

National and international courts' assessment of conformity to the Constitution and the ECHR (on the basis of Art. 6(1), first sentence, of the ECHR) of statutes...

K 7/21

Ref. No. <https://trybunal.gov.pl/s/k-7-21>K 7/21 (/s/k-7-21)

JUDGMENT IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 10 March 2022

The Constitutional Tribunal, composed of:

Stanisław Piotrowicz – Presiding Judge
Mariusz Muszyński – Judge Rapporteur
Krystyna Pawłowicz
Wojciech Sych
Andrzej Zielenacki,

Recording Clerk – Michał Ryłski,

having considered, at the hearings on 19 and 24 January 2021 as well as 10 March 2022 – in the presence of the applicant, the President of the Republic of Poland, the Sejm, and the Minister of Foreign Affairs – the application of the Public Prosecutor-General, lodged with the Constitutional Tribunal to assess the conformity of:

Art. 6(1), first sentence, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), done at Rome on 4 November 1950, amended by Protocols Nos. 3, 5 and 8 as well as supplemented by Protocol No. 2 (Journal of Laws – Dz. U. of 1993 No. 61, item 284) – insofar as

(a) it authorises the European Court of Human Rights to create, on the basis of national law, the judge's subjective right, subject to court protection, to hold a managerial position within the organisational structure of common courts of the Republic of Poland – to Article 8(1), Article 89(1)(2) and Article 176(2) of the Constitution of the Republic of Poland,

(b) the prerequisite “tribunal established by law”, contained therein, does not take account of universally binding provisions of the Polish Constitution and statutes, which constitute the basis for the establishment of a court, as well as final and universally binding judgments of the Polish Constitutional Tribunal – to Article 89(1)(2), Article 176(2), Article 179 in conjunction with Article 187(1) in conjunction with Article 187(4) as well as Article 190(1) of the Constitution,

(c) permits national and/or international courts to conduct the binding assessment of conformity to the Polish Constitution and the ECHR of statutes concerning the organisational structure of the judicial system, the jurisdiction of courts, and the Act on the National Council of the Judiciary – to Article 188(1) and (2) of the Constitution,

adjudicates as follows:

Article 6(1), first sentence, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), done at Rome on 4 November 1950, amended by Protocols Nos. 3, 5 and 8 as well as supplemented by Protocol No. 2 (Journal of Laws – Dz. U. of 1993 No. 61, item 284), insofar as:

(1) under the phrase “civil rights and obligations”, it comprises the judge's subjective right to hold a managerial position within the structure of common courts in the Polish legal system

– is inconsistent with Article 8(1), Article 89(1)(2) and Article 176(2) of the Constitution of the Republic of Poland,

(2) in the context of assessing whether the requirement of “tribunal established by law” has been met:

We use
cookies.

(a) it permits the European Court of Human Rights and/or national courts to overlook the provisions of the Constitution and statutes as well as the judgments of the Polish Constitutional Tribunal,

(b) makes it possible for the European Court of Human Rights and/or national courts to independently create norms, by interpreting the Convention, pertaining to the procedure for appointing national court judges

– is inconsistent with Article 89(1)(2), Article 176(2), Article 179 in conjunction with Article 187(1) in conjunction with Article 187(4) as well as Article 190(1) of the Constitution,

(c) authorises the European Court of Human Rights and/or national courts to assess the conformity to the Constitution and the ECHR of statutes concerning the organisational structure of the judicial system, the jurisdiction of courts, and the Act specifying the organisational structure, the scope of activity, modus operandi, and the mode of electing members of the National Council of the Judiciary

– is inconsistent with Article 188(1) and (2) as well as Article 190(1) of the Constitution.

The ruling was unanimous.

Stanisław Piotrowicz

Mariusz Muszyński

Krystyna Pawłowicz

Wojciech Sych

Andrzej Zielonacki

<http://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%207/21>

[Dokumenty w sprawie \(IPO\) \(http://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%207/21\)](http://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%207/21)

Briefcase link <https://trybunal.gov.pl/en/s/k-7-21> (/en/s/k-7-21).