



## PRESS RELEASE No 89/23

Luxembourg, 5 June 2023

Judgment of the Court in Case C-204/21 | Commission v Poland (Independence and private life of judges)

### Rule of law: the Polish justice reform of December 2019 infringes EU law

*The value of the rule of law is an integral part of the very identity of the European Union as a common legal order and is given concrete expression in principles containing legally binding obligations for the Member States*

Following the adoption, by Poland, on 20 December 2019, of a law amending the national rules relating to the organisation of the ordinary courts, the administrative courts and the Supreme Court ('the amending law'), the European Commission brought an action for failure to fulfil obligations, asking the Court of Justice to declare that the regime put in place by that law infringes various provisions of EU law.

The Commission maintains that, in so far as the amending law confers on the Polish Supreme Court's Disciplinary Chamber, whose independence and impartiality are not guaranteed, jurisdiction to rule on cases having a direct impact on the status of judges and the performance of their duties, that law affects their independence. Furthermore, according to the Commission, the amending law prohibits any national court from reviewing compliance with the EU requirements relating to an independent and impartial tribunal previously established by law and establishes such a review as a disciplinary offence. The Extraordinary Review and Public Affairs Chamber of the Supreme Court is deemed to have exclusive jurisdiction to carry out such reviews. Finally, the Commission maintains that, by requiring judges to communicate information relating to their activities in associations or foundations and previous political memberships, and by planning to publish that information, the amending law infringes the right to respect for private life and the right to protection of personal data.<sup>1</sup>

During the proceedings, Poland was ordered to pay the Commission, by Order of the Vice-President of the Court of 27 October 2021, a daily penalty of €1 000 000.<sup>2</sup> The imposition of that periodic penalty payment was considered necessary in order to ensure that Poland gave effect to the interim measures set out previously in the order of 14 July 2021,<sup>3</sup> in particular as regards the suspension of the application of the provisions of the amending law contested by the Commission. By the order of the Vice-President of the Court of 21 April 2023, the amount of the daily penalty payment was reduced to €500 000.<sup>4</sup> The effects of those orders cease to apply with today's judgment which closes the proceedings. However, this does not affect Poland's obligation to make the daily penalty payments due in respect of the past.

By today's judgment, **the Court upholds the Commission's action.**

<sup>1</sup> For further information on the proceedings in question and the complaints of the Commission, please see press releases Nos [127/21](#), [180/21](#) and [192/21](#).

<sup>2</sup> Order of the Vice-President of the Court of 27 October 2021 in Case [C-204/21 R](#) (see also press release No [192/21](#)).

<sup>3</sup> Order of the Vice-President of the Court of 14 July 2021 in Case [C-204/21 R](#) (see also press release No [127/21](#)).

<sup>4</sup> Order of the Vice-President of the Court of 21 April 2023 in Case [C-204/21 R-RAP](#) (see also press release No [65/23](#)).

In the first place, the Court confirms that **the review of respect by a Member State for values and principles such as the rule of law, effective judicial protection and judicial independence falls entirely within the competence of that Member State.** In exercising their power concerning the organisation of justice, Member States must comply with the obligations arising from EU law. They are thus required to ensure that, in the light of the value of the rule of law, **any regression of their laws on the organisation of justice is prevented,** by refraining from adopting rules which would undermine the independence of judges. That fundamental value, which is an integral part of the very identity of the European Union, is given concrete expression in legally binding obligations, which **the Member States may not disregard by relying on national provisions or case-law, including constitutional provisions and case-law.**

In the second place, the Court, relying on its earlier case-law,<sup>5</sup> reiterates its assessment that the **Disciplinary Chamber** of the Supreme Court does not satisfy the requirement of independence and impartiality. It infers from this that the **mere prospect, for judges called upon to apply EU law, of running the risk that such a body may rule on matters relating to their status and the performance of their duties,** in particular by authorising criminal proceedings against them or their arrest or by adopting decisions relating to essential aspects of the employment, social security or retirement regimes applicable to them, **is liable to affect their independence.**

In the third place, the Court considers that, in the light of the relatively broad and imprecise nature of the provisions of the amending law complained of by the Commission and the particular context in which those provisions were adopted, they lend themselves to an interpretation that allows the disciplinary regime applicable to judges, and the sanctions that that regime entails, to be used to **prevent national courts from assessing whether a court or a judge meets the requirements relating to effective judicial protection under EU law, where appropriate by referring questions to the Court for a preliminary ruling.** The measures thus adopted by the Polish legislature **are incompatible with the guarantees of access to an independent and impartial tribunal, previously established by law. Those guarantees mean that, in certain circumstances, national courts are required to ascertain whether they themselves or the judges of whom they are composed or other judges or courts meet the requirements laid down by EU law.**

In the fourth place, **the fact that the amending law conferred on a single national body (namely the Extraordinary Review and Public Affairs Chamber of the Supreme Court) jurisdiction to verify compliance with essential requirements relating to effective judicial protection infringes EU law.** Compliance with those requirements **must be guaranteed across all the substantive areas of application of EU law and before all national courts seised of cases falling within those areas.** The monopolistic control put in place by the amending law, combined with the introduction of the abovementioned prohibitions and disciplinary infringements **is liable to contribute to weakening even further the fundamental right to effective judicial protection enshrined in EU law.**

Finally, according to the Court, the national provisions requiring judges to submit a written declaration indicating any membership of an association, non-profit foundation or political party, which provide that that information be placed online, infringe the fundamental rights of those judges to protection of personal data and respect for private life. The placing online of information relating to past membership of a political party **is not,** in the present case, **appropriate for attaining the alleged objective** of strengthening the impartiality of judges. Information relating to membership of associations or non-profit foundations on the part of judges is liable to reveal their religious, political or philosophical beliefs. The placing online of that information **could enable persons who, for reasons unrelated to the alleged public interest objective, seek to obtain information about the personal situation of the judge concerned to have free access to those data.** Having regard to the specific context of the measures introduced by the amending law, such placing online is, moreover, **liable to expose judges to risks of undue stigmatisation, by unjustifiably affecting the perception of those judges by individuals and the public in general.**

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<sup>5</sup> Judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, [C-791/19](#) (see also press release No [130/21](#)).

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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