



## PRESS RELEASE No 203/22

Luxembourg, 15 December 2022

Advocate General's Opinion in Joined Cases C-615/20 and C-671/20 | YP and Others (Lifting of a judge's immunity and his or her suspension from duties)

### **Advocate General Collins: only an independent and impartial tribunal previously established by law may authorise the prosecution of a judge**

On 18 November 2020, the Disciplinary Chamber of the Supreme Court (Poland) lifted Judge I.T.'s immunity from prosecution, reduced his remuneration and suspended him from office. Due to his suspension, Judge I.T. may not hear any of the cases that had been assigned to him.

In Case C-615/20, the referring court, in which Judge I.T. sits, raises numerous objections regarding the independence and impartiality of the Disciplinary Chamber and doubts whether its authorisation to prosecute and to suspend a judge from office is a 'judicial ruling'. Considering that the Disciplinary Chamber's resolution has a direct impact upon the status of the referring court, it seeks to ascertain, *inter alia*, whether the national rules authorising the criminal prosecution of judges are subject to the requirement of effective judicial protection and whether, given its characteristics, the Disciplinary Chamber may grant such authorisations. In addition, it inquires whether an unjustified refusal to allow a judge in respect of whom such a prosecution has been authorised to sit on a court infringes EU law.

In Case C-671/20, a judge to whom the President of Regional Court in Warsaw reassigned the cases initially heard by Judge I.T. expressed similar reservations as to the legality and effectiveness of the authorisation given by the Disciplinary Chamber.

In his Opinion delivered today <sup>1</sup>, Advocate General Anthony Michael Collins reaffirms that – notwithstanding the abolition of the Disciplinary Chamber – the legitimate doubts as to its independence and impartiality, already identified in the Court's case-law <sup>2</sup>, persist. Subject to verification by the referring court, the direct and indirect institutional links between the Minister for Justice, the public prosecutor, the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) and the Disciplinary Chamber add to the already considerable risk that the latter may not be perceived as an entirely neutral adjudicator when it rules upon applications for authorisations to prosecute judges and to suspend them.

The Advocate General concludes that Article 2 TEU and the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, **preclude national rules that grant jurisdiction to authorise the prosecution, detention and suspension of judges upon a court or tribunal that**

<sup>1</sup> See also Advocate General Collins' Opinion of today on partially identical matters in Case Commission v Poland (Independence and private life of judges) (C-204/21, see also Press Release No 201/22).

<sup>2</sup> Judgment of 15 July 2021, *Commission v Poland (Disciplinary regime for judges)*, C-791/19 (see also Press Release No 130/21); judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18 (see also Press Release No 145/19).

**does not comply with the requirements of independence, impartiality or prior establishment by law.**

According to Advocate General Collins, the obligation to check whether a national court, as composed, constitutes a tribunal previously established by law is an essential procedural requirement. Compliance with this requirement is a matter of public policy and must be verified of the court's own motion <sup>3</sup>. **EU law thus precludes the Polish amended Law on the organisation of the ordinary courts that prevents all Polish courts from examining any aspect of the procedure leading to the appointment of a judge.** As for the Constitutional Court of Poland's case-law prohibiting any judicial review touching upon judicial appointments, the Advocate General observes that the Court's judgments requiring such a review to take place bind all Polish courts. **The referring court must therefore disregard rulings of the Constitutional Court if it considers them to be inconsistent with EU law and refuse to apply any national rule that requires it to comply with those rulings.**

The Advocate General also assessed the consequences of a finding that the conferral of jurisdiction to authorise the prosecution of judges on the Disciplinary Chamber did not comply with EU law. In his opinion, following the abolition of the Disciplinary Chamber, **Poland must ensure that the Disciplinary Chamber's jurisdiction is exercised by an independent and impartial tribunal previously established by law. Poland must also, without delay, nullify the effects of the resolutions that chamber adopted.**

Advocate General Collins considers that all State bodies, including the referring court, are bound to nullify the unlawful consequences of the Disciplinary Chamber's resolutions to authorise the prosecution and the suspension of judges. Consequently, they must disregard the Disciplinary Chamber's resolution **and allow Judge I.T. to sit on the adjudicating panel of the referring court.** However, if one of the cases initially attributed to Judge I.T. has been reassigned to another formation that itself constitutes an independent and impartial tribunal previously established by law, those proceedings can remain before the new formation. The opposite conclusion would not take into account litigants' rights to legal certainty and to a trial within a reasonable time.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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<sup>3</sup> Judgment of 26 March 2020, *Review Simpson v Council and HG v Commission*, Joined Cases [C-542/18 RX-II](#) and [C-543/18 RX-II](#), paras 55, 57.