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# The Order of Periodic Penalty Payments by the CJEU in Cases Filed by a State Against Another State

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## Abstract

The CJEU, recognizing rights arising from actions by a Member State against another Member State for failure to fulfil obligations under the Treaties, has the right to “prescribe any necessary interim measures” in cases it is examining. An interesting example of the exercise of this right is the decision of the vice-president of the CJEU of 21 May 2021, which imposed on the Republic of Poland a periodic penalty payment of € 500,000 per day. In the course of the proceedings before the CJEU, Poland raised the procedural charges discussed in this paper. The conclusion is that there are no obstacles to the adjudication of these measures.

## Keywords

Court of Justice of the European Union; Interim Measures; Periodic Penalty Payments.

## 1 Introduction

The topic of the imposition of periodic penalty payments by the Court of Justice of the European Union (“CJEU”) in cases arising from a complaint by a Member State against another Member State has recently been the subject of many statements by both politicians and specialists in European Union law in my country as a consequence of the case of the *Czech Republic vs. Republic of Poland*, C-121/21. Such events provoked in the Polish legal doctrine the consideration of the issue of the admissibility of the imposition

of periodic penalty payments by the CJEU in cases brought by a Member State against another Member State,<sup>1</sup> which are worth presenting with a commentary to readers in Europe.

The competence of the CJEU is to hold proceedings arising from actions by a Member State against another Member State for failure to fulfil obligations under the Treaties.<sup>2</sup> The Treaty on the Functioning of the European Union (“TFEU”) gives *expressis verbis* the Court the power to “*prescribe any necessary interim measures*” in cases it is examining.<sup>3</sup>

The aim of this paper is to present the issue of the admissibility of an order by the vice-president of the CJEU for periodic penalty payments as interim measures in cases brought by a Member State against another Member State. Therefore, both arguments in favour of and against their admissibility will be presented. The issue of the legal admissibility of the application of periodic penalty payments requires analysis in two aspects. First, the trial body and, second, the active power of the Member State to make such an application. These issues were raised by the Republic of Poland in case C-121/21 and will therefore be discussed using it as an example.

The author will try to resolve this issue based on an analysis of the normative state and the views of the doctrine. Therefore, the formal-dogmatic method will be used.

## **2 Case of the Czech Republic vs. the Republic of Poland (C-121/21)**

By making use of possibility in the Treaty, the Czech Republic brought an action against the Republic of Poland to seek the fulfilment of its obligations under Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. The Czech

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<sup>1</sup> BIERNAT, S. Zarządzenie tymczasowe w sprawie kopalni Turów. *Europejski Przegląd Sądowy*. 2021, Vol. 6, p. 1; BULAJSKI, R. Pół miliona euro kary dzienne za kopalnię Turów. Omówienie postanowienia TS z dnia 20 września 2021 r., C-121/21 R (Czechy p. Polsce). *LEX/el* [online]. [cit. 31. 5. 2022]. Available at: <https://sip.lex.pl/komentarze-i-publicacje/omowienia/pol-miliona-euro-kary-dziennie-za-kopalnie-turow-omowienie-151374152>

<sup>2</sup> Art. 259 TFEU.

<sup>3</sup> Art. 279 TFEU.

Republic, supported by the European Commission,<sup>4</sup> applied for a declaration that the Republic of Poland, by adopting measures as part of an administrative procedure aimed at extending the term of the mining concession for the Turów lignite mine (Poland)<sup>5</sup> until 2026,<sup>6</sup> has breached a number of pieces of EU legislation on environmental protection,<sup>7</sup> as well as the provisions of two other directives, and the principle of sincere cooperation within the meaning of Article 4 para. 3 Treaty on European Union (“TEU”). According to the applicant, Poland failed to fulfil its obligations by allowing the extension by six years of the development consent for the extraction of lignite without conducting an environmental impact assessment (“EIA”); by allowing the exclusion of the public concerned from the procedure for the grant of mining development consent for such extraction; by declaring the EIA decision for the continuation of lignite extraction until 2044 to be immediately enforceable; by failing to include in the EIA decision a potential procedure to be followed in the event exemptions are not granted for the bodies of water concerned under an EU directive; by failing to allow the intervention of the public concerned and of the Czech Republic in the procedure for the extension of the mining development consent for that mine by six years; by failing to publish the mining development consent granted until 2026 and failing to provide it to the Czech Republic in a comprehensible form; by failing to enable judicial review of the mining development consent granted until 2026; by failing to provide complete information in connection with the procedure for the granting of the mining development consent until 2026; by failing, in the mining development consent granted until 2026, to take sufficient regard of the EIA decision; and by failing to set sufficient environmental conditions in the mining development consent granted until 2026.

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<sup>4</sup> Order of the Vice-President of the CJEU of 19. 5. 2022, *Poland vs. the Czech Republic, supported by the European Commission*, Case C-121/21 R-RAP.

<sup>5</sup> Poland. Concession No 65/94 of 27. 4. 1994, issued by the Minister of Environmental Protection, Natural Resources and Forestry, for the extraction of lignite from the “Turów” deposit, valid until 30 April 2020.

<sup>6</sup> Poland. The decision of the Regional Director for Environmental Protection in Wrocław of 21. 1. 2020 (as amended) establishing the environmental conditions for the project consisting in the continuation of the exploitation of the “Turów” lignite deposit in the Bogatynia commune.

<sup>7</sup> Action brought on 26. 2. 2021, *Czech Republic vs. Republic of Poland*, Case C-121/21.

The dispute in the present case concerned the cross-border effects resulting from the mining activities of the Polish operator in the above-mentioned mine, which were the subject of disagreement between the two Member States. On the one hand, the Czech Republic claims that its citizens living close to the border unjustifiably suffer the environmental consequences of the mining activities, such as a significant fall in the groundwater table and subsidence. On the other hand, the Republic of Poland maintains that the closure of the mines would cause serious economic losses both in terms of energy supply and employment.<sup>8</sup>

At the request of the Czech Republic, by a decision of 21 May 2021, the vice-president of the Tribunal ordered the Republic of Poland to cease lignite mining activities at the Turów mine immediately, pending delivery of the judgment closing the proceedings.<sup>9</sup> It should be noted that the obligation of a Member State to refrain from certain actions that may constitute a breach of EU law is one of the eight types of interim measures distinguished in the doctrine.<sup>10</sup>

The Republic of Poland undoubtedly failed to fulfil its obligations under that order. The Czech Republic therefore applied to the CJEU to order the Republic of Poland to pay the EU budget a periodic penalty payment of € 5 million per day. On the basis of Article 279 of the TFEU, the Court has *expressis verbis* the power to “*prescribe any necessary interim measures*” in cases it is examining. This is a typical temporary measure.<sup>11</sup> For example, the provisions of Polish civil procedure stipulate that: “*If the subject of the security is not a pecuniary claim, the court shall grant security in such a way that it deems appropriate according to the circumstances.*”<sup>12</sup>

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<sup>8</sup> Opinion of the Advocate General Priita Pikamäe delivered on 3. 2. 2022, *Czech Republic vs. Republic of Poland*, Case C-121/21.

<sup>9</sup> Order of the Vice-President of the CJEU of 21. 5. 2021, *Czech Republic vs. Republic of Poland*, Case C-121/21 R.

<sup>10</sup> POSTULSKI, W. Systematyka środków tymczasowych. In: KORNOBIS-ROMANOWSKA, D., ŁACNY, J. (eds.). *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz, t. III (art. 223–358)*. Warszawa: Wolters Kluwer, 2012, Art. 279.

<sup>11</sup> KAWCZYŃSKA, M. Spór o kopalnię Turów, czyli stosowanie i efektywność środków tymczasowych w postępowaniach dotyczących naruszenia prawa unijnego. *Europejski Przegląd Sądowy*. 2021, Vol. 11, pp. 24–38.

<sup>12</sup> Poland. Art. 755 para. 1 Code of Civil Procedure (Act of 17. 11. 1964).

In the course of the proceedings before the CJEU, the Republic of Poland argued that, in its opinion, this application was inadmissible on the ground that, in proceedings for interim relief, only the Commission, as “guardian of the Treaties”, may bring an application seeking imposition of a periodic penalty payment on a Member State.

This argument was not approved by the Tribunal and, by an order of 20 September 2021, the vice-president of the Tribunal imposed on the Republic of Poland a periodic penalty payment of € 500,000 per day. In the justification of this decision, he indicated that the Court hearing an application for interim measures must be able to ensure the effectiveness of an order directed at a party pursuant to Article 279 TFEU, by adopting any measure intended to ensure that the interim order is complied with by that party. Such a measure may entail, *inter alia*, provision for a periodic penalty payment to be imposed should that order not be respected by the relevant party.<sup>13</sup> After the ruling was issued, the Republic of Poland maintained its position regarding the inadmissibility of the application of a periodic penalty payment and is not paying it.

The main case between the Czech Republic and the Republic of Poland was closed with a settlement.<sup>14</sup> The agreement provides for the completion, by Poland, of the construction of a barrier preventing the outflow of groundwater, an earth embankment, and the payment of € 35 million in compensation.<sup>15</sup> Although the main issue is beyond the scope of this paper, it resulted in the removal of the complaint from the list of CJEU cases and the cessation of the charging of periodic fines, the total value of which was € 69 million. However, Poland did not pay these funds to the European Commission and officially stated that it would not do so. The Commission will therefore deduct this penalty from funds due from the EU budget.<sup>16</sup>

<sup>13</sup> Differently SIKORA, A. *Sanckje finansowe w razie niewykonania wyroków Trybunatu Sprawiedliwości Unii Europejskiej*. Warszawa: Wolters Kluwer, 2011, 378 p.

<sup>14</sup> Order of the President of the CJEU of 4. 2. 2022, Deletion of the case C-121/21.

<sup>15</sup> Koniec sporu o Turów. Polska wnioskuję do TSUE o zaprzestanie naliczania kar. *Gazeta Prawna* [online]. 4. 2. 2022 [cit. 31. 5. 2022]. Available at: <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8349936,czechy-turow-ugoda-umowa-skarga-tsue.html>

<sup>16</sup> Kary za Turów potrącone z unijnych funduszy dla Polski. W dwóch transzach. *TVN24* [online]. 6. 4. 2022 [cit. 31. 5. 2022]. Available at: <https://tvn24.pl/biznes/z-kraju/kopalnia-turow-kary-komisja-europejska-potraca-kary-zunijnych-funduszy-dla-polski-informacje-ministerstwa-finansow-5665508>

Poland is also not paying periodic fines of € 1 million a day imposed by the CJEU for failure to comply with the interim order<sup>17</sup> suspending the Disciplinary Chamber of the Supreme Court in a case initiated by the European Commission.<sup>18</sup> These funds have also been deducted by the European Commission<sup>19</sup> and found its place in the doctrine.<sup>20</sup>

The arguments made public by the Polish authorities were not based on legal issues. The government alleged that the application of such far-reaching interim measures, such as ordering the shutdown of the mine's operation in one day, posed a threat to the energy security of the State.<sup>21</sup>

### 3 Selected Issues of the Procedure for Imposing Periodic Penalty Payments

#### 3.1 Trial Body

TFEU gives *expressis verbis* the Court the power to “*prescribe any necessary interim measures*” in cases it is examining.<sup>22</sup>

<sup>17</sup> Order of the Vice-President of the CJEU of 27. 10. 2021, *European Commission vs. Republic of Poland*, Case C-204/21 R.

<sup>18</sup> Order of the Vice-President of the CJEU of 14. 7. 2021, *European Commission vs. Republic of Poland*, Case C-204/21 R.

<sup>19</sup> Potężna kara za Izbę Dyscyplinarną. Bruksela potrąciła ponad pół miliarda złotych ze środków dla Polski. *TVN24* [online]. 20. 5. 2022 [cit. 31. 5. 2022]. Available at: <https://tvn24.pl/biznes/z-kraju/izba-dyscyplinarna-kary-komisja-europejska-potraca-ponad-pol-miliarda-zlotych-ze-srodkow-dla-polski-5719279>

<sup>20</sup> SOBCZAK, K. Izba Dyscyplinarna SN nie może sądzić sędziów. Omówienie postanowienia TS z dnia 8 kwietnia 2020 r., C-791/19 R (Komisja p. Polsce). *LEX/el* [online]. [cit. 31. 5. 2022]. Available at: <https://sip.lex.pl/komentarze-i-publikacje/omowienia/izba-dyscyplinarna-sn-nie-moze-sadzc-sedziow-omowienie-151362698>; SIWIERSKA, A. Odpowiedzialność dyscyplinarna sędziego w Polsce w świetle wyroku TS UE z 15 lipca 2021 R., C-791/19. *Aspekty materialne i procesowe. Radca Prawny*. 2021, Vol. 29, no. 4, pp.11–28; GONTARSKI, W. Unijne środki tymczasowe: “status quo” a nie “status quo ante”. Głos do postanowienia TS z dnia 19 października 2018 r., C-619/18 R. *LEX/el* [online]. [cit. 31. 5. 2022]. Available at: <https://sip.lex.pl/komentarze-i-publikacje/glosy/unijne-srodki-tymczasowe-status-quo-a-nie-status-quo-ante-glosa-do-386226949>

<sup>21</sup> Polski rząd zabezpiecza interesy energetyczne milionów Polaków. *Kancelaria Prezesa Rady Ministrów* [online]. 20. 9. 2021 [cit. 31. 5. 2022]. Available at: <https://www.gov.pl/web/premier/polski-rzad-zabezpiecza-interesy-energetyczne-milionow-polakow>; ŻAWODZIŃSKI, K. Nakaz zaprzestania wydobywania węgla brunatnego w kopalni Turów nałożony w ramach środków tymczasowych zarządzanych w sprawie C-121/21 R (postanowienie Wiceprezes Trybunału Sprawiedliwości z dnia 21 maja 2021 r.). *Internetowy Kwartalnik Antymonopolowy i Regulacyjny*. 2021, Vol. 10, no. 2, p. 115.

<sup>22</sup> Art. 279 TFEU.

The allegation of the improper composition of the Court with regard to the application of interim measures and periodic penalty payments was raised both in the procedural position of the Republic of Poland and in public statements by the Polish government. The Rules of Procedure of the CJEU provide that the president decides independently or immediately refers an application to the Tribunal.<sup>23</sup> Identical regulations were contained in the Rules of the Court of Justice of the European Communities.<sup>24</sup> The single-person character of the adjudicating panel on interim measures was also accepted in the doctrine.<sup>25</sup>

The singularity of the judiciary always means greater susceptibility to external pressure. However, this can be excused in relation to interim measures, which *ex natura* must be adjudicated quickly, which would be significantly hindered – if not prevented – by collegiality of the composition. The issue of the formal and dogmatic interpretation of the Treaty is more problematic. It states that the Tribunal “*shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice of the European Union. When provided for in the Statute, the Court of Justice may also sit as a full Court.*”<sup>26</sup> This norm was also emphasized in the doctrine.<sup>27</sup> The interpretation of the Tribunal assumes that these are substantive decisions deciding on the merits of the case. On the other hand, the Republic of Poland expresses the view that this provision applies to all decisions of the Tribunal, including those based on Article 279 of the TFEU, i.e., interim measures.

The earlier doctrine indicated that when the vice-president of the CJEU issued the decision of 19. 10. 2018, *the Commission vs. Poland*, case C-619/18,

<sup>23</sup> Art. 161 para. 1 Rules of Procedure of the CJEU.

<sup>24</sup> Art. 85 Rules of the Court of Justice of the European Communities.

<sup>25</sup> CASTILLO DE LA TORRE, F. Interim Measures in Community Courts: Recent Trends. *Common Market Law Review*. 2007, Vol. 44, no. 2, pp. 273–353; BAJOREK-ZIAJA, H. *Skarga do Europejskiego Trybunału Praw Człowieka oraz skarga do Trybunału Sprawiedliwości Unii Europejskiej*. Warszawa: LexisNexis, 2010, 318 p.; LIPINSKI, A. Głosa do postanowienia Wiceprezesa Trybunału Sprawiedliwości Unii Europejskiej z 21.05.2021 r. (Republika Czeska v. Rzeczpospolita Polska, C-121/21). *Przegląd Ustawodawstwa Gospodarczego*. 2021, no. 6, p. 63.

<sup>26</sup> Art. 160 para. 2 Rules of Procedure of the CJEU.

<sup>27</sup> WILBRANDT-GOTOWICZ, M. B. *Instytucja pytań prawnych w sprawach sądowoadministracyjnych*. Warszawa: Wolters Kluwer, 2010, 535 p.

it was then confirmed by the Grand Chamber decision of the CJEU of 17. 12. 2018, *European Commission vs. Republic of Poland*, case C-619/18.<sup>28</sup>

It should be emphasized that Article 253 TFEU empowers the CJEU to establish its own rules of procedure which, however, require approval by the Council. In my opinion, it may provide for the recognition of incidental issues in a one-man panel.

### 3.2 Active Standing

The second issue, fundamental from the perspective of the EU system, was not analysed in the doctrine at all, but only expressed in the written position of the Republic of Poland. The Republic of Poland questioned the active standing of the Czech Republic to apply for the imposition of a periodic penalty payment.

The issue of the ability to apply for interim measures is governed by Article 160 para. 2 of the Rules of Procedure of the CJEU: an application for another interim measure, referred to in Art. 279 TFEU, is admissible only when the applicant is a party to the pending proceedings before the Court and where the application relates to those proceedings. The intervener's application in Case T-310/03 is considered inadmissible.<sup>29</sup> The same regulations were contained in the previously applicable regulations, i.e., Article 243 of the Treaty Establishing the European Community and the Rules of the Court of Justice of the European Communities.<sup>30</sup>

In the opinion of the Republic of Poland, only the European Commission is entitled to submit such an application. The Republic of Poland argued that the enforcement of CJEU judgments is a treaty obligation – such a view was also expressed earlier in the doctrine.<sup>31</sup> Therefore, the Commission – the “guardian of the Treaties” – is obliged to guard it. In the opinion

<sup>28</sup> TABOROWSKI, M. *Mechanizmy ochrony praworządności państw członkowskich w prawie Unii Europejskiej: studium przebudzenia systemu ponadnarodowego*. Warszawa: Wolters Kluwer, 2019, 483 p.

<sup>29</sup> SASINOWSKA, B. Środki tymczasowe w postępowaniach z art. 226 i 230 TWE. *Europejski Przegląd Sądowy*. 2008, no. 2, pp. 18–27.

<sup>30</sup> Art. 83 para. 2 Rules of the Court of Justice of the European Communities.

<sup>31</sup> ZAWODZINSKI, K. Zarządzenie środków tymczasowych w sprawie ze skargi Komisji Europejskiej dotyczącej Puszczy Białowieskiej – Głosa do postanowienia TSUE z 20.11.2017R., C-441/17 R Komisja P. Polsce. *Palestra*. 2019, no. 1–2, pp. 143–151.



of the Republic of Poland, the regulations contained in the Rules of the Tribunal are therefore inconsistent with the TFEU.

Also in the doctrine commenting on the decision of the CJEU of 21 May 2021, doubts were raised as to whether the Czech Republic acted as a *parens patriae* for the inhabitants and entrepreneurs in the region located in the Turów mine environmental impact area, or – due to the lack of a complaint by the European Commission against Polish shortcomings – as a kind of “subsidiary guardian of treaties”, which raised reservations in the doctrine as to the admissibility of the complaint.<sup>32</sup>

Indeed, in earlier views of world doctrine it was pointed out that: *“It remains to be seen how often the ‘Commission’ is going to request penalty payments under Article 279 TFEU [...] to a large extent on whether national courts must provide a similarly enhanced interim relief as the Court has established under Article 279 TFEU. The decentralization of enforcement should not, however, overshadow the fact that the “Commission” still plays an important role. Sometimes infringement proceedings may be the most, or even only, effective means of enforcement. This is true in particular for cases in which domestic remedies are limited because of rule-of-law deficiencies, and a fortiori where those deficiencies concern the independence of the judiciary.”*<sup>33</sup> Indeed, it was assumed that the applications for interim measures would be made by the Commission and not by the Member States.

These divagations did not only concern the procedural strategy of the Republic of Poland. While the lodging by Member States of complaints about infringement of EU law by another Member State is very rare, some have already occurred (eight such complaints have been brought so far). However, this is the first time that a Member State has decided to submit an application for interim measures in such a case. Applications for provisional protection are most often submitted in proceedings initiated under the procedure of direct actions against EU institutions, and only in a few cases in proceedings concerning infringement of EU law

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<sup>32</sup> ZAWODZIŃSKI, K. Nakaz zaprzestania wydobycia węgla brunatnego w kopalni Turów nałożony w ramach środków tymczasowych zarządzonych w sprawie C-121/21 R (postanowienie Wiceprezes Trybunału Sprawiedliwości z dnia 21 maja 2021 r.). *Internetowy Kwartalnik Antymonopolowy i Regulacyjny*. 2021, Vol. 10, no. 2, p. 114.

<sup>33</sup> WENNERAS, P. Saving a forest and the rule of law: Commission v. Poland. *Common Market Law Review*. 2019, Vol. 56, no. 2, pp. 541–558.

initiated by the Commission against Member States. For the first time, the vice-president of the Tribunal also decided to strengthen the effectiveness of previously ordered security measures with a periodic penalty payment, payable until the execution of the decision or issuance of a decision in the main case. Thus, financial penalties have become an instrument to ensure the enforceability of interim measures, as in the case of Article 260 para. 2 and 3 TFEU, it is a remedy for the failure of Member States to fulfil their obligations under EU law.<sup>34</sup>

The position of the Republic of Poland is opposed by the statement cited in the doctrine that the distinction between a measure under Article 278 and under Article 279 has its source in the distinction between cases in the sphere of public law and private law: measures under Article 279, unlike measures under Article 278, are to protect individual interests and ensure the effectiveness of proceedings in private cases.<sup>35</sup> In the Polish doctrine, which criticized the CJEU's decision of 21 May 2021, it was also indicated that the dispute underlying case C-121/21 R seems to have a thoroughly civil-law character, which is supported mainly by the fact that it is not the Republic of Poland, but a company (although the State Treasury is the majority shareholder) that is extracting this coal and possibly causing environmental damage.<sup>36</sup>

When analysing this issue, it should be noted that Article 279 of the TFEU only states that “*the Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures*”. Therefore, the TFEU does not establish complaints at all in these cases – on the contrary, the literal wording of this provision seems to mean that the Tribunal may also order interim measures *ex officio*.

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<sup>34</sup> KAWCZYŃSKA, M. Spór o kopalnię Turów, czyli stosowanie i efektywność środków tymczasowych w postępowaniach dotyczących naruszenia prawa unijnego. *Europejski Przegląd Sądowy*. 2021, Vol. 11, pp. 24–38.

<sup>35</sup> DE LA SIERRA, S. Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from the Right to Effective Court Protection. A Comparative Approach. *European Law Journal*. 2004, Vol. 10, no. 1, p. 46.

<sup>36</sup> LIPIŃSKI, A. Glosa do postanowienia Wiceprezes Trybunału Sprawiedliwości Unii Europejskiej z 21.05.2021 r. (Republika Czeska v. Rzeczpospolita Polska, C-121/21). *Przegląd Ustawodawstwa Gospodarczego*. 2021, no. 6, pp. 61–66.

## 4 Conclusion

In conclusion, the imposition of periodic penalty payments by the vice-president of the CJEU in cases brought by a Member State against another Member State is *de lege lata* allowed and *de lege ferenda* does not require amendment of the TFEU or the Rules of Procedure of the CJEU. The finding in the doctrine that the Tribunal and the Court have broad powers in granting temporary legal protection under Article 279 TFEU<sup>37</sup> should be confirmed, while the judge hearing an application for interim measures is more powerful than the Court in the main case, since it is for the parties to a case to draw the necessary consequences from a judgment, whereas the judge hearing an application for interim measures may determine how the ordered measure needs to be executed.<sup>38</sup>

Commenting on Poland's failure to implement interim measures, the doctrine rightly argued that: *"It was the time of a unique accumulation of multifarious events which, when put together, may be considered a continuation towards even deeper crisis of the rule of law in Poland and our country's further divergence from European standards [...] If the general impression of this review leaves one with a sense of chaos and uncertainty, and at times even of amazement and disbelief, rest assured that these feelings are fully justified."*<sup>39</sup> On the other hand, the very admissibility of their application in the realities of this case raises numerous doubts in the doctrine. While, in my opinion, the objections to the composition of the judge are not justified, I wonder whether a Member State should indeed be entitled – under the CJEU's rules of procedure – to apply for the imposition of periodic penalty payments when the Commission does not do so.

<sup>37</sup> CASTILLO DE LA TORRE, F. Interim Measures in Community Courts: Recent Trends. *Common Market Law Review*. 2007, Vol. 44, no. 2, pp. 273–353; BRZEZIŃSKI, P. *Unijny obowiązek odmowy zastosowania przez sąd krajowy ustawy niezgodnej z dyrektywą Unii Europejskiej*. Warszawa: Wolters Kluwer, 2010, 464 p.; BULAJSKI, R. Kopalnia w Turowie z zakazem wydobywania węgla. Omówienie postanowienia TS z dnia 21 maja 2021 r., C-121/21 R (Czechy p. Polsce). *LEX/el* [online]. [cit. 31. 5. 2022]. Available at: <https://sip.lex.pl/komentarze-i-publicacje/omowienia/kopalnia-w-turowie-z-zakazem-wydobywania-węgla-omowienie-151387126>; LENAERTS, K., MASELIS, I., GUTMAN, K. *EU Procedural Law*. Oxford: Oxford University Press, 2014, p. 566.

<sup>38</sup> CASTILLO DE LA TORRE, F. Interim Measures in Community Courts: Recent Trends. *Common Market Law Review*. 2007, Vol. 44, no. 2, pp. 273–353.

<sup>39</sup> BIERNAT, S. Czas chaosu i niepewności. *Europejski Przegląd Sądowy*. 2021, Vol. 8, p. 1.

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