



PRESS RELEASE No 65/23

Luxembourg, 21 April 2023

Order of the Vice-President of the Court in Case C-204/21 R-RAP | Poland v Commission

Rule of law: the amount of the daily penalty payment which Poland is required to pay is reduced from one million to 500 000 euros

In 2021, the Commission brought proceedings before the Court of Justice for failure to fulfil obligations against Poland, seeking a declaration that certain legislative amendments concerning the organisation of justice in Poland infringed EU law. ¹

In particular, according to the Commission, those amendments prohibit any national court from reviewing compliance with the EU requirements relating to the independence and impartiality of courts and tribunals. Such an assessment may be classified as a disciplinary infringement. Exclusive jurisdiction was conferred on the Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court to examine matters concerning the lack of independence of a judge or a court. Furthermore, the Disciplinary Chamber of the Supreme Court, whose independence and impartiality is not guaranteed, has jurisdiction over certain requests having a direct impact on the status of judges and the performance of their office.

During the ongoing procedure, by order of the Vice-President of the Court of 27 October 2021, Poland was ordered to pay the Commission a periodic penalty payment of €1 000 000 per day. ² The imposition of that periodic penalty payment was considered necessary to ensure that Poland gave effect to the interim measures set out previously in an order of 14 July 2021, ³ in particular as regards the suspension of the application of the provisions of national legislation contested by the Commission.

On 10 March 2023, Poland asked the Court to cancel or, in the alternative, vary the order imposing the periodic penalty payment in question. In support of that request, Poland claims that, following legislative changes, it has complied in full with its obligations under those interim measures.

By today's order, **the Vice-President of the Court reduces the amount of the periodic penalty payment to €500 000 per day.**

First, the Vice-President recalls that an interim measure may at any time be varied or cancelled on account of a change in circumstances calling into question the assessments of the judge hearing the application for interim measures. However, the variation or revocation of such a measure has no retroactive effect.

¹ Case [C-204/21](#). For further information on the history of the proceedings and the complaints of the Commission, please see press releases Nos [127/21](#), [180/21](#) and [192/21](#).

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

³ 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](#)).

Next, after examining whether Poland had demonstrated a change in circumstances meaning that the periodic penalty payment in question is no longer justified, **the Vice-President concludes that the measures adopted by Poland are not sufficient to ensure that all the interim measures set out in the order of 14 July 2021 have been put into effect.**

In that regard, the Vice-President observes, in particular, that the effects of the decisions adopted by the Disciplinary Chamber of the Supreme Court authorising the initiation of criminal proceedings against a judge or his or her arrest were not, in any event, suspended with immediate effect. Moreover, contrary to the obligations arising from the interim measures, Poland has not demonstrated the full and effective suspension of the provisions prohibiting national courts from reviewing compliance with the EU requirements relating to an independent and impartial tribunal previously established by law, or those allowing disciplinary proceedings against a judge who has carried out that review. According to the Vice-President, Poland has only partially established that it has suspended the application of the provisions conferring on the Extraordinary Review and Public Affairs Chamber of the Supreme Court exclusive jurisdiction to examine complaints alleging lack of independence on the part of a judge or a court.

Nevertheless, the Vice-President considers that the measures put in place by Poland after the order imposing the daily penalty payment was signed are such as to ensure, to a significant extent, that the interim measures set out in the order of 14 July 2021 have been put into effect. In particular, it notes that Poland has repealed the provisions conferring certain powers on the Disciplinary Chamber as regards the status of judges and that that chamber has been abolished. The Vice-President also notes that various measures adopted by Poland had the effect of reinforcing the legal remedies available to judges who are the subject of decisions of the Disciplinary Chamber or facilitating, in certain scenarios, the review of the compliance of requirements relating to an independent and impartial tribunal previously established by law.

In the light of the effect of the measures thus adopted by Poland, the Vice-President reduces the amount of the periodic penalty payment to €500 000 per day, as from the date of signing of the present order.

The Court will deliver the judgment on the substance of this case on 5 June 2023. ⁴

NOTE: An order as to interim measures is without prejudice to the outcome of the main proceedings.

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.

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

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⁴ Advocate General Anthony M. Collins delivered his Opinion on 15 December 2022 (see press release No [201/22](#)).