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WHAT GOES AROUND COMES AROUND: THE COURT OF JUSTICE UPHOLDS THE COMMISSION'S ACTION AGAINST THE REBELLIOUS CASE LAW OF THE POLISH CONSTITUTIONAL TRIBUNAL

Posted on 17 Febbraio 2026 by [Martina Coli](#)

On 18 December 2025, the Court of Justice of the EU delivered its long-awaited [judgment](#) in *Commission v Poland* (Case C-448/23), marking the fifth infringement decision finding Poland in breach of judicial independence and the rule of law. This ruling was highly anticipated, as the Court was expected to issue a significant judgment on the primacy of EU law over national constitutional case law and the independence of the Polish Constitutional Tribunal (*Trybunał Konstytucyjny*). The Court did not disappoint expectations, and the case represents a milestone for several reasons.

Facts and legal background

At issue were the Polish Constitutional Tribunal's judgments of 14 July 2021 ([Case P 7/20](#)) and 7 October 2021 ([Case K 3/21](#)), which declared certain provisions of the EU Treaties – namely Articles 1, 2, 4(3) and 19(1) TEU, along with Article 279 TFEU – to be incompatible with the Polish Constitution. This marked an unprecedented attack by a national

constitutional court on the core principles of the Union, [aimed at preventing Polish courts from applying the Court of Justice's case law on judicial independence](#). The gravity of the ruling should not be underestimated. It challenged the core and structural principles of the EU legal order, including the primacy of EU law and the values of Article 2 TEU that underpin the Union's identity (see [Case C-156/21](#), para 127). Thus, it had the potential to cause "[perverse and destructive effects](#)" on that legal order.

The two decisions by the Constitutional Tribunal were a direct response to the Court of Justice's rulings and interim measures finding that the Polish judicial reforms breached the second subparagraph of Article 19(1) TEU, notably the judgment in [Case C-824/18, A.B and others](#), and the [order requesting interim measures in C-791/19](#). In particular, case K 3/21 originated from a request by the then-Polish Prime Minister Morawiecki, whose government, led from 2015 to 2023 by the Law and Justice party (*Prawo i Sprawiedliwość* – PiS), launched numerous assaults on the independence of the national judiciary in an effort to control it. Over the years, those Polish reforms have given the Court of Justice the opportunity to build a substantial body of case law defending judicial independence under Article 19(1) TEU as an expression of the value of the rule of law enshrined in Article 2 TEU. Because of the direct effect of Article 19(1) TEU (see [judgment in A.B and others](#), para 146), Polish judges were required to set aside national provisions that threaten judicial independence and to give precedence to EU law. However, this resistance was unacceptable to the PiS government, which then sought the intervention of its no-longer-independent Constitutional Tribunal (see below) to assess the compatibility of specific provisions of the EU Treaties with the Polish Constitution.

Since Member States are responsible for breaches of EU law [committed \(also\) by their judicial bodies](#), in December 2021, the Commission began infringement proceedings against Poland, targeting the "rebel" case law of its Constitutional Tribunal. A lot of water has passed under the bridge since then. Notably, there was a change of government in Poland, led since December 2023 by the centrist and pro-European Civic Platform

party under the premiership of Donald Tusk. The government is striving to restore the rule of law and the independence of the Constitutional Tribunal in Poland, despite strong opposition from both the previous and current Presidents of the Republic, who are close to the PiS party. In its rejoinder before the Court, the current Polish government withdrew its defence and fully accepted the Commission's complaints. Nonetheless, as the Court recalled in paragraph 84 of the judgment, it is solely for it to determine whether the alleged breach of obligations exists, even if the Member State concerned no longer denies it. And indeed, in the judgment of 18 December, the Court of Justice upheld the Commission's action in full, officially establishing that Poland's constitutional case law breaches EU law.

Frontal assaults on Article 2 TEU and the primacy of EU law are not to be tolerated

By responding to the Commission's first and second pleas, the Court determined that the Polish Constitutional Tribunal violated Article 19(1) TEU, along with the principles of autonomy, primacy, and effectiveness, the uniform application of EU law and the binding effect of the Court of Justice's case law. As is often the case in such matters, the Court of Justice first recalled that, although the organisation of the judiciary falls within national competence, this competence must be exercised in accordance with EU law, particularly with the principles of judicial independence and impartiality deriving from Article 19(1) TEU (paras 102-103). Moreover, the Court also reaffirmed that, following accession to the Union, a Member State shall not amend its legislation, including the laws relating to the organisation of justice, in a way that diminishes the level of protection afforded to the value of the rule of law (see [Case C-896/19, *Repubblika*](#), para 63, and para 179 of the present judgment).

In its October 2021 judgment, the Polish Constitutional Tribunal barred all Polish judges from assessing the compatibility of national judicial appointment procedures with EU law, thereby precluding them from applying Article 19(1) TEU. This was found by the Court of Justice as "manifestly incompatible with the requirements inherent in that provision, as interpreted by the Court on the basis of its exclusive jurisdiction to

provide the definitive and binding interpretation of EU law” (para 125). Furthermore, the declaration by the Polish Constitutional Tribunal in its judgment of July 2021 that the interim measures imposed by the Court of Justice under Article 279 TFEU on 8 April 2020 were adopted *ultra vires* “disputed the very principle of the Republic of Poland’s obligation to comply with its obligations, which derive, for the latter, as regards the organisation of justice, from the second subparagraph of Article 19(1) TEU” (para 140).

By depriving the requirements stemming from Articles 2 and 19(1) TEU, as well as interim measures ordered by the Court under Article 279 TFEU, of producing legal effect in the Polish legal order and instructing Polish judges to refrain from applying those rules, the Constitutional Tribunal also breached the primacy of EU law (paras 187-189). For the same reasons, the principles of autonomy, effectiveness, and uniform application of EU law were also infringed (para 195). While the case’s outcome was obvious to any first-year EU law student, it gave the Court the chance to reaffirm what the primacy of EU law entails, requiring all Member State bodies to give full effect to EU law regardless of any conflicting national provisions (see paras 168-182).

Regarding the binding effect of its own judgments, the Court of Justice emphasised that, although the Union is bound by the principle of conferral under Article 5(2) TEU, national courts cannot determine the scope and limits of the Union’s competences, nor can they declare acts of EU law invalid, as these powers are exclusively for the Court of Justice (paras 212-215). The Court also reminded the Polish Constitutional Tribunal of the correct and physiological procedure to follow in cases of doubt regarding the scope of EU competences or the validity of an EU act: engaging in a dialogue with the Court of Justice through the preliminary reference procedure. Instead, the Polish Constitutional Tribunal did not submit a preliminary request to avoid a direct conflict, thereby demonstrating a non-cooperative behaviour that completely disregards Poland’s participation in a supranational legal order.

At last, the Polish Constitutional Tribunal is found to be not independent under EU law

The judgment is important for another reason: the Court of Justice stated, for the first time, that the Polish Constitutional Tribunal does not qualify as an independent tribunal established by law within the meaning of EU law. Notably, the Polish Constitutional Tribunal was the first victim of the wave of judicial reforms implemented by the PiS government (see [Koncewicz, 2018](#)). In 2015, three of its members were partially replaced after the newly elected Polish Parliament annulled judicial appointments made by the previous legislature. This was a clear disregard for Article 194(1) of the Polish Constitution as interpreted by the Constitutional Tribunal, which requires that a judge be elected during the parliamentary term in which their seat becomes vacant (see [Sadurski, 2018](#)). It thus constituted a breach of a fundamental rule concerning the appointment of judges, “forming an integral part of the establishment and functioning of that judicial system”, which, according to the Court’s case law, is a necessary element to establishing a violation of the requirement of the “tribunal previously established by law” ([Case C-487/19, W.Ż.](#), para 130). The appointment of the President of the Constitutional Tribunal also breached EU law, as it took place with the participation of the three unlawful judges. While this strong stance was much needed, the Court missed the chance to clarify the legal status of the rulings of the illegitimate Constitutional Tribunal, especially whether they could be [disregarded](#) in light of its recent case law requiring to consider “null and void” decisions from a non-independent judicial body in [Case C-487/19, W.Ż.](#), and, more recently, [Case 225/22, AW T’](#) (see [here](#) for a comment). The irregularities in the procedures for appointing constitutional judges had already been condemned by the European Court of Human Rights (ECtHR) in its [Xero Flor judgment of July 2021](#), to which the Court also refers in support of its reasoning (para 272). It was about time that the Court of Justice had the chance to recognise these irregularities as a breach of EU law, bringing the number of European courts acknowledging the lack of independence of the Polish Constitutional Tribunal to two. The fact that this decision came almost four years after the ECtHR’s judgment testifies to the [inertia of the Commission](#), which waited for a frontal attack on primacy before addressing violations of the Constitutional Tribunal’s

independence before the Court of Justice. Moreover, that judgment arrives at a moment when [“no one, in Poland or in the EU, takes the current seriously”](#). One could hope that, even if delayed, this ruling will still support the Polish government’s [arduous efforts](#) to restore the rule of law. Yet [the room for manoeuvre is limited](#), given the President of the Republic’s threat of a constant veto. A key question, therefore, is the future role of the Commission. If the Tusk government fails to prevent other primacy challenges by the Constitutional Tribunal and restore its independence, would the Commission initiate a second infringement action under Article 260 TFEU? Clearly, the Commission is holding a hot potato here.

Article 4(2) TEU is not a blank check to disregard EU values

On multiple occasions in the judgment, the Court of Justice addressed the Constitutional Tribunal’s arguments concerning the alleged violation of Poland’s constitutional identity. Unsurprisingly, any attempt by the Polish Constitutional Tribunal to rely on the Union’s duty to respect national identities under Article 4(2) TEU was unsuccessful. As the Court of Justice clarified in the conditionality judgments (Cases [C-156/21](#) and [C-157/21](#)), Member States cannot invoke their national identity to avoid complying with the values enshrined in Article 2 TEU, which include the rule of law and, by extension, judicial independence. This was also recalled in the present judgment (see para 180), where the Court also emphasised that Article 4(2) TEU must be read in conjunction with the provisions of the same rank, particularly Articles 2 and 19(1) TEU. Thus, the interpretation of the Constitutional Tribunal cannot withstand a “systematic understanding” of Article 4(2), in light of other provisions of Treaties, first and foremost Article 2 TEU ([Martinico, 2021](#)). Accordingly, Poland cannot evade its obligations under these provisions by claiming they threaten its constitutional identity (paras 191-193).

Defending the binding effect of its case law, the Court was even more assertive in its statements: “Article 4(2) TEU cannot be interpreted in such a way as to confer on the power to derogate unilaterally from the provisions of EU law by relying on that national identity” (para 227). This statement reflects the dramatic scenario at stake. The Polish reliance on

Article 4(2) TEU fits within the context of the [abusive use](#) of that provision by non-independent national constitutional courts in populist countries. In the face of such serious violations of EU values and the fundamental principles of the EU legal order, Article 4(2) TEU [cannot play a conciliatory role](#), and [constitutional pluralism cannot accommodate constitutional conflicts](#). As Advocate General Spielmann emphasised, Member States made a sovereign decision to join the Union and, therefore, they “must respect the ‘rules of the game’”, primarily the values of Article 2 TEU (para 92 of the [Opinion](#)). Only if those rules are followed can Article 4(2) TEU play a role in fostering dialogue and pluralistic interactions.