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<https://doi.org/10.26881/gsp.2020.4.08>

## **Circumstances of the Application of Article 7 par. 1 of the Treaty on European Union with Regard to the Rule of Law in Poland<sup>1</sup>**

1. Pursuant to art. 2 of the Treaty on European Union<sup>2</sup> “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” The construction of the European integration has to functionally assume the existence of a protective system for shared base values. It should be primarily motivated by general objectives to persuade the Member State breaching shared values to return thereto and limit the negative impact of such a state on the action of the Union. It may be favoured by diverse measures and procedures. The linking brackets are provided by the procedure under art. 7 of the Treaty.

First of all, in compliance with art. 7 par. 1 of the Treaty, on “a reasoned proposal” by 1/3 of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of 4/5 of its members after obtaining the consent of the European Parliament, may “determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2” of the Treaty. Before making such a determination, the Council hears the Member State in question and, acting in accordance with the same procedure, may address recommendations to it. The Council also regularly verifies that the grounds on which such a determination was made continue to apply.

Secondly, in compliance with art. 7 par. 2 of the Treaty, the European Council, acting by unanimity on a proposal by 1/3 of the Member States or by the Commission

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<sup>1</sup> The theses of the article were prepared for the XXVI Biennial Congress of the World Jurist Association “Constitution, Democracy & Freedom. The Rule of Law, Guarantor of Freedom”, which took place in Madrid on 19–20 February 2019.

<sup>2</sup> OJ C 326 of 2012, p. 3. As underlined by M. Rulka [in:] *idem*, “Unijna kontrola praworządności – uwagi *de lege ferenda*”, *Studia Europejskie* 2016, no. 2, p. 53, the catalogue of values from art. 2 of the Treaty reminds catalogues adopted in the Statute of the Council of Europe and the preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

and after obtaining the consent of the European Parliament, may determine (after inviting the Member State in question to submit its observations) "the existence of a serious and persistent breach by a Member State of the values referred to in Article 2" of the Treaty.

In consequence, (art. 7 par. 3 of the Treaty) where a determination under par. 2 has been made, the Council, acting by a qualified majority, may decide to "suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council;" the Council takes into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under the Treaties in any case continue to be binding on that State. However, the Council, (art. 7 part. 4 of the Treaty) acting by a qualified majority, may decide subsequently to vary or revoke measures taken under art. 7 par. 3 of the Treaty in response to changes in the situation which led to their being imposed.

The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of the referred art. 7 are laid down in art. 354 of the Treaty on the Functioning of the European Union (art. 7 par. 5).

As has been noticed in the doctrine, the mechanism under art. 7 of the Treaty is flexible and takes into consideration various stages of the development of the situation. It can apply even in situations when a breach of the Treaty's values is of a systemic character despite the fact that the genesis of this provision intended it to be rather a preventive mechanism. The Procedure under art. 7 is sometimes criticised as tardy and potentially, due to the intergovernmental character, ineffective. Nevertheless, it should be taken into consideration that it exposes the conduct of the Member State breaching shared values, helps other Member States realise the state of threat, has a degrading political impact on the position of the State infringing art. 2 of the Treaty and marginalises such a State. Relations among various Union procedures are also of legal importance. The next step of the dialogue is aimed at clarifying the issue and pressuring the Member State.<sup>3</sup>

In the discussion it is especially indicated that art. 7 of the Treaty *de facto* vested the Union with competences "basically in each subject matter, also those formally governed by the exclusive competences of Member States."<sup>4</sup> As explained in the Communication from the Commission (on art. 7 of the Treaty): "if a Member State breaches the fundamental values in a manner sufficiently serious to be caught by art. 7, this is likely to undermine the very foundations of the Union and the trust between its members, whatever the field in which the breach occurs."<sup>5</sup> The Union mechanisms in areas of

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<sup>3</sup> It is underlined by J. Barcz: "Unia Europejska wobec niepraworządnego państwa członkowskiego", *Państwo i Prawo* 2019, no. 1, pp. 4–9.

<sup>4</sup> M. Rulka, "Unijna kontrola...", p. 54.

<sup>5</sup> Communication from the Commission of 15 October 2003: Respect for and promotion of the values on which the Union is based, COM (2003) 606 final, p. 6.

essential significance were specified in the judicial decisions issued by the Court of Justice of the European Union.<sup>6</sup>

In the debate on art. 7 of the Treaty the political nature of this procedure and entrusting the final decision with the European Council and not the Court of Justice of the European Union, as an independent and competent body, are also underlined. This disharmony in the practice of institutions enumerated in art. 7 of the Treaty is mitigated by “referring to the opinion of the Venice Commission, the advisory body of the Council of Europe, in majority composed of prominent representatives of the doctrine of law, as well as former and present judges of international courts and national constitutional courts.”<sup>7</sup> It has also been underlined in the doctrine that the proposal of enhancing, in the procedure under art. 7 of the Treaty, the role of the Court of Justice of the European Union deserves particular attention. Currently, the CJEU supervises only adherence to the procedural requirements in the actions of the Council of the European Union (relatively the European Council). As has been noticed, the procedure under art. 7 of the Treaty would be much more effective, if the CJEU made decisions on stating “the existence of a clear risk of a serious breach” (par. 1) and “a serious and persistent breach” (par. 3) of Treaty values under art. 2; whereas, the “monitoring” activity (in the first case) and specification of “sanctions” (in the second case) could remain within the competences of the Council of the European Union (in the second case, perhaps it would be even better if these activities were included in the competences of the European Council).<sup>8</sup>

**2.** In the case of Poland, the issue of the procedure under art. 7 of the Treaty was updated in the area of the rule of law (in the terminology used in art. 2 of the Treaty – respect for the rule of law). It concerns “reasoned proposal in accordance with Article 7 par. 1 of the Treaty on European Union regarding the rule of law in Poland”<sup>9</sup> submitted by the European Commission. It is a proposal for a Council Decision preceded with the Explanatory Memorandum “on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.” In the introduction to the Explanatory Memorandum the non-exclusive list of principles comprising the rule of law and hence defining the core meaning of the rule of law was presented. As indicated on the basis of the case law of the Court of Justice of the European Union and the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the European Commission for Democracy through Law (“the Venice Commission”) – “those principles include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; sepa-

<sup>6</sup> See: J. Barcz, “Unia Europejska...” pp. 7–8; as has been indicated, the CJEU, among others, covered with its jurisdiction assessment of the rule of law in Member States assuming that this concept is included in the concept of “branches” of the EU law (art. 19 par. 1 of the Treaty).

<sup>7</sup> M. Rulka, “Unijna kontrola...,” pp. 66–67.

<sup>8</sup> As J. Barcz, “Unia Europejska...” pp. 20–21.

<sup>9</sup> Brussels, 20 December 2017, COM (2017) 835 final; 2017/0360/NLE. See: comprehensively *Wniosek Komisji Europejskiej w sprawie wszczęcia w stosunku do Polski procedury art. 7 TUE*, eds J. Barcz, A. Zawidzka-Łojek, *Ramy prawno-polityczne*, Warsaw 2018.

ration of powers; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law.”<sup>10</sup> In addition to upholding those principles and values, State institutions, as has been indicated, also have the duty of loyal cooperation.<sup>11</sup>

As was stated in the introduction to the Explanatory Memorandum “the present reasoned proposal sets out, in accordance with Article 7(1) TUE, the concerns of the Commission with regard to the rule of law in Poland. It invites the Council to determine, on the basis of the same provision, that there is a clear risk of a serious breach by the Republic of Poland of the rule of law which is one of the values referred to in Article 2 TUE.” The concerns of the Commission relate to the following issues: 1) the lack of an independent and legitimate constitutional review; 2) the adoption by the Polish Parliament of new legislation relating to the Polish judiciary which raises grave concerns as regards judicial independence and increases significantly the systemic threat to the rule of law in Poland.<sup>12</sup>

In section 2 of the Explanatory Memorandum the “Factual and Procedural Background” was presented in details.<sup>13</sup> In section 3 “The lack of an independent and legitimate constitutional review” was presented (the issue of the composition of the Constitutional Tribunal, the publication of judgments of the Constitutional Tribunal, the appointment of the President of the Tribunal and the subsequent developments, the combined effect on the independence and legitimacy of the Tribunal).<sup>14</sup> Section 4 of the Explanatory Memorandum covered “The threats to the independence of the Ordinary Judiciary” (the law on the Supreme Court – including the dismissal and compulsory retirement of current Supreme Court judges, the power to prolong the mandate of Supreme Court judges, the extraordinary appeal, other provisions; the law on the National Council for Judiciary; the law on Ordinary Courts Organisation – including retirement age and the power to prolong the mandate of judges, the court presidents, other concerns; other legislation – including the law on the National School for Judiciary, other laws).<sup>15</sup> Section 5 of the Explanatory Memorandum covered “Finding of a clear risk of a serious breach of the values referred to in art. 2 of the Treaty on European Union” – conclusions on the character of the synthesis of facts and assessment.<sup>16</sup>

The reasoned proposal ends with the attached proposal for a “Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.”<sup>17</sup> It comprises a preamble (points 1–15), art. 1 – stating the existence of

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<sup>10</sup> Reference to section 2, appendix no. I to the Communication from the Commission to the European Parliament and the Council of 11 March 2014 “A new EU Framework to strengthen the Rule of Law”, COM (2014) 158 final.

<sup>11</sup> Points 1–3 of the Explanatory Memorandum (section 1).

<sup>12</sup> Points 4–5 of the Explanatory Memorandum, where questioned acts were enumerated *in fine* (section 1).

<sup>13</sup> Points 6–90 of the Explanatory Memorandum (pp. 2–16 of the document).

<sup>14</sup> Points 91–113 of the Explanatory Memorandum (pp. 16–22 of the document).

<sup>15</sup> Points 114–170 of the Explanatory Memorandum (pp. 22–37 of the document).

<sup>16</sup> Points 171–186 of the Explanatory Memorandum (pp. 37–42 of the document).

<sup>17</sup> 2017/0360 (NLE), pp. 43–45 of the document.

clear risk in question, art. 2 – including recommendations (points a–e) of taking by the Republic of Poland the indicated (enumerated) actions within 3 months after notification of this Decision.

The “Reasoned Proposal” implies that the European Commission observes that within a period of over two years more than 13 consecutive laws have been adopted affecting the entire structure of the justice system in Poland: the Constitutional Tribunal, the Supreme Court, the ordinary courts, the National Council for the Judiciary, the prosecution service and the National School of Judiciary. The Commission accurately adopted that the common pattern of all these legislative changes is that the executive or legislative powers have been systematically enabled to interfere significantly with the composition, the powers, the administration and the functioning of these authorities and bodies. The legislative changes and their combined effects put at serious risk the independence of the judiciary and the separation of powers in Poland, which are key components of the rule of law. What is important is that the Commission also observes that such intense legislative activity has been conducted without proper consultation of all the stakeholders concerned, without a spirit of loyal cooperation required between state authorities and constituting, as underlined by the Venice Commission, the prerequisite for the existence of the democratic state based on the rule of law. Nevertheless, the depicted processes were accompanied by actions and public statements against judges and courts in Poland made by the Polish Government and by members of Parliament from the ruling majority, which have also damaged the trust in the justice system as a whole. Due to the fact that the independence of courts and impartiality of judges constitute one of the basic elements of the rule of law, new acts and especially joint consequences thereof significantly increase the systemic threat to the rule of law. Respect for the rule of law is not only a prerequisite for the protection of all of the fundamental values listed in art. 2 of the Treaty. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and for establishing mutual trust of citizens and national authorities in the legal systems of all other Member States of the EU. In particular, the Commission underlined that the proper functioning of the rule of law is also essential for the trust in the area of justice and home affairs, in particular for effective judicial cooperation in civil and criminal matters which is based on mutual recognition. As was underlined, this cannot be assured without an independent judiciary in each Member State.

Furthermore, the Commission drew the attention that the discussed legislative changes in Poland were carried out without consideration for the opinions from a wide range of European and international organisations. The contents of the “Reasoned Proposal” imply that it especially refers to the entities, such as: the Venice Commission, the Commissioner for Human Rights of the Council of Europe, the Consultative Council of European Judges, the United Nations Human Rights Committee, the United Nations Special Rapporteur on the independence of judges and lawyers, the Network of Presidents of the Supreme Judicial Courts of the European Union, the European Network of Councils for the Judiciary, the Council of Bars and Law Societies of Europe. Also numer-

ous civil society organisations, such as, in particular: Amnesty International and the Human Rights and Democracy Network should be added.

As results from the observations made by the Commission, since January 2016 the Commission has carried out an extensive dialogue with the Polish authorities in order to find solutions to the concerns raised. Throughout this process the Commission has always substantiated its concerns in an objective and thorough manner. In line with the “Rule of Law Framework of the European Union”, the Commission issued an Opinion followed by 3 Recommendations regarding the rule of law in Poland. The Commission has exchanged numerous letters and held meetings with the Polish authorities, as well as it has always made clear that it stood ready to pursue a constructive dialogue and has repeatedly invited the Polish authorities for further meetings to that end. However, in spite of these efforts, as stated by the Commission in the “Reasoned Proposal”, the dialogue has not removed the Commission’s concerns. Despite the issuing of 3 Recommendations by the Commission,<sup>18</sup> the situation in Poland has deteriorated continuously. The fact that the Polish authorities have not used these occasions to take into account the concerns expressed by the Commission (especially in its third Recommendation) as well as by other actors (in particular the Venice Commission), clearly shows, in the Commission’s opinion, a lack of willingness on the side of the Polish authorities to address the concerns. After two years of dialogue with the Polish authorities which has not led to results and has not prevented further deterioration of the situation, the Commission stated that it is necessary and proportionate to enter into a new phase of dialogue formally involving the European Parliament and the Council. On 15 November 2017, the European Parliament adopted a resolution stating that the current situation in Poland represents a clear risk of a serious breach of the values referred to in art. 2 TEU. It constitutes a premise of the “Reasoned Proposal” under art. 7 par. 1 of the Treaty. This proposal was issued at the same time as the Commission’s Recommendation of 20 December 2017 regarding the rule of law in Poland.

**3.** It is also worth briefly recapitulating herein the substance of the Commission’s concerns consisting in noticing the clear risk of a serious breach of the rule of law by Poland. The Commission underlined that Member States decide on the form of their justice system. However, irrespective of the selected model, the independence of the judiciary and impartiality of judges must be safeguarded as a matter of EU law. It is up to the Member States to decide on e.g. possible establishment of a body such as the Council for the Judiciary the role of which is to safeguard judicial independence. However, where such a Council has been established by a Member State, as it is the case in Poland, where the Polish Constitution has entrusted explicitly the National Council for the Judiciary with the task of safeguarding judicial independence and impartiality

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<sup>18</sup> Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland – OJ L 217 of 12 August 2016, p. 53; Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374 – OJ L 22 of 27.1.2017, p. 65; Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146 – OJ L 228 of 2 September 2017, p. 19.

of judges, the independence of such Council must be guaranteed in line with European Standards.<sup>19</sup> In particular, the Commission indicated the elements of the continuously deteriorating situation in Poland, despite the issuing of three Recommendations by the Commission, especially with regard to Constitutional Tribunal, the Supreme Court, ordinary courts and the National Council for the Judiciary.<sup>20</sup> These areas were previously subjected to a detailed analysis carried out by the Commission.

With regard to the Constitutional Tribunal the following have been indicated: a) the unlawful appointment of the President of the Constitutional Tribunal, b) the admission of the three judges nominated by the 8<sup>th</sup> term of the Sejm without a valid legal basis, c) the fact that three judges that were lawfully nominated in October 2015 by the previous legislature have not been able to take up their functions of judge in the Tribunal, d) as well as the subsequent developments within the Tribunal described above have *de facto* led to a complete recomposition of the Tribunal outside the normal constitutional process for the appointment of judges. For this reason, the Commission considers that the independence and legitimacy of the Constitutional Tribunal are seriously undermined and, consequently, the constitutionality of Polish laws can no longer be guaranteed. According to the Commission, judgements rendered by the Tribunal under these circumstances can no longer be considered as providing an effective constitutional review. This situation is particularly worrying for the respect of the rule of law since, as explained in the previous Recommendations of the Commission, a number of particularly sensitive new legislative acts have been adopted by the Polish Parliament.<sup>21</sup>

As regards the Supreme Court, the main concerns of the Commission can be summarised as follows: a) the compulsory retirement of a significant number of the current Supreme Court judges combined with the possibility of prolonging their active judicial mandate, as well as the new disciplinary regime for Supreme Court judges, structurally undermine the independence of the Supreme Court judges, whilst the independence of the judiciary and impartiality of judges are key components of the rule of law, b) the compulsory retirement of a significant number of the current Supreme Court judges also allows for a far reaching and immediate recomposition of the Supreme Court. That possibility raises concerns in relation to the separation of powers, in particular when considered in combination with the simultaneous reforms of the National Council for the Judiciary. In fact all new Supreme Court judges will be appointed by the President of the Republic of Poland on the recommendation of the newly composed National Council for the Judiciary, which will be largely dominated by the political appointees. As a result, the current parliamentary majority will be able to determine, at least indirectly, the future composition of the Supreme Court to a much larger extent than this would be possible in a system where existing rules on the duration of judicial man-

<sup>19</sup> Point 182 of the Explanatory Memorandum (p. 41 of the document).

<sup>20</sup> Point 175 of the Explanatory Memorandum (pp. 38–39 of the document).

<sup>21</sup> It also refers to new acts such as the Act on the Civil Service, the Act amending the Police Act, the Act on the Prosecutor's Office, the Act on the Commissioner for Human Rights, the Act on the National Media Council, the Act on Counter-Terrorism.

dates operate normally – whatever that duration is and with whichever state organ the power to decide on judicial appointments lies, c) the new extraordinary appeal procedure raises concerns in relation to legal certainty and, when considered in combination with the possibility of a far reaching and immediate recomposition of the Supreme Court, in relation to the separation of powers.

Concerns of the Commission regarding ordinary courts: a) by decreasing the retirement age of judges while making prolongation of the judicial mandate conditional upon the discretionary decision of the Minister of Justice, the new rules undermine the principle of irremovability of judges which is a key element of the independence of judges, b) the discretionary power of the Minister of Justice to appoint and dismiss presidents of courts without being bound by concrete criteria, with no obligation to state reasons, with no possibility for the judiciary to block these decisions and with no judicial review available may affect the personal independence of court presidents and of other judges.

As regards the National Council for the Judiciary, the Commission's concerns regarding the overall independence of the judiciary and impartiality of judges are increased by the termination of the mandate of all judges-members of the National Council for the Judiciary and by the reappointment of its judges-members according to a process which allows a high degree of political influence.

As noticed by the Venice Commission, the combination of proposed changes amplifies the negative effect of each of them to the extent that it puts at serious risks the independence of all parts of the judiciary in Poland.<sup>22</sup>

Presenting *in fine* proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, the Commission proposes (art. 2) that the Council recommends that Poland take the following actions:

- "a) restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution by ensuring that its judges, its President and its Vice-President are lawfully elected and appointed, by implementing fully the judgments of the Constitutional Tribunal of 3 and 9 December 2015 which require that the three judges that were lawfully nominated in October 2015 by the previous legislature can take up their function of judge in the Constitutional Tribunal, and that the three judges nominated by the new legislature without a valid legal basis no longer adjudicate without being validly elected;
- b) publish and implement fully the judgments of the Constitutional Tribunal of 9 March 2016, 11 August 2016 and 7 November 2016;
- c) ensure that the law on the Supreme Court, the law on Ordinary Courts Organisation, the law on the National Council for the Judiciary and the law on the National School of Judiciary are amended in order to ensure their compliance with the requirements relating to the independence of the judiciary, the separation of powers and legal certainty;

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<sup>22</sup> Opinion CDL-AD (2017) 035, point 131.



- d) ensure that any justice reform is prepared in close cooperation with the judiciary and all interested parties, including the Venice Commission;
- e) refrain from actions and public statements which could undermine further the legitimacy of the Constitutional Tribunal, the Supreme Court, the ordinary courts, the judges, individually or collectively, or the judiciary as a whole."

"Reasoned proposal" of the Commission of 20 December 2017 in accordance with art. 7 par. 1 of the Treaty on the European Union – opened in Poland a new stage of development of the internal situation and in relations as the Member State of the EU in the area of the condition of the national rule of law.<sup>23</sup>

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<sup>23</sup> With reference to the subject matter of the "Reasoned Proposal" (issues concerning the rule of law in Poland after 2015) see, among others: A. Szmyt, "Some Remarks on the Amendment to the Act on the National Council of the Judiciary in Poland" [in:] *The International Conference "European Unions History, Culture and Citizenship"* 2018, 11<sup>th</sup> ed., pp. 115–130, www.iccn.upit.ro (accessed: 2020.08.01); C.H. Beck Publishing House, Bucharest; *idem*, "Trudne czasy 'trzeciej władzy' w Polsce lat 2015–2018" [in:] *Nadanie Profesorowi Andrzejowi Szmytowi tytułu doktora honoris causa Kijowskiego Uniwersytetu Prawa Narodowej Akademii Nauk Ukrainy*, eds J. Boszycki, A. Rytel-Warzocho, Gdańsk–Kiev 2018, pp. 59–74; *idem*, "Destruction of the Constitutional Tribunal in Poland in the Light of Opinions of the Venice Commission" [in:] *Giustizia e Costituzione agli albori del XXI Secolo, a cura di Luca Mazetti e Elena Ferioli*, Bologna 2017, Bonomo Editore, vol. 1, pp. 641–656; *idem*, "Ocena zgodności z Konstytucją RP projektu nowelizacji ustawy – Prawo o ustroju sądów powszechnych" [in:] *Współczesne problemy sądownictwa w Republice Czeskiej i w Rzeczypospolitej Polskiej*, eds Z. Witkowski, J. Jirasek, K. Skotnicki, M. Serowanec, Toruń 2017, pp. 257–271; A. Rytel-Warzocho, A. Szmyt, "The new law of 2016 on the Constitutional Tribunal in Poland", *Annales Universitatis Apulensis. Series Jurisprudentia* 2016, no. 19, pp. 263–290; A. Rytel-Warzocho, A. Szmyt, "Dispute over the reform of the 'Third power' in Poland" [in:] *Constituent power v. review of constitutionality: collection of papers from the Bratislava legal forum 2018*, eds J. Andraško, J. Hamulak, Bratislava 2018, pp. 120–130; A. Szmyt, "W kręgu sporu wokół Trybunału Konstytucyjnego (uwagi w związku z poselskim projektem ustawy wniesionym do Sejmu 10 lutego i wycofanym 8 czerwca 2016 r.)" [in:] *Demokracja, teoria prawa, sądownictwo konstytucyjne*, eds M. Aleksandrowicz *et al.*; Białystok 2018, pp. 619–627; A. Rytel-Warzocho, P. Uziębło, "National Council of the Judiciary as the guardian of the independence of judges and courts in Poland in the light of recent legislative amendments" [in:] *The International Conference "European Union's History, Culture and Citizenship"*, Bucharest C.H. Beck Publishing House 2017, pp. 231–245; A. Szmyt, "W sprawie niepublikowanych orzeczeń Trybunału Konstytucyjnego" [in:] *Orzecznictwo sądowe jako źródło prawa*, eds H. Olszewski, M. Chmaj, Opole 2018 (in print).

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## Summary

**Andrzej Szmyt**

### **Circumstances of the Application of art. 7 par. 1 of the Treaty on European Union with Regard to the Rule of Law in Poland**

Statutory changes introduced in Poland after 2015 with regard to the judiciary (the Constitutional Tribunal, common courts, the Supreme Court, as well as the National Council of the Judiciary) triggered a debate on the infringement of the rule of law in Poland and, consequently, the procedure under art. 7 par. 1 of the Treaty on European Union was initiated. The concerns of the European Commission were raised above all by two issues – the lack of an independent and lawful review of the compliance of law with the Constitution and the adoption of new statutory provisions relating to the judicial system, which has increased the threat to the independence of courts and the rule of law in Poland. The author presents in detail both the contents of art. 7 par. 1 of the Treaty and the conditions of its application, as well as the circumstances and consequences of the application of the procedure provided for therein in relation to Poland.

**Keywords:** rule of law, independence of courts, art. 7 par. 1 of the Treaty on European Union, Constitution

## Streszczenie

*Andrzej Szmyt*

### **Okoliczności zastosowania art. 7 ust. 1 Traktatu o Unii Europejskiej w sprawie praworządności w Polsce**

Zmiany ustawowe wprowadzone w Polsce po roku 2015 w odniesieniu do władzy sądowniczej (Trybunału Konstytucyjnego, sądów powszechnych, Sądu Najwyższego, jak również Krajowej Rady Sądownictwa) wywołały debatę na temat poszanowania zasady praworządności w Polsce, a w konsekwencji – uruchomienie w odniesieniu do Polski procedury z art. 7 ust. 1 Traktatu o Unii Europejskiej. Obawy Komisji Europejskiej wzbudziły przede wszystkim dwie kwestie – brak niezależnej i zgodnej z prawem kontroli zgodności prawa z Konstytucją oraz przyjęcie przez polski parlament nowych przepisów ustawowych, dotyczących systemu sądownictwa, które zwiększają zagrożenie dla niezależności sądów oraz praworządności w Polsce. Autor szczegółowo przedstawia zarówno treść i przesłanki zastosowania art. 7 ust. 1 Traktatu, jak i okoliczności oraz konsekwencje zastosowania przewidzianej tam procedury w odniesieniu do Polski.

**Słowa kluczowe:** praworządność, niezależność sądów, art. 7 ust. 1 Traktatu o Unii Europejskiej, Konstytucja