Poland Tests EU Law Again

The Turów Damages Action and the Court of Justice as an Interstate Court

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Poland is once again testing the procedures and limits of EU law. This time, however, it is doing so under a government that professes its commitment to European integration, whereas the government in office until 2023 chiefly generated political conflicts with the Union. Poland's place in EU law textbooks will probably become even more secure, but for once an EU law scholar need not find the episode embarrassing. *Poland v Court of Justice of the European Union, T-308/26*, lodged before the General Court on 21 May 2026, raises important questions about judicial procedure and the Union's liability.

In an action for damages under Article 268 in conjunction with the second paragraph of Article 340 TFEU, Poland seeks a declaration of the Union's non-contractual liability and EUR 68,591,910.95 plus interest. Yet the action goes beyond damages. Those measures were adopted in proceedings ancillary to *Czech Republic v Poland, C-121/21*, an interstate action under Article 259 TFEU. Both the order to halt lignite extraction immediately and the first periodic penalty payment actually imposed for failure to comply with an interim measure were issued by the Vice-President of the Court of Justice sitting alone.

That interstate origin of those proceedings is crucial to assessing the procedure used. This is not to question the binding force of the orders or to excuse Poland's refusal to comply with them. Rather, the point is that when the Court of Justice decides on interim measures in proceedings brought by one Member State against another under Article 259 TFEU, it is not only safeguarding the effectiveness of EU law; it is also acting as an interstate court. The procedure in Turów did not adequately reflect this distinctive function, and the Vice-President did not persuasively explain why decisions of such importance could be taken by a single judge.

The Case After the Case

The dispute began in February 2021, when the Czech Republic brought an action against Poland under Article 259 TFEU. It concerned the extension of a licence for lignite extraction at the Turów mine without the environmental impact assessment required by EU law. The Czech Republic also requested interim measures. By an order of 21 May 2021, the Vice-President required Poland to halt extraction immediately until final judgment, finding that continued mining could cause serious and irreparable harm to the environment and human health.

On a further Czech application, the Vice-President issued a second order on 20 September 2021, requiring Poland to pay the Commission EUR 500,000 for each day of non-compliance. This was the first time the Court had actually imposed a periodic penalty payment on a Member State to enforce an interim measure under Article 279 TFEU.

By autumn 2021, the Turów penalty formed part of a broader and unprecedented sanctions context. In an *order of 27 October 2021 in Commission v Poland, C-204/21 R*, the Vice-President imposed a further EUR 1 million per day for non-compliance with interim measures concerning the Disciplinary Chamber of the Polish Supreme Court. For several months, Poland therefore faced two daily penalties totalling EUR 1.5 million.

Poland and the Czech Republic settled in February 2022, and the main case was removed from the register. By then, however, the penalty had reached about EUR 68.5 million. When Poland did not pay, the Commission offset the amount against EU budget

funds due to it. In January 2026, the Court of Justice dismissed Poland's appeal in C-554/24 P. Those earlier proceedings concerned the lawfulness and effects of the offsetting decisions, not liability for the interim orders themselves.

Poland advances three pleas. The first alleges an erroneous assessment of fumus boni iuris, breach of the necessity requirement, and infringement of equality of arms in the order of 21 May 2021. The second concerns the failure to examine all conditions for imposing a periodic penalty payment. The third points to the absence of any appeal against either order. Poland is no longer challenging how the penalty was enforced. It seeks to establish the unlawfulness of the decisions from which the payment obligation arose.

The new action develops a dispute previously discussed on Verfassungsblog in connection with the offsetting proceedings. Pekka Pohjankoski examined them in *Contesting the Ultimate Leverage to Enforce EU Law*. T-308/26 shifts attention from enforcement against a Member State to the procedural limits of the judicial power that made such enforcement possible.

A Court With Two Faces

In Commission actions under Article 258 TFEU, it acts as a supranational court reviewing Member States' compliance with their obligations. The Commission does not enforce a right of its own in such proceedings. As guardian of the Treaties, it acts in the interest of the Union legal order.

An action under Article 259 TFEU has a different structure. One Member State accuses another of breaching EU law. The Commission's mandatory involvement before proceedings are brought limits direct confrontation but does not alter their interstate nature. The Court continues to protect the autonomy and effectiveness of EU law, while performing a function akin to that of a classic international court. Turów was the first EU interstate environmental dispute and the first Article 259 case involving interim measures. As Oktawian Kuc and Miłosz Gapsa show the procedure did not adequately reflect that exceptional setting.

Mathieu Leloup shows that supranational courts increasingly shape relations among domestic branches of government while remaining outside national checks and balances. In view of this structural asymmetry, Leloup argues that supranational courts should remain conscious of the effects of their case law and exercise their powers with restraint and persuasive reasoning.

This may be described as methodological self-discipline. It does require a court to explain the path from its jurisdictional basis to the result, address competing interpretations, and adapt the intensity of its reasoning to the importance of the decision. Turów shows that self-discipline also has a procedural dimension. Both the composition of the bench and the explanation of its authority matter.

One Judge and Two Firsts

The relationship between the rules on the Court's composition and the special procedure for interim measures is not expressly settled. Article 16(3) of the Statute of the CJEU provides that the Court shall sit as a Grand Chamber when a Member State or an EU institution party to the proceedings so requests. It grants a procedural entitlement and apparently leaves the Court no discretion.

At the same time, Article 39 of the Statute provides that the President may decide applications for interim measures. Article 161(1) of the Rules of Procedure allows the President either to decide an application alone or refer it to the Court without delay. Under the decision of 23 October 2012, this function is generally performed by the Vice-President. In practice, the same single-judge authority decides whether to refer the application to a collegiate formation or determine it alone.

In the proceedings on the Czech Republic's second application, Poland requested referral to the Grand Chamber. The Vice-President refused. Relying on Article 161(1) and the 2012 decision, she held that it was for her alone to assess whether special circumstances warranted referral to a collegiate formation, and found none. She did not, however, explain how that discre-

tion related to the categorical wording of Article 16(3) of the Statute.

It is not settled that Article 16(3) also covers incidental proceedings for interim measures. Article 39 may arguably establish a special regime for such applications. The difficulty is that the order did not provide that reasoning. It did not explain why the President's or Vice-President's special power should restrict a Member State's procedural entitlement concerning the "case", or why an application for a precedent-setting penalty did not merit collegiate consideration.

In its *order of 20 November 2017 in Commission v Poland concerning the Białowieża Forest, C-441/17 R*, the Grand Chamber considered whether Article 279 TFEU could support a periodic penalty payment. In Turów, by contrast, the Vice-President imposed such a penalty on a state for the first time, but found no need for a collegiate formation.

Speed might support single-judge decision-making. Yet the comparative material presented by Kuc and Gapsa does not bear this out. The two Turów orders took 83 and 105 days. Collegiate formations of the European Court of Human Rights have granted interim measures in interstate disputes within one day. The average time taken by the International Court of Justice and the International Tribunal for the Law of the Sea was also shorter.

The practice of international courts is not uniform. The predominant practice of the ICJ and ITLOS nevertheless confirms collegiate consideration of measures interfering with states' rights and obligations. Collegiality cannot guarantee a correct outcome, but it permits competing assessments to be tested and strengthens the legitimacy of the decision.

In Turów, the assessment of whether halting extraction was appropriate occupied only a few paragraphs. The reasoning mainly rejected Poland's arguments as general, unsubstantiated, or essentially concerned with financial harm. It did not explain in any depth why a complete halt was not only effective but also necessary and proportionate. The single-judge formation and the brevity of the reasoning compounded rather than dispelled the doubts.

Accountability Without Appeal

The published summary of T-308/26 mentions neither Articles 16(3) nor 39 of the Statute, nor does it directly challenge the single-judge formation. The issue therefore remains in the background.

The final plea has systemic importance. When a single-judge decision directly and severely affects a Member State, the absence of an appeal increases the importance of the procedure preceding it. Collegiate consideration can provide an internal safeguard that no later appeal supplies. The fewer the opportunities to challenge an order, the more persuasive the reasons for both the chosen formation and the measure itself should be.

An action for damages is not an ordinary appeal. The Union's non-contractual liability generally requires a sufficiently serious breach of a rule of law, actual damage, and a direct causal link. The General Court may dismiss the action because one condition is not satisfied without ruling on the others. T-308/26 may therefore end without a substantive assessment of how Article 279 TFEU was applied.

The General Court will hear the damages action, while the defendant is the CJEU as an institution. This is not literally a case in which the same judges review their own ruling. The General Court is a distinct court within the CJEU, and its judges enjoy guarantees of independence. Any appeal from its future judgment will, however, be heard by the Court of Justice.

EU law already knows actions for damages against the Union represented by the CJEU. In its *judgment of 1 February 2017 in Kendrion v European Union, T-479/14*, the General Court assessed liability for excessive delay in proceedings before the General Court itself. T-308/26 is qualitatively different. The alleged unlawfulness concerns not the administration or duration of proceedings, but the substance of orders made by the Vice-President. The General Court will have to preserve the autonomy of the damages action without turning it into an appeal against Court of Justice orders for which the Treaties provide no appeal.

What to Watch

If it examines the alleged unlawfulness, however, it will have to define the standard for reviewing the Court of Justice's judicial activity and the significance of the absence of an appeal.

Particular attention should be paid to whether the relationship between Articles 16(3) and 39 of the Statute and Article 161 of the Rules emerges later in the proceedings. Even if it is not adjudicated, the case should prompt the Court of Justice to reconsider its practice. The President and Vice-President could refer interstate applications for interim measures to the Grand Chamber as a matter of course. Procedural guidance could also confine single-judge determination to cases of genuine and exceptional urgency.

A single-judge decision may fit a literal reading of the interim-measures regime. Yet legal possibility alone is insufficient in a precedent-setting, politically sensitive, and financially consequential case. The Court must also explain why it chose to decide alone.

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