

# JUDGMENT OF THE MOOT EUROPEAN COURT OF JUSTICE

In Case C-276/19,

**European Commission**, represented by M. Dalar, M. Durmaz, I. Kahle,

Applicants,

Supported by:

**The Federal Republic of Germany**, represented by Y. Mazi, M. Özgenç, S. Schönhaar,

**European Parliament**, represented by B. Akdemit, A. Bischoff,

V

**The Republic of Poland**, represented by T. Cetinkaya, L. Hopp, J. Schophaus

**The Republic of Hungary**, represent by O. Alp, M. Broich, A. Kirca,

**The Republic of Romania**, represented by L. Klewinghaus, C. Raphael, Z. Yüksek,

Defendant.

APPLICATION for a breach of Art. 2 TEU.

## THE EUROPEAN COURT OF JUSTICE

Composed of T. Fachinger (*president*), A. Humeyra (*vice-president*), F. Hacibektasoglu (*Judge*), Y. Hechavarria (*Judge*),

having regard to the written procedure and further to the hearings on 27 and 28 June 2019, after hearing the opinion of the Advocate General at the hearing on 28 June 2019, gives the following

### JUDGMENT

#### **Background to the dispute (Teresa)**

In recent years, the European Union had been confronted with several difficulties. Not only did the financial or the migration crisis raise issues about cooperation and solidarity amongst the member states. The European Union even had to face member states distancing themselves from the Union and its values. In this context, especially Hungary, Poland and Romania are of prime importance, as they have raised serious concerns about respecting EU law.

In Hungary, several critical laws have invoked infringement procedures by the European Commission. The country is mainly accused of non-compliance with different Asylum Directives. In 2015, the Hungarian government passed asylum laws, that criminalised providing services and help to refugees or restricts the right to asylum. In addition, the country refused to take refugees. Further, an infringement procedure was launched concerning the Higher Education Law, which is accused of restricting Academic Freedom. Certain stringent requirements for foreign accredited universities violate inter alia the freedom of establishment (Art. 49 TFEU) of the right of academic freedom (Art. 13 CFR) and could effectively force the Central European University to close. Similar to those restrictions, the law about foreign-funded NGO's forces those to register at Court and reveal their finances and by this violates the right to freedom of association. In addition, the European parliament initiated the Art. 7 TEU sanction procedure, as it found Hungary to not consider the recommendations issued in previous resolutions.

The infringement procedures and accusations against Poland are mainly based on concerns about the rule of law. The reform of the judicial system in 2016 enables the government to replace Supreme Court judges with their own nominees and dismiss or appoint presidents of courts neither with any concrete criteria nor obligation to state reasons. Although the retirement age was lowered in general, the government can prolong the individual mandate as it wishes. In addition, the retirement age is different for women and men and thus endangers gender equality in employment. Furthermore, Poland also refused to take in refugees. Finally, the European Commission initiated the Art. 7 TEU sanction procedure, due to the lack of progress of the Rule of Law Framework.

In contrast, Romania has until now not been confronted with infringement procedures but raising concern with regard to the rule of law and corruption. Especially amendments to the Criminal Code endanger the fight against corruption and organised criminality. An amnesty bill absolves those corruption crimes with a damage sum under 50.000€. In consequence several state officials are freed from the accusation of corruption. This fight is in addition impeded by amendments to existing legislation on the statute of Judges and prosecutors.

Besides breaching EU secondary law provisions, several laws and amendments in the respective countries have raised concerns about compliance with the EU's fundamental principles and values. The legal changes in the respective states, touch upon several principles laid down in Art. 2 TEU, such as democracy, Rule of Law or Respect and Human Rights. In addition, the measures taken, such as infringement procedures and Rule of Law Recommendations, did mostly not succeed. Against this background the Commission, supported by the European Parliament and Germany, has claimed the infringement of Art. 2 TEU.

### **Legal Context (Ayse)**

The implementation of certain contested laws in the EU member states Hungary, Poland, and Romania are the causes for concern for the European Court of Justice due to the violations of the EU law, e.i. the breach of Art. 2 TEU.

## Article 2 TEU

*“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’.”*

European Commission has referred Hungary, Poland, and Romania to the European Court of Justice to protect the values enshrined in Article 2 of the Treaty on European Union (TEU) as the European Commission, together with the European Parliament and the Council, is responsible under the Treaties for guaranteeing the respect of the rule of law as a fundamental value of the Union and making sure that EU law, values and principles are respected. The European Commission argues that the three member states violate Art. 2 TEU. After observing practices running contrary to democracy, fundamental human rights, the rule of law, and the equality in society, the Commission has decided that the above-mentioned countries breach the fundamental values of the EU, which the Union is founded on as clearly indicated in Art. 2 TEU.

Among the values violated are "the rule of law" which means that all members of a society – governments and parliaments included - are equally subject to the law, under the control of independent courts irrespective of political majorities. Through the infringement procedure and Art. 7 TEU, the EU ensures the rule of law is correctly implemented and respected at national level. The rule of law is also essential for the functioning of the EU as a whole, for example with regard to the Internal Market, cooperation in the area of Justice and Home Affairs, and ensuring that national judges who are also 'EU judges' can fulfil their role in ensuring the application of EU law and can properly interact with the Court of Justice of the EU in the context of preliminary ruling procedures. Democracy, as well as, equality, and fundamental human rights are all the values that reinforce each other and together safeguard the constitutional core of the EU and its Member States.

## **Procedure (Ayse)**

Regarding claims of violation of the EU law, i.e. Art. 2 TEU, by the EU Member States Hungary, Poland and Romania, The Commission presented a pleading to the court. The Federal Republic of Germany and The European Parliament supported the Commission and took action against the three member states claiming they seriously breach the EU values.

Upon reading the pleadings sent by applicants and defendants, the Court decided to open the oral procedure. The parties presented an oral argument and replied to the Court's questions at the hearing held on June 27-28, 2019.

The applicants demand that the Court should decide that the three member states Hungary, Poland and Romania violate the EU law with their policies and the Court should immediately stop their violations. The defendants demand that the Court should decide there is no breach of EU law and values enshrined in Art. 2 TEU.

## **Law**

### **I. Hungary (Teresa)**

The relations between Hungary and the European Union has not been trouble-free for several years. But since 2015, the conflict has worsened. Especially in the light of the migration crisis in 2015, the Hungarian government has passed several asylum laws that have evoked infringement procedures by the Commission, as they neither complied with EU secondary law, nor with the Charter of Fundamental Rights. In addition, the government has been refusing to take in refugees.

A crucial figure in these politics has been Victor Orban. He and his ruling party Fidesz are concentrating on national politics, moving away from international cooperation. In this process, the Hungarian government has been heavily criticised to abandon not only European partnership, but also the basic values and principles of the European Union.

#### **1. Arguments put forth by the applicant (Teresa)**

The Applicant puts forth a breach of Art. 2 TEU by Hungary, especially criticising the lack of cooperation for as the government hasn't answered to the Commission's recommendations. The concrete arguments are laid down in the following.

a. Democracy

One of the demanded principles laid down in Art. 2 TEU is the respect democracy and the Commission puts forth a violation of the same. The Hungarian media law introduced the so-called Media Council which is supposed to be a regulatory agency. As pleaded by the Commission, this Council is not politically independent, sets unclear requirements for content regulation and has, in consequence, set high fines for non-obeying journalists.

According to the Applicant, those norms are inhibiting citizens to freely form own opinions and being able to express them, thus violating the freedom of expression (Art. 11 CFR). As this right is considered crucial for a vital democracy, the new media law is seen as violating Art 2 TEU in relation to the required democratic values.

b. Equality

Furthermore, the Commission finds a violation of the equality principle of Art. 2 TEU with regard to two laws. On the one hand, the Hungarian government initiated a law, that restricts the work of foreign-funded NGO's, as they now have to reveal their receipts of funding from abroad above HUF 500,000 in a given year. According to the Commission, this law breaches the right to freedom of association (Art. 12 CFR) and discriminates those associations in comparison to domestic ones, thus violating the equality principle of Art. 2 TEU.

On the other hand, the Commission sees this principle violated by the Higher Education Law. This law equally restricts the work from abroad, now concentrating on universities. Foreign names of academic institution are penalised, those institutions need to bind themselves to Hungary through a contract and have their operations supervised and installs work permit requirements for foreign university teaching staff. Those measures are complicating the work of independent universities and academic life coming from abroad. As stated by the Commission, this law thus breaches the equality principle of Art. 2 TEU.

c. The rule of law

The Applicant criticizes the process of amending the Hungarian Fundamental Law. Although it establishes a system based on the rule of law, this process has been non-transparent and not including civil society. Furthermore, the changes are seen as an endangerment of the

separation of powers and weakening the national system of checks and balances. In addition, the president of the newly created National Judicial Office received extensive powers, which is regarded as blurring the boundaries between the judiciary and the executive powers. The Applicant concludes, that these practices are violating the demanded rule of law, Art. 2 TEU.

d. Human Rights

The Commission further condemns the Hungarian asylum legislation as not compatible with the value of human rights. These laws mainly aim to minimize the amount of refugees in Hungary. This is done by refusing to take in refugees through the EU allocation procedure, building a fence at the border, criminalizing its crossing and penalising the support for asylum seekers.

According to the Applicant, those laws are not only incompatible with secondary EU law and the international human rights regulations (Art. 19, 20 CFR; Art. 14 UDHR), but are violating the basic principles of human rights, especially those of minorities as laid down in Art. 2 TEU.

**2. Arguments put forth by supporting parties (Yanelvis)**

a. European Parliament

The European Parliament sees a systemic threat to the values of Article 2 TEU in the following issues.

*i. Judicial independence and the rule of law*

With the passing of the new constitution in 2011 the Hungarian government under Viktor Orbán began to undermine the values listed in Article 2 TEU openly stating that they did not aim to achieve a liberal constitution. According to the European Parliament, these laws affect several civil rights as the right of freedom of information and to a large the independence of the judiciary, the functioning of the Constitutional Court and elections to the parliament. The European Parliament calls upon Hungary to make its laws compatible with Union law to make the process of law-making more transparent.

*ii. Freedom of expression and academic freedom*

The EP puts forth a violation of Article 10 of the ECHR due to policies that hamper the operations of opposition groups, journalists, universities and nongovernmental organizations whose perspectives it finds unfavourable.

Also the amendment to the Hungarian Higher education law which forced the Central European University out of the country is regarded as a breach of the fundamental rights, namely the right of academic freedom, the right to education and the freedom to conduct a business.

*iii. Rights of minorities and the situation of migrants*

Asylum seekers were deprived of their rights, namely the right for liberty breaching Article 5, and deprived of their right to effective remedy, breaching Article 13 of the Human Rights Convention. The European Parliament states that the European Court for Human Rights also found a breach of Article 3 TEU as applicants were not protected from further dangers and inhuman treatment. Its actions also go against the Asylum Qualifications Directive 2011/95/EU.

Hungary breaches the fundamental values of respect for Human dignity, freedom and respect for Human rights, including the rights of persons belonging to minorities, protected by Art. 2 TEU.

b. Germany

Due to infringements about asylum law, deficits in Academic freedom due to Higher Education Law and amendments to its law on higher Education, Germany finds a clear violation of Article 2 TEU, thus urging the implementation of Article 7 (1) TEU and the imposition of sanctions.

**3. Arguments by defendant states (Ayse)**

In the case of Hungary - a member state for 14 years - the country is accused of rejecting asylum applications and not following the Asylum Procedures Directive, which sets common procedures for EU Member States for granting and withdrawing international protection. About criticism of Hungary's "zero tolerance" approach to immigration, the government says Hungarians "have declared their opinion and their will: they do not want to live in an immigrant country."



In an effort to have "safe borders and controlled migration", the Hungarian government has put wire at the borders of Serbia and Croatia in order to stop the influx of irregular migrants. In its pleading, the country says it took those measures to keep its borders safe enough for its own people. The country says it has the right to do so within the TFEU article 77 (1a.), which gives member states the right to monitor and control national borders. The country also denies maltreatment against migrants and any related human rights violation.

As for the law amendments regarding the higher education and the NGOs, which operate by foreign funds, Hungary argues that there is no discrimination against any group or nationality and that no constitutional right is violated. It says the principles of clarity and transparency are sought. The country also refers to Article 165 of TFEU and says it "clearly states the sovereignty of the member state over its educational system."

#### **4. Findings of the Court**

##### **a. Democracy (Teresa)**

With regard to the accusations made, it first needs to be determined if the freedom of expression is indeed restricted. Second, it is then in question, if such a restriction might constitute a breach of the democratic value of Art. 2 TEU.

The freedom of expression has two important characteristics. First, it is a human right to freely express oneself and thus also enshrined in several international human rights legislatives. The intrinsic value ensures that every individual, by virtue of being human, is entitled to this freedom. At the same time the freedom of expression has an instrumental value as well. It promotes plurality of ideas, opinions and thoughts and thus helps the society evolve in more progressive manner.

The applicants have, in their written pleadings, brought forward several arguments that could constitute a breach of the freedom of expression (see above). In the hearings on 27<sup>th</sup> of June 2019, the Defendants had the possibility to contend those allegations.

According to the Commission, the Hungarian government set high fines for journalists and strict requirements for content regulation. In addition, the Parliament mentioned the Sargentini report, which describes several problems; amongst others, that the Media Council does not reflect "socially significant political and other groups" and is thus not politically neutral. In response, the Hungarian representatives justified its composition by mainly governmental groups through the electoral legitimation: the government reflects the political

will of Hungarian citizens and their respective public opinion and its representation in the Media Council would thus be justified.

It is no question, that debate, dialogue, deliberation and dissent are forms of democratic engagement and dependent on the idea of freedom of expression. Therefore, any attack on freedom of expression not only weakens the democratic foundation of a society, but it poses a threat to traditional heterodoxy and cultural diversity. Unquestioning conformity without any critical examination only leads to stagnation.

Thus, the Court wants to emphasize these alarming signs, putting the freedom of expression and thus the principle of democracy at risk. However, the composition of the Media Council and other important broadcasting networks as mainly government friendly do not automatically lead to a completely censored press. The threshold for finding a violation of Art. 2 TEU is very high and the Court needs to find systematic violations.<sup>1</sup> In the presented case, the Court cannot – for the aforementioned reasons - find a violation of Art. 2 TEU.

#### b. Equality (Teresa)

The protection of human rights in the EU requires people to be treated equally and not to be discriminated against on impermissible grounds. In general, discrimination could constitute a human rights violation, when two persons who are equal in terms of skills and abilities are treated unequally because one of them has a specific characteristic. The prohibition of discrimination on grounds of certain personal characteristics (e.g. race, sex, religion, age) has come to be the most important element in a substantive and solid structuring of the human right to equality.

However, it is questionable, if it is possible to apply the principle of equality as a human rights principle to associations or academic institutions, as put forward by the Applicant. In this regard, it is important to recall, that equality is not only a principle with regard to the treatment of human beings. Equality is also considered an organising principle of the EU, as a by-product of federal theory, deriving from the principle of the equality of States in international law.<sup>2</sup> This means, that the European Union is built not only on equality amongst people, but also amongst Member States. Thus, European citizens shall not only be treated equally with regard to their personal characteristics such gender, but shall also not be

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<sup>1</sup> See Mangiameli (2013), p. 351.

<sup>2</sup> See Braga (2006), p.299-330.

discriminated “on the basis of citizenship [...], one of the fundamental principles of Community Law”<sup>3</sup>.

Establishing an NGO and exercising its work in another European member states should be equally possible as in its own national Member State. The principle of equality can thus to be applied to associations or academic as well. However, it stands in question, if the equality principle is violated in the present case.

The Defendant made clear, that its aim for the law on foreign-funded NGO’s was transparency. Also in the light of freedom of thought, the government aspires to provide transparency to their citizens, regarding which organisation stands behind NGO’s working in Hungary. Demanding NGO’s working in Hungary to disclose how they are funded can thus not constitute a breach of equality, as in balancing both interest, the interest of transparency is predominant. However, the high taxation of those NGO’s is not proportionate. This cannot be legitimized by the wish for transparency. Nonetheless, as explained above, the Court must find a grave violation of the values in question. Although the Court urges Hungary to eliminate this injustice, it finds the discrimination not systematic and grave enough to constitute a breach of the equality principle as laid down in Art. 2 TEU.

#### c. Rule of Law (Ayse)

The Court finds that one core value enshrined in Art. 2 TEU "the rule of law" has been violated by Hungary in various instances. The rule of law means that all members of a society are equally subject to the law, under the control of independent courts irrespective of political majorities. However, the independence of the judiciary in Hungary is at risk as the parliament has extensive power of the judiciary. Observing the lack of transparency as well as the inadequate involvement of civil society and the absence of sincere consultation, the principle of security of law - one of the principles of the rule of law - is violated. The rule of law is also essential for the functioning of the EU as a whole. Thus, the EU has to ensure that the rule of law is correctly implemented and respected at the national level.

#### d. Human Rights (Ayse)

Regarding the rights of refugees and the handling of asylum rights, the court finds that Hungary has violated human rights by not providing the refugees humanitarian assistance. The judgment of the European Court of Human Rights of 14 March 2017 also found that the treatment of refugees in the transit zones as inhuman, which is completely against the

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<sup>3</sup> See e.g. Case 167/88, *Association générale des producteurs de blé et autres céréales v ONIC* (ECJ 8 June 1989)

fundamental values of respect for human dignity, freedom, and respect for human rights. The Court also finds that Hungary has violated the supremacy of EU law as the country refused to comply with the relocation of refugees according to the EU law.

The violation of a single value would not be sufficient to justify that a member state violates Art. 2 TEU. However, in this case, there is violation of more than one values, which shows the pattern of state practice.

## **II. Poland (Teresa)**

In 2015, the national conservative Law and Justice Party has won their biggest victory in the history of their party: their candidate, Andrzej Duda, has won the presidency with 51, 55 %. Furthermore, the party achieved 37,58% in the parliamentary election, which enables them to govern alone.

Since then, the Polish government has implemented several laws that have evoked questions concerning their commitment and compliance with EU law and values. Especially laws that reform the Courts and work of the Judiciary are raising concerns about the respect for the rule of law.

Thus, the Commission has already initiated several procedures against the government of Poland. Beginning in January 2016 with the opening of a dialogue under the Rule of Law Framework, the Commission has issued four recommendations<sup>4</sup> and three infringement procedures under Art. 258 TFEU<sup>5</sup>. In addition, the Commission also initiated the Art. 7 TEU sanction procedure in 2017.

### **1. Arguments put forth by the applicant (Teresa)**

The Applicant puts forth a breach of Art. 2 TEU by Poland, especially through the lack of independence of the Judiciary. Several arguments are laid down in the following.

#### **a. Democracy**

According to the Commission, the respect for Democracy as demanded in Art. 2 TEU is mainly endangered by the amendments on the media law. The new laws spark fear of restricting freedom of media and speech. Personnel decisions have previously been taken by a

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<sup>4</sup> Commission recommendations EU 2016/1374, EU 2017/146, EU 2017/1520, EU 2018/103.

<sup>5</sup> Commission press releases: IP-17-1607, IP/17/2205, IP/18/4341.

media supervisory committee and are now in the hands of Treasury Minister. The Applicant claims, that these changes lead to media, which are dependent from the governments wishes and opinions. However, independent media would guarantee shaping opinions freely, a crucial element for democracy. Thus the Applicant sees the principle of democracy as pointed out in Art. 2 TEU, endangered.

b. Rule of Law

First, the Applicant sees the respect for the Rule of Law endangered by a law, that gives the Minister of Justice the power to dismiss and appoint Court presidents. Additionally, he can prolong the mandate of those, who have exceeded the retirement age. These measures symbolize a strong influence by the Minister of Justice on individuals working in the judiciary, which the Applicant understand as government's control over the Law.

c. Human Rights

As the polish government refused to take in refugees, that should have been allocated to Poland, it violated the obligations by the Council decision from September 2015. According to the applicants, this refusal did also symbolise a violation of human rights and those of minorities, as laid down in Art. 2 TEU.

d. Equality

As mentioned above, Poland introduced differing retirement ages for men and women. According to the applicant, this violates not only Art. 157 TFEU and Directive 2006/54 on gender equality in employment but as well the equality principle as presented in Art. 2 S. 2 TEU.

**2. Arguments put forth by supporting parties (Yanelvis)**

a. European Parliament

The European Parliament argues that Poland has jeopardized the independence of the Constitutional Court with new legal regulations which violate Article 2 TEU which states non-discrimination and gender equality.

*i. Implications of the legal changes*

Poland introduced a new law on the supreme Court in April 2018, lowering the retirement age of Supreme Court judges obliging judges who turn 65 before a July 3 cut-off date to stand down, unless they had officially requested -to Poland's president- to extend their dictate and had a health certificate showing they are fit to continue.

*ii. Breaches of EU law*

Violation of Article 157 Treaty on the Functioning of the European Union (TFEU) and Directive 2006/54 on gender equality in employment. The European Parliament finds that besides the dialogue process, the sanction process should start.

b. Germany

By violation the independence of judges in the Supreme Court and separating the powers, Poland seriously violates the rule of law under Article 2 TEU in conjunction with the Preamble Charter of Fundamental Rights of the European Union. Germany calls on the Polish government to respond to the allegations within two months and to bring their legal systems back to EU standards.

**3. Arguments by defendant states (Fatih)**

In the case of Poland, the government is accused of the retirement regime of the Polish Supreme Court and Ordinary Court, the power given to the Minister of Justice, the reorganization of the National Council of the Judiciary, and the new disciplinary regime. The Commission is concerned about the rule of law in Poland because of recent justice reforms.

Poland, as the defended, mentions that the Polish government has the background of communistic structure, and this background affected their justice system. The member state Poland stated that the transition period to democracy and becoming Member State were very rapid, therefore, they have some problems in their justice system. In addition to that, the Polish Government are complaining about judges, who had been appointed under the communist regime. The defendant defines those judges as “Pitilessness”, “Authoritarian” and “Corrupted”. The solution and regulations for the former communistic justice system, the defendant claim that Poland must need a reasonable time.

Poland, as the defendant, pleads guilty themselves for the “Retirement Age” accusation of the Commission. According to the supporter of the defendant statement, different retirement age regulations for men and women are not suitable for our modern world. After all, the

authorities of Poland stated that the Polish government will make arrangements and reforms on this issue.

In the face of the allegation of the Commission, Polish authorities indicate that the Member State Poland stands by the European Union's treaties and values. As the statement of Poland, the Member State which is called as Poland fulfilled all criteria which are given by the Commission for judge. It is possible to say that Polish government claim that these criteria enhance the effectiveness of rule of law. On the other hand, the defendant argues that the new justice reforms of Poland develop the quality of the rule of law principle, especially the criteria of 'muckraking'. The Polish government claims that the Commission and the Court of Justice acting unjustly against Poland, according to defendant, interpretation and implementation of Article 2 of the TEU should be different from member states to EU institutions.

Against the concerns of the Commission, the Polish government alleged that the new justice reform does not damage the rule of law and separation of power principle. Poland, as the defended, stated that the system of assignment of Polish judges is democratic, and it is favourable for the principle of legitimacy. Additionally, the authorities of Poland claim that this system must be there because of the abandoning of the communist system. For the concerns on the National Council of the Judiciary (NCJ), the defendant claims that the assignment of the Polish judge system establishes a great instrument to promote European standards and values of Article 2 of the TEU. Poland stated that Polish people will not accept to be judged by a force independent from the people and deaf to their wishes and needs. The Polish authorities claim that this system is an important principle of state organization called "Chain of Democratic Legitimation". Also, according to the defendant statement, all representatives of the states must be independent like members of the Parliament, therefore, judges cannot be excluded from this custom.

#### **4. Findings of the Court**

##### **a. Democracy (Yanelvis)**

Freedom of expression gives special rights and duties to the media. The media inform society on matters of public interest and create an important platform for public debate, scrutiny and reflection. Therefore, independent media and quality journalism are considered to be the "watchdog" of a democratic society. Concerning the media law, the defendant argues that a change of the public broadcast represents no violation of the freedom of press or freedom of

speech. The Court doesn't see sufficient evidence of a violation of Art. 2 TEU, however it recognizes developments which endanger the freedom of press. By leaving the hiring process under the control of the Treasury Minister, it facilitates restrictions on media freedom, censorship and the dispersal of biased information.

b. Equality (Yanelvis)

Since the Polish government reacted positively to EU concerns in terms of non-discrimination and equality between women and men by equalizing the retirement age for male and female judges in April 2018, the court finds no breach of Art. 2 TEU.

c. Human rights (Yanelvis)

Although Poland's position towards refugees, especially regarding the crisis in 2015, does not represent the value of solidarity respect for human dignity of the European Union, the Court finds no breach of Art. 2 TEU. However, Poland ignored the EU quotas by not taking any refugees in. Without a fair sharing of responsibility of asylum seekers across EU member States, any reform to face the migration challenges will remain patchwork. With this attitude the Polish government is not doing any justice to the notion of European solidarity.

d. Rule of Law (Fatih)

In the case of Poland, the Applicant accuses authorities of Poland for the suffering of the Rule of law in Poland, the reason for this, the law gives extreme power to the Minister of Justice. However, the Minister of Justice can dismiss and appoint the Court President. The Applicant argues that the Minister of Justice can effects the judiciary body, because of this reason, the separation of power is damaged by Poland law system. According to the Applicant, there is a violation of Article 2 of TEU. The allegation of the European Parliament remarks on Justice Reforms and the authorities of the European Parliament argues that Justice Reforms cause the limitation of the Constitutional Court's powers. On the other hand, the authorities of Germany argue that the Disciplinary chamber of the Supreme Court is problematic.

Polish authorities, as against the allegations, rejected all accusations. The Polish Government alleged that the new Justice Reform does not violate Article 2 of TEU's value of Rule of Law. Poland as the defended, argues that Polish judges of the Supreme Court are elected by the Polish Parliament, because of this reason, there are legitimacy of democracy. Polish authorities state that all decisions of the judiciary are in the hand of the Judiciary, not the Ministry. Poland as the defended, argues that there is no clear separation of power and sample



model. On the other hand, another reason of the Judicial Reform is the suspension of the Communist Judges who are corrupt. Also Polish authorities alleged that Justice Reform provides efficiency.

The Court rules that the Justice Reform of Polish Government causes the suffering of the Rule of Law. The Polish Executive Body has potential authority to bring under control the Judicial Body, due to this reason, Polish Justice Reform violates Article 2 of the TEU.

### **III. Romania (Teresa)**

Although there have been no infringement procedures initiated up to this point, Romania is a source of growing concern. The Commission has repeatedly expressed concerns with regard to Romania's judicial independence and rule of law in their reports within the Cooperation and Verification Mechanism.

#### **1. Arguments put forth by the applicant (Teresa)**

The Applicant claims a violation of Art. 2 TEU only with regard to the principles of the rule of law. Amendments in the Romania judicial law include several restrictions of judges and prosecutors. Those include for example the establishment of a special prosecution section for investigating offences committed by magistrates, new provisions on material liability of magistrates for their decisions, a new early retirement scheme, restrictions on the freedom of expression for magistrates and extended grounds for revoking members of the Superior Council of Magistracy. The Applicant fears pressure on the judiciary, leading to less judicial independence. Thus, the Commission finds those amendments and the lack of willingness to incorporate the Commission's recommendations as grounds for a breach of Art. 2 TEU.

#### **2. Arguments put forth by supporting parties (Yanelvis)**

##### **a. European Parliament**

The European Parliament has serious concerns about breaches of the fundamental values of Article 2 TEU, namely the respect for the rule of law, democracy and freedom

Respect for the rule of law and the independence of the judiciary

A number of the amended justice laws pose a threat to the judicial independence and consequently the public confidence in the institution.

#### *Corruption*

Since the formulation of the Benchmark, namely Benchmark Three on tackling high-level corruption and the prevention of corruption, of November 2018, the Romanian Government and Parliament do not seem to cooperate with the Commission but are rather impairing the achievements of progress.

#### b. Germany

Germany finds the progress on Benchmark One and Benchmark Three very concerning.

### **3. Arguments by defendant states (Fatih)**

According to the statement of Romania, the judicial reforms develop efficiency, transparency and prevent corruption mechanisms. Also, Romania, as the supporter of the defended, stated that the aim of the amendments is to provide national security in the statement of Article 4 (2) TEU. On the other hand, they mentioned ‘parallel state’, which is damage the national security of Romania and the amendments prevent this organization. Authorities of Romania claim is the amendments provide to develop and enhance the efficiency and the judiciary.

Romania, as the defended, alleged that judicial reforms and amendments are ‘democratically legitimized’ and ‘constitutional’. This is because, the initiating point of the amendment’s proposal is the Romanian National Parliament, which is elected by Romanian people with democratic and, also the Romanian Government elected by democratic. They mention Article 2 TEU and argue that Romanian people use their democratic rights and Romanian’ state has aimed at the effectiveness of the Romanian people’s access to their democratic rights.

Romania claims that the European Union is not treated equally between member states and member states’ citizens. Also, according to Romania’s authorities, the European Union has not shown respect to Romanian Judicial Sovereignty. Romanian authorities, mention Article 67 (1) TFEU, stated that the European Union and member states should respect the legal sovereignty of Romania. On the other hand, Romania complies against the European Union because of the Cooperation and Verification Mechanism as seem as important evidence of ‘double standard’. They refer to article 4 (2) TEU and claim this mechanism is not favourable for equality of all member states. According to Romanian authorities, this position of the European Union is causing decrease in the trust of the European Union’ institutions.

The accusation of Commission, that extending the term of office of the Chamber of Deputies and the Senate from four to eight years, is objected by authorities of Romania. They exemplify President of the European Central Bank, which is elected for exactly the same period. According to authorities, the eight-year-term ensures stability and enhances the effectiveness of the parliament and the government. Also, the eight-year-term prevents the high cost of elections and corruption.

Authorities of Romania highlight the importance of the Presidency of the Council and Ordinary Legislative Procedure with the Lisbon Treaty. Romania, as the defended, argues that the President of the European Commission threatened Romanian's authority and ride roughshod over, and evincing the European Union summit in Sibiu on 9th May 2019.

#### **4. Findings of the Court**

Romania, as the defender, alleged that Judicial Reforms and amendments are 'democratically legitimized' and 'constitutional'. This is because, the initiating point of the amendment's proposal is the Romanian National Parliament, which is elected by Romanian people with democratic and, also the Romanian Government elected by democratic. Romanian government mentions Article 2 of TEU and argues that Romanian people use their democratic rights and Romanian' state has aimed at the effectiveness of the Romanian people's access to their democratic rights. Despite the authorities of Romania's claims, the Applicant states the elections does not provide legitimacy for the Judicial Reforms. Despite the Applicant argues that the Judicial Reforms are still violate Article 2 of TEU. The Court rules the Judicial Reforms does not violate Article 2 of TEU. (Fatih)

In terms of the judicial independence and judicial reform, Romania has failed in following the proposal by the European Commission, which was aimed at improving the freedom of the courts. The legal changes in Romania show that the judges and the prosecutors do not have the independence they need to work independently, which is against the rule of law. Plus, the most problematic elements of the Criminal Procedure Code remained unchanged. The EU Member States must ensure that their judiciary is both independent and impartial. (Ayse)

Concerning the fight against corruption, as the European Commission confirms, Romania has made positive developments. The very well-funded concerns of the Advocate Generals regarding the new Corruption Law are to be taken serious. However, a law that has not come

into force does not constitute a violation of Art. 2 TEU. Despite this finding, the Court considers constant observation of the developments necessary. (Yanelvis)

#### **IV. Final judgment**

In the present case, the values of Art. 2 TEU – and their respective potential breach - have been under scrutiny. It has been made clear on several occasions, that those values are common to all member states and constitute the basic principles of the European Union.

To sum it up, it must be stressed, that the threshold for finding a violation of Art. 2 TEU is high. It does not provide grounds for individual violations of fundamental rights but is rather referring to the dimensions of a systematic problem. According to the Commission, the approach should be “political and global”<sup>6</sup>. In this regard it is important to remember, that the restrictions of certain values can only constitute a breach, if systematic and cumulative violations can be found. However, Europe’s future development concerning the values it promotes inside and outside of the Union, need to be taken into account at the same time when assessing the situation. It also needs to be recognized, that once a country is breaching values and thus on an alarming course, the European Union and the Court must be vigilant and firmly promote those values.

The situation of the Republics of Hungary, Poland and Romania have been evaluated on written and oral grounds. After considering the submitted written accusations and pleadings, the Court has in addition gained further insights into the situations of the Defendant member states.

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<sup>6</sup> Commission Communication on Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based, COM(2003) 606 final, point 1.4.1.

On those grounds,

THE MOOT EUROPEAN COURT OF JUSTICE

Hereby declares:

1. that Hungary has violated the principles of Rule of Law and Human Rights as laid down in Art. 2 TEU. Although other values such as Equality or Democracy have not been breached, the overall situation is indicating an alarming sign of violating Art. 2 TEU.
2. that Poland has violated the principle of Rule of Law. In this case, the Court has recognized the effort the Polish government has taken and the withdraw of certain reforms. However, the remaining situation and the overall assessment indicates a systematic violation of the Rule of Law and thus of Art. 2 TEU.
3. that Romania does not violated Art. 2 TEU. However, the government shows alarming signs of risking a breach and the Court urges the European Union to further monitor their steps.

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T. Fachinger  
A. Humeyra  
F. Hacibektasoglu  
Y. Hechavarria

Delivered in open court in Brussels on 28 June 2019.