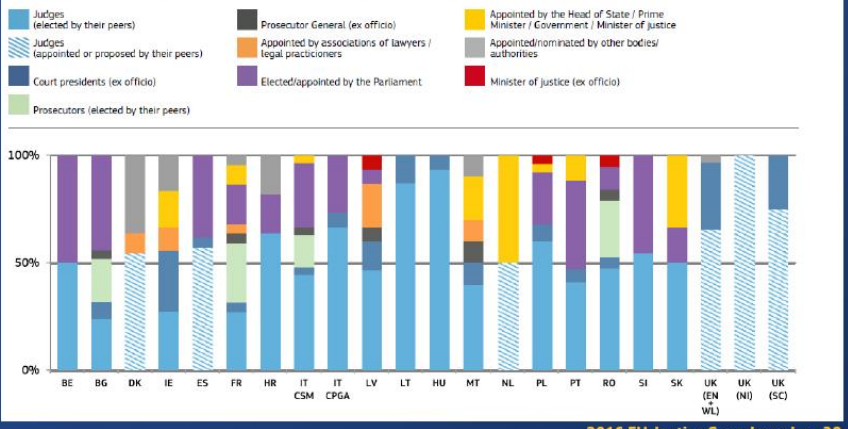
1) Majority of judges elected by their peers
2) Judges elected by their peers – but **no majority**
3) Majority of judges – **elected by parliament/appointed by the executive**
4) **Minority of judges**, appointed in various ways (not exclusively by their peers)
5) **No judicial council at all** – nominations, appointments, promotions decided by the executive and/or the legislature

NATIONAL COUNCIL OF THE JUDICIARY

Figure 49

Composition of the Councils for the Judiciary according to the nomination process (*) ([85])

The figure shows the composition of Councils for the Judiciary ([86]), members of the ENCJ, according to the nomination process, depending on whether the members are judges/prosecutors elected or appointed/proposed by their peers, members nominated by the executive or legislative branch, or members nominated by other bodies and authorities. Not less than half the members of Councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary ([87]).



2016 EU Justice Scoreboard, p. 38


WHAT IS THE ROLE OF THE NCJ?
Article 186 (1) of the Polish Constitution
"The National Council of the Judiciary shall safeguard the independence of courts and judges."
Article 187 (4) of the Polish Constitution
"The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by a statute."


NATIONAL COUNCIL OF THE JUDICIARY
• Over 2/3 judicial majority [17 out of 25 members are judges]
• Irrevocability, fixed 4-year term
• 18 candidates for 15 seats in 2018, 18 – in 2014, 24 in 2010, 19 in 2006
• Hearing of candidates for judicial positions (limited hearings before 2018)
• Transparency – live on-line streaming, judicial appointments are now subject of a live public discussion
• Independence – secret ballot
(some candidates for the Supreme Court were recommended a majority as narrow as 13–11, others were rejected by similar numbers)
• Amendments?

EXTRAORDINARY APPEAL

"The concerns expressed by the Commission fully remain. The changes do not eliminate the broadness of the criteria governing the extraordinary appeal: they remain almost the same; **in particular they still refer to 'social justice'** albeit in a different wording."

"This could even justify, for example, the repeal of final judgments by Polish courts applying EU law as interpreted by the case-law of the Court of Justice of the EU."

– European Commission Contribution, page 10

Article 2 of the Polish Constitution

The Republic of Poland shall be a democratic state ***ruled by law and implementing the principles of social justice.***

Article 3 (3) TEU

The Union ... shall promote social justice *and protection, equality between women and men, solidarity between generations and protection of the rights of the child.*

COUNCIL OF EUROPE RECOMMENDATION

Recommendation No. R (2000) 2 of the Committee of Ministers of 19 January 2000

The Committee of Ministers:

I. Invites … the Contracting Parties to ensure that here exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;

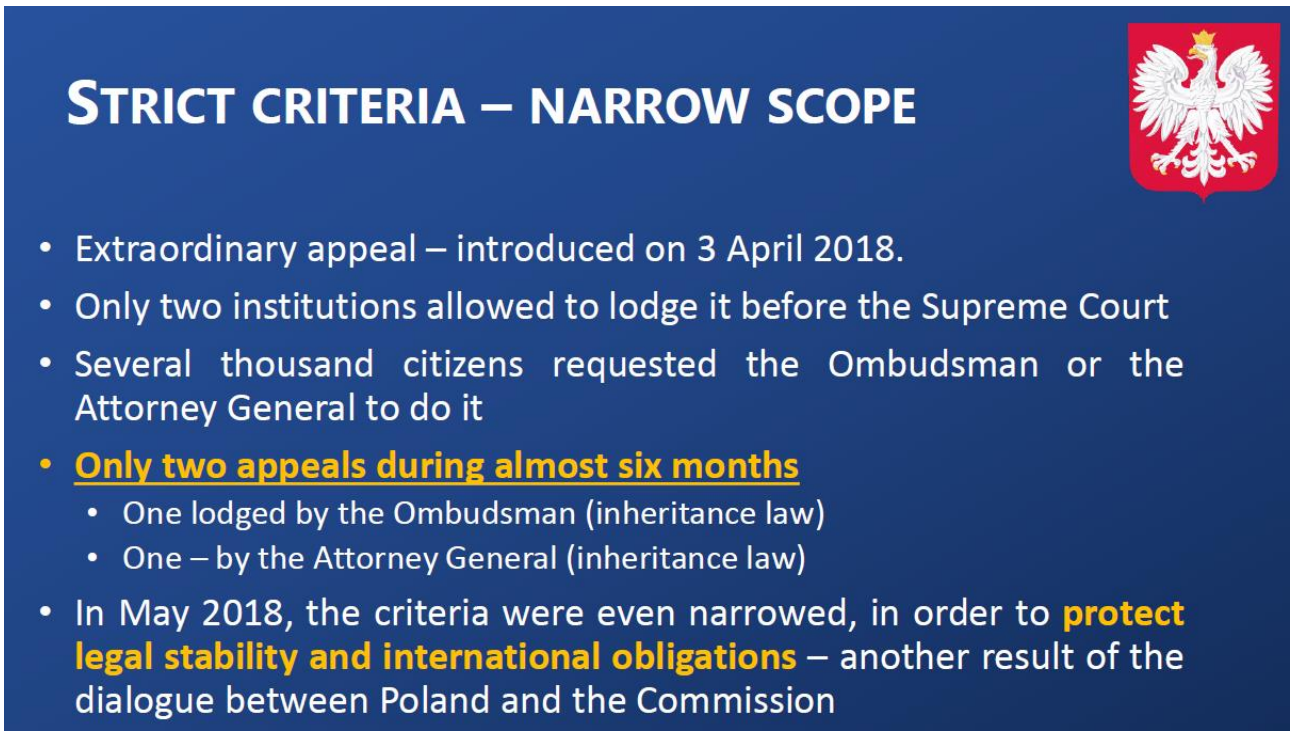
II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to **ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings**, in instances where the Court has found a violation of the Convention, especially where:

(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

(ii) the judgment of the Court leads to the conclusion that

(a) the impugned domestic decision is **on the merits contrary to the Convention**, or

(b) the violation found is **based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings** complained of.

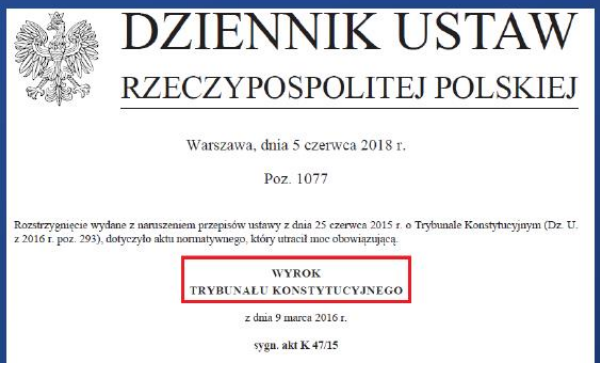

STRICT CRITERIA – NARROW SCOPE
• Extraordinary appeal – introduced on 3 April 2018.
• Only two institutions allowed to lodge it before the Supreme Court
• Several thousand citizens requested the Ombudsman or the Attorney General to do it
• Only two appeals during almost six months
• One lodged by the Ombudsman (inheritance law)
• One – by the Attorney General (inheritance law)
• In May 2018, the criteria were even narrowed, in order to protect legal stability and international obligations – another result of the dialogue between Poland and the Commission

CONSTITUTIONAL TRIBUNAL

The three 2016 judgements have not been published as a 'judgement' but as "findings delivered in breach of law".

***– European Commission Contribution,** page 11*

Already explained in previous hearing:



DZIENNIK USTAW
RZECZYPOSPOLITEJ POLSKIEJ

Warszawa, dnia 5 czerwca 2018 r.

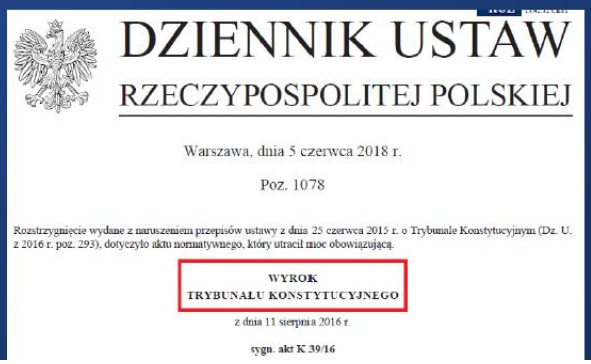
Poz. 1077

Rozstrzygnięcie wydane z naruszeniem przepisów ustawy z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym (Dz. U. z 2016 r. poz. 293), dotyczyło aktu normatywnego, który utracił moc obowiązującą.

WYROK
TRYBUNAŁU KONSTYTUCYJNEGO

z dnia 9 marca 2016 r.

sygn. akt K 47/15



DZIENNIK USTAW
RZECZYPOSPOLITEJ POLSKIEJ

Warszawa, dnia 5 czerwca 2018 r.

Poz. 1078

Rozstrzygnięcie wydane z naruszeniem przepisów ustawy z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym (Dz. U. z 2016 r. poz. 293), dotyczyło aktu normatywnego, który utracił moc obowiązującą.

WYROK
TRYBUNAŁU KONSTYTUCYJNEGO

z dnia 11 sierpnia 2016 r.

sygn. akt K 39/16

CONSTITUTIONAL TRIBUNAL



- All five judges nominated in October 2015 were appointed in breach of law (**their terms were to start after the parliamentary election**, which the then-ruling majority expected to lose)
- CT President appointed lawfully – contrary claim unsubstantiated
- Since current CT President took over – majority for judges appointed before 8th term of Sejm in **41% cases** *(updated for 17 September 2018)*
- Previous CT President – **0% cases** with majority for judges appointed during 8th term of Sejm
- All judges in CT history – endorsed by some political groups, some – members of political parties themselves (including previous President)
- Guarantees of independence → judgments **often contrary to parliament, government, Attorney General**

ORDINARY COURTS – RETIREMENT AGE

- **"Originally established term"?**

  Article 179:

  *"Judges shall be **appointed for an indefinite period** by the President of the Republic on the motion of the National Council of the Judiciary."*

  Article 180 (4):

  ***"A statute shall establish an age limit** beyond which a judge shall proceed to retirement."*

- **April 2018 – retirement age equalized for male and female judges**

OVERLOOKED IMPROVEMENTS

Random allocation of cases

- **Previously:** head of court division could appoint a civil case to a judge as they pleased – **possible undue influence**
- **Now:** cases allocated by a computerized draw *(Law on the composition of common courts – Article 47a)*

Strict limitation of transferring judges without their consent

- **Previously:** court presidents could transfer a judge at the beginning of every year if they deemed that it is necessary for organisational reasons
- **Now:** transfer prohibited without judge's consent, save for limited exceptions only – and the judge has **always the right to appeal** *(Law on the composition of common courts – Article 22a § 4a)*

No changes to adjudicating panels during trial

- **Previously**: a judge could be swapped even in the last moment of a civil trial and the new one **could still issue a verdict, even not having heard the evidence in person**
- **Now**: composition of a bench unchanged during trial, save for exceptional circumstances *(Law on the composition of common courts – Article 47b)*

COURT PRESIDENTS



- Function of a court president ≠ judicial tenure
- **Major role – adjudicating**
- Court president – administrative duties
- After being relieved of duties – **still in active service**


AMENDMENTS INTRODUCED IN 2018
Dialogue between the Commission and Poland – results:
• Retirement age equalised for male and female judges
• Prolongation of judicial tenure – transferred from Minister of Justice to the National Council of Judiciary
• Court Presidents dismissal may now be blocked by the NCJ
• New procedure for appointing judges on probation
• Amendments also to the regulations on Constitutional Tribunal, Supreme Court, extraordinary appeal

DISCIPLINARY PROCEDURE



Who is in charge?

- Minister of Justice appoints Disciplinary Officer of the Ordinary Courts (DOOC) and two Deputy Disciplinary Officers – **only judges, appointed for 4-year terms**
- Additional Deputy Disciplinary Officers (also judges) are appointed by the DOOC **from among the candidates presented by the General Assemblies of Judges of respective District Courts** (at least 45).
- Any possible influence of the Minister of Justice – limited, and only during first stage:
  - MoJ may file a motion for initiating the proceedings
  - a special disciplinary officer may be appointed to initiate and carry it out
- Initial stage ends with a disciplinary indictment – or discontinuation

DISCIPLINARY PROCEDURE



wyborcza.pl
Wtorek 26.06.2018

Mundial 2018 Kraj Świat Miasta Opinie Gospodarka Nauka Tech Kultura Classic Wideo Magazyny Tylko Zdrowie Wysokie Obcasy CJG24 Więcej

Kraj

Ziobro powołał "głównego oskarżyciela sędziów". "Uczciwy i niepodatny na naciski"

Łukasz Woźnicki 22 czerwca 2018 | 15:54

Gazeta Wyborcza, 22 June 2018: Ziobro [MoJ] appointed "head prosecutor of judges". "Honest and insusceptible to pressure"

*"Judge Piotr Schab **contradicted the Minister of Justice and refused a disciplinary action** against judge Wojciech Łączewski. Right-wing media labelled him a member of the "extraordinary caste", but the Minister has just made the judge the top disciplinary officer in the country"*

DISCIPLINARY PROCEDURE



Who decides in the end?

- Indictment – only a start of the disciplinary trial
- Disciplinary judgment – at the hands of the judiciary
- First instance: a panel of three professional judges
- Second instance: a panel of two professional Supreme Court Judges and one Supreme Court Lay Judge
- **Minister of Justice – not involved**

EUROPEAN COURT OF JUSTICE



Cases filed by the Commission

- Judgments of the ECJ are final and binding
- At this stage – the case regarding the Supreme Court not filed to the ECJ
- The case regarding ordinary courts – still not withdrawn (even after amendments addressing relevant issues)
- **Poland have always respected ECJ rulings**

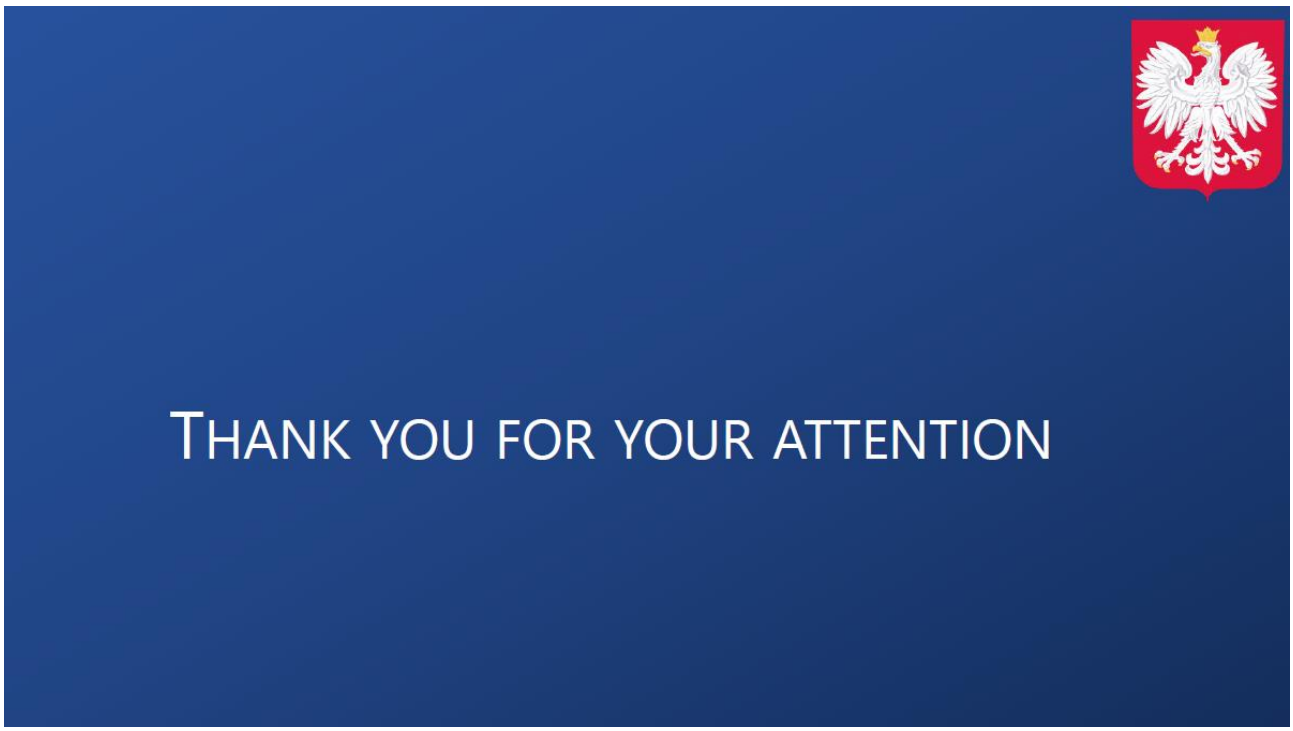
Questions for preliminary rulings

- Implementation by the courts in particular cases, not government
- Suspensive effect applicable according to the ECJ case-law

FURTHER STEPS



- Article 7 (1) TEU *vis-à-vis* infringement procedure
- Jurisdictional independence of the ECJ
- Objective, fact-based assessment
- **Legal text vs. practical application** of the norms (e.g. extraordinary appeal)
- Further **amendments possible if needed**
- Openness to a dialogue with the Council, Member States and the Commission


THANK YOU FOR YOUR ATTENTION