



## **Rule of Law: European Commission refers Poland to the European Court of Justice to protect independence of Polish judges and asks for interim measures**

Brussels, 31 March 2021

Today, the European Commission decided to refer Poland to the Court of Justice of the European Union regarding the law on the judiciary of 20 December 2019, which entered into force on 14 February 2020. The Commission also decided to ask the Court of Justice to order interim measures until it has issued a final judgment in the case.

The Commission considers that the Polish law on the judiciary undermines the independence of Polish judges and is incompatible with the primacy of EU law. Moreover, the law prevents Polish courts, including by using disciplinary proceedings, from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice.

In addition, the Commission considers that Poland violates EU law by allowing the Disciplinary Chamber of the Supreme Court – the independence of which is not guaranteed – to take decisions which have a direct impact on judges and the way they exercise their function. These matters include cases of the lifting of immunity of judges with a view to bringing criminal proceedings against them or detain them, and the consequent temporary suspension from office and the reduction of their salary. The mere prospect for judges of having to face proceedings before a body whose independence is not guaranteed creates a 'chilling effect' for judges and can affect their own independence. The Commission considers that this seriously undermines judicial independence and the obligation to ensure effective legal protection, and thus the EU legal order as a whole.

Besides referring the case to the Court of Justice, the Commission also decided today to ask the Court of Justice to order interim measures so as to prevent the aggravation of serious and irreparable harm inflicted to judicial independence and the EU legal order.

In its request for interim measures, the Commission will ask the Court of Justice in particular to:

- suspend the provisions empowering the Disciplinary Chamber of the Supreme Court to decide on requests for the lifting of judicial immunity, as well as on matters of employment, social security and retirement of Supreme Court judges,
- suspend the effects of decisions already taken by the Disciplinary Chamber of the Supreme Court on the lifting of judicial immunity, and
- suspend the provisions preventing Polish judges from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice as well as the provisions qualifying action taken by judges in that respect as disciplinary offences.

### **More details on the referral to Court**

First, the Commission notes that the law on the judiciary prevents Polish courts from assessing, in the context of cases pending before them, the requirements of judicial independence and from requesting a preliminary ruling. This is incompatible with the principle of primacy of EU law, the functioning of the preliminary ruling mechanism and Article 19(1) of the Treaty on European Union read in connection with Article 47 of the Charter of Fundamental Rights of the European Union, which establish a right to an effective remedy before an independent and impartial tribunal previously established by law.

Second, the Commission notes that the law grants the new Chamber of Extraordinary Control and Public Affairs of the Supreme Court the sole competence to rule on issues regarding judicial independence. This prevents Polish courts from assessing the requirements of judicial independence and from requesting preliminary rulings from the Court of Justice. The law is incompatible with the principle of primacy of EU law, the functioning of the preliminary ruling mechanism as well as with the requirements of judicial independence set out in Article 19(1) TEU.

Third, the Commission notes that the law broadens the notion of disciplinary offence by allowing the assessment by Polish courts of the requirements of judicial independence, and thus the content of judicial decisions, to be qualified as a disciplinary offence. As a result, the disciplinary regime can be used as a system of political control of the content of judicial decisions. The law is incompatible with the requirements of judicial independence set out in Article 19(1) TEU and the functioning of the preliminary ruling mechanism.

Fourth, the Commission considers that Poland violates EU law by allowing the Disciplinary Chamber of the Supreme Court – the independence of which is not guaranteed – to take decisions which have a direct impact on judges and the way they exercise their function. These decisions include the lifting of immunity of judges with a view to bringing criminal proceedings against them or to detain them, as well as the consequent temporary suspension from office and the reduction of their salary. The Disciplinary Chamber is also deciding on matters related to labour law, social security and the retirement of Supreme Court judges. By giving the Disciplinary Chamber powers that directly affect the status of judges and the exercise of their judicial activities, the Polish legislation jeopardises the ability of the respective courts to adjudicate in full independence and therefore to provide an effective remedy, as required by Article 19(1) TEU.

Fifth, the Commission notes that the law imposes a disproportionate obligation on judges to provide information for the purposes of publication about specific non-professional activities. This is incompatible with the right to respect for private life and the right to the protection of personal data as guaranteed by the Charter of Fundamental Rights of the EU and the [General Data Protection Regulation](#).

## Background

The rule of law is one of the fundamental values of the European Union. It is enshrined in Article 2 of the Treaty on European Union. It 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 to ensure that national judges who are also 'EU judges' can fulfil their role in the application of EU law and can properly interact with the Court of Justice of the European Union (CJEU). The European Commission, together with other institutions and the Member States, is responsible under the Treaties for guaranteeing the rule of law as a fundamental value of our Union and making sure that EU law, values and principles are respected.

On [20 December 2017](#), the Commission triggered the Article 7(1) TEU procedure for the first time for Poland. There were already several debates (26 May and 16 October 2018) and three hearings on the Rule of Law in Poland amongst Member States in the General Affairs Council (26 June, 18 September and 11 December 2018).

The Commission has also frequently made use of its tools as guardian of the treaties to address rule of law issues in Poland. On [29 July 2017](#), the Commission launched an infringement procedure on the **Polish Law on Ordinary Courts**, on the grounds of its provisions requiring early retirement and their impact on the independence of the judiciary. The Commission referred this case to the Court on [20 December 2017](#). On 5 November 2019, the CJEU issued a final judgement in the case, confirming in full the position of the Commission. In addition, on [2 July 2018](#), the Commission launched an infringement procedure on the **Polish Law on the Supreme Court**, on the grounds of its provisions requiring early retirement and their impact on the independence of the Supreme Court. On [24 September 2018](#), the Commission referred the case to the CJEU. On 17 December 2018, the CJEU issued a final order imposing interim measures to stop the implementation of the Polish law on the Supreme Court and reinstate the judges forced to retire. On 24 June 2019, the CJEU issued a final judgement in the case, confirming in full the position of the Commission. Both infringement proceedings led the Polish authorities to remove the contested provisions.

On [3 April 2019](#), the Commission launched an infringement procedure on the grounds that the **disciplinary regime** undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control, as required by the CJEU. On [10 October 2019](#), the Commission referred this case to the CJEU. [On 14 January 2020](#), the Commission decided to ask the CJEU to impose interim measures on Poland, ordering it to suspend the functioning of the Disciplinary Chamber of the Supreme Court. On 8 April 2020, the CJEU ruled that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges, confirming in full the position of the Commission. This order applies until the Court renders its final judgment in the infringement procedure.

A new law of 20 December 2019 amending a series of legislative acts governing the functioning of the justice system in Poland, entered into force on 14 February 2020. [On 29 April 2020](#), the Commission sent a Letter of Formal Notice to Poland regarding this new **law on the judiciary**. On

30 October, the European Commission, since Poland's reply is not satisfactory, continued with the infringement process by sending a Reasoned Opinion on this matter. Poland replied on 30 December 2020.

In the context of this infringement procedure launched on 29 April 2020, the Commission sent Poland an additional letter of formal notice [adopted on 3 December 2020](#), taking issue with the continued functioning of the Disciplinary Chamber of the Supreme Court as regards other cases concerning judges. [On 27 January 2021](#), in view of a non-satisfactory reply of Poland to the additional letter of formal notice, the Commission adopted an additional Reasoned Opinion. Poland replied on 26 February 2021.

## **For more information**

[Referral to the Court of Justice in case C-791/19](#)

[Referral to the Court of Justice in case C-619/18](#)

[Referral to the Court of Justice in case C-182/18](#)

[Infringements database](#)

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