**Union of German Socio-Cultural Associations in Poland complains to European Commission against a breach of EU law by Poland**

On 5 April 2022, the Union of German Socio-Cultural Associations in Poland, represented by Dentons on a pro bono basis, filed a complaint to the European Commission alleging that certain regulations of the Polish Minister for Education and Science discriminate against children belonging to the German minority in Poland. The infringing national regulations are:

* The regulation of the Minister for Education and Science of 4 February 2022, amending the regulation on the conditions and procedure for kindergartens, schools and public establishments to discharge their responsibilities in support of the sense of national, ethnic and linguistic identity of students belonging to national or ethnic minorities or regional linguistic communities (*Journal of Laws* of 2022, item 267); and
* The regulation of the Minister for Education and Science of 10 February 2022, amending the regulation on the distribution of the educational part of the general subsidy for local governments in 2022 (*Journal of Laws* of 2022, item 352).

The regulations effectively deprive children belonging to the German minority of the right to learn their national language and so cultivate their national traditions. Importantly, while Poland recognises nine national minorities (see the Polish legislation on national and ethnic minorities and regional languages), only the German minority has been caught by the discriminating regulation.

The first of the contested regulations expressly says this:

*"§ 1. The following amendments shall be made in the regulation of the Minister for National Education of 18 August 2017 on the conditions and procedure for kindergartens, schools and public establishments to discharge their responsibilities in support of the sense of national, ethnic and linguistic identity of students belonging to national or ethnic minorities or regional linguistic communities (Journal of Laws, item 1627):*

***1) in §8(3), the following language shall be added after the words "of 3 hours weekly": "or of 1 hour weekly in the case of students belonging to the German minority" (...)"***

This complaint is intended to prompt the European Commission to initiate proceedings to stop continued infringement of the rights and freedoms of Polish citizens, being EU citizens, who belong to the German national minority.

We believe that the European Commission should file a formal complaint with the Court of Justice of the European Union together with a request to grant interim relief by ordering relevant authorities of Poland to promptly suspend the application of the discriminating regulations and prohibit the introduction of legal measures that result in continued infringement of the rights and freedoms of citizens from the German national minority.

Our complaint argues that Poland is currently in breach of EU law, specifically the Treaty on European Union, the Charter of Fundamental Rights of the European Union, and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

The impugned regulations breach a number of provisions, including:

* Article 2 of the Treaty on European Union, with respect to the fundamental values of the European Union, such as the rule of law and respect for human rights, including the rights of persons belonging to minorities;
* Article 20 of the Charter of Fundamental Rights, guaranteeing that everyone is equal before the law;
* Article 21 of the Charter of Fundamental Rights, prohibiting discrimination, including on the basis of ethnic origin, language, or membership of national minorities;
* Article 24 of the Charter of Fundamental Rights (children's rights);
* Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Following the amendments, the legal situation of a group of Polish citizens, who are also EU citizens, has now deteriorated for the sole reason that they belong to the German minority in Poland. In other words, the amended regulations introduce restrictions that apply to the German minority only, so they are used to differentiate, illegitimately, among national and ethnic minorities with statutory recognition in Poland. What the amendments constitute is arbitrary, direct discrimination – something that is prohibited at the EU treaty level (in both the EU treaties and the in the EU Charter of Fundamental Rights) and by secondary legislation. Additionally, the situation has led to a number of other laws, both Polish and international, being infringed upon, including those banning discrimination on grounds of membership of a national minority or protecting children’s rights.

Regarding the EU laws which the regulations infringe, this would be essentially Article 2 of the Treaty on European Union (TEU), which provides for the values on which the EU is founded, including respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Article 2 also mentions pluralism in society and the principles of non-discrimination and tolerance.

The Charter of Fundamental Rights of the European Union, in turn, establishes the principle at Article 20 that everyone is equal before the law; at Article 21, it prohibits discrimination, including based on ethnic origin, language, and membership of a national minority. Regarding children’s rights, Article 24(2) stipulates explicitly that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

As to the EU’s secondary legislation, mention must be made first of all of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Its provisions were implemented into Polish law via the Equal Treatment (Implementing Certain European Laws) Act of 3 December 2010 (*Journal of Laws* of, 2020, item 2165; “Implementing Act”). At Article 3(1), the Implementing Act defines direct discrimination as the situation where a natural person is treated less favourably than another is, has been or would be treated in a comparable situation, including on grounds of ethnic or national origin. At Article 7, the Implementing Act explicitly enacts a ban on unequal treatment of natural persons regarding healthcare and education (including higher education) on grounds of ethnic or national origin. Given how the Implementing Act defines direct discrimination in its Article 3(1), what we can observe now is an unjustified differentiation in language teaching affecting the German minority vis-à-vis other national minorities in Poland.

At Article 8(1), the Directive refers to the rights of people wronged by discrimination, providing that Member States will take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

Secondarily, the regulations subject to this complaint undermine the rules of European law as implemented at the national level (they violate the Implementing Act, including where it prohibits direct discrimination as defined at Article 3(1) there, and unequal treatment of natural persons regarding healthcare and education (including higher education) on grounds of ethnic or national origin, at Article 7). The application of the Implementing Act is being violated, which is prejudicial to the effectiveness of the EU law implementation at the national level. The effect of the amended regulations coming into force is non-compliance with Directive 2000/43/EC and the Implementing Act, which satisfies the conditions of Article 51 of the Charter (Field of application). Consequently, the Charter has application to the breaches of EU law that are complained about.