

# ECJ Reprimands Polish Constitutional Court and Denies its Independence



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## News

**Thomas Wahl**

In the dispute over the primacy of EU law over national constitutional law and the decision-making powers of the highest courts, the Grand Chamber of the European Court of Justice (ECJ) has once again reaffirmed the ECJ's position: In its [judgment of 18 December 2025](#) in infringement proceedings [C-448/23](#) brought by the European Commission against Poland (→[euclid 1/2023, 4](#)), the judges in Luxembourg postulate that national constitutional courts cannot override the primacy of EU law either by invoking their respective constitutional identity or by means of *ultra vires* review.

### Background of the case

The case was prompted by rulings of the Polish Constitutional Court on 14 July and 7 October 2021, which questioned the compatibility of EU law and the rulings of the ECJ with the Polish constitution (→[euclid 3/2021, 135 et seq.](#)). The criticised ECJ rulings were issued in connection with the controversial judicial reform under the national-conservative PiS government.

In its ruling of 14 July 2021, the Polish Constitutional Court found that the interim measures imposed by the ECJ on the organisation of the courts (Case [C-791/19 R](#) (→[euclid 1/2020, 4](#))) violated the principle of specific conferment of powers and the Polish constitutional identity. In view of this alleged conflict of norms, the Polish Constitutional Court reaffirmed the primacy of the constitution as the supreme source of law in Poland. In its ruling of 7 October 2021, the Polish Constitutional Court declared unconstitutional certain provisions of EU law as interpreted by the ECJ (Cases [C-824/18, A.B. and Others](#) (→[euclid 1/2021, 4](#)) and [C-487/19, W.Ż.](#) (→[euclid 3/2021, 136](#))), according to which national courts are empowered, among other things, to review the legality of the procedures for appointing judges.

The European Commission then initiated an action for failure to fulfil obligations against Poland, alleging violations of the principles of EU law, in particular the primacy of Union law and the binding effect of ECJ decisions. It also complained of serious irregularities in the appointment of three judges and the President of the Polish Constitutional Court, as a result of which the latter could no longer be regarded as an independent and impartial tribunal within the meaning of EU law.

### The ECJ's ruling

The ECJ upheld the complaint in its entirety. In its 2021 judgments, the Polish Constitutional Tribunal had violated the principle of effective judicial protection by denying the national courts the jurisdiction to review the legality of the procedures for appointing judges and to rule on the defective nature of these procedures,

#### AUTHOR

**Thomas Wahl**

Senior Researcher  
Max Planck Institute for the  
Study of Crime, Security and  
Law

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in disregard of the case law of the Court of Justice. It had also disregarded the binding effect of the interim measures issued by the Court of Justice concerning the organisation and jurisdiction of the Polish courts and the proceedings before those courts. In its reasoning, the ECJ also stressed the following issues:

- The judgments by the Polish Constitutional Court call into question the essential characteristics of the legal order of the European Union;
- After accession, Poland undertook legally binding obligations for the values enshrined in Art. 2 TEU (including the rule of law, effective judicial protection and the independence of the judiciary) and cannot escape from these obligations by relying on constitutional identity;
- National courts cannot unilaterally determine the scope and limits of the powers conferred on the Union.

Looking at the Commission's complaint involving specific appointments of judges to the Polish Constitutional Court, including its President, in 2015/2016, the ECJ concluded that these appointments were vitiated by infringements of fundamental rules relating to appointment procedures in Poland. As a consequence, the Polish Constitutional Court does not meet the requirements of an independent and impartial tribunal established by law, within the meaning of EU law and Poland has failed to fulfil its obligations under Art. 19(1) TEU.

### Put in focus

Beyond the specific dispute with the Polish Constitutional Court and the related judicial reform from 2015 onwards, which raises concerns about the rule of law, the ECJ ruling is another important landmark decision on the fundamental relationship between the law of Member States and EU law on the one hand, and – correspondingly – between national supreme courts or constitutional courts and the ECJ on the other. It reaffirms the primacy of EU law, which has been developed by the ECJ since the 1960s. With this ruling, the ECJ ultimately clarifies that the correct place to resolve discrepancies between national and European law is the preliminary ruling procedure under Art. 267 TFEU and no unilateral decision-making at the national court level.

It remains to be seen to what extent Poland itself will or can respond to the ruling. Under Art. 260(1) TFEU, Poland is obliged to take the necessary measures to comply with the ECJ's judgment. However, dismantling the judicial reforms implemented by the PiS government is proving extremely difficult for the liberal-conservative government led by Prime Minister Donald Tusk, which has been in office since December 2023 (→[eucrim 1/2024, 4](#) and →[eucrim 4/2024, 264-265](#)). The Polish Constitutional Court, which was restructured by the then PiS government in the wake of the constitutional crisis at the end of 2015, is still largely in office in its former form at the beginning of 2026. In March 2024, however, the Sejm, the Polish parliament, [denied the Constitutional Court's legitimacy](#), so that it is currently in a crisis of legitimacy because its decisions are being ignored. Conversely, the election of *Karol Nawrocki*, who is close to the PiS, as Polish President in June 2025 will continue to make judicial reforms in Poland difficult and protracted, as the President has the right to veto laws. It would certainly be contrary to the efforts of the new Polish government if the European Commission were to conclude that Poland had not responded adequately to the ruling from Luxembourg of 18 December 2025 and then, pursuant to Art. 260(2) TFEU, refer the matter back to the ECJ to request that a fine be imposed on Poland.

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