



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 204/18**  
Luxembourg, 17 December 2018

Order of the Court in Case C-619/18 R  
Commission v Poland

## **Poland must immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges**

*The pleas of fact and law raised by the Commission justify granting interim measures*

On 3 April 2018 the new Polish Law on the Supreme Court ('the Law on the Supreme Court') entered into force. Under that Law, the retirement age for Supreme Court judges has been lowered to 65. The new age limit applies as from the date of entry into force of that Law, including with regard to judges of that court appointed before that date. It is possible for Supreme Court judges to continue in active judicial service beyond the age of 65 but this is subject to the submission of a statement indicating the desire of the judge concerned to continue to perform his duties and a certificate stating that his state of health allows him to serve, and must be consented to by the President of the Republic of Poland. In giving that consent, the President of the Republic of Poland would not be bound by any criterion and his decision would not be subject to any form of judicial review.

Thus, according to the Law, serving Supreme Court judges who reached the age of 65 before that Law entered into force or, at the latest, on 3 July 2018, were required to retire on 4 July 2018, unless they had submitted such a statement and such a certificate by 3 May 2018 inclusive and the President of the Republic of Poland had granted them permission to continue in active service at the Supreme Court.<sup>1</sup>

On 2 October 2018 the Commission brought an action for failure to fulfil obligations before the Court of Justice.<sup>2</sup> The Commission considers that by, first, lowering the retirement age and applying that new retirement age to judges appointed to the Supreme Court up until 3 April 2018 and, second, granting the President of the Republic of Poland the discretion to extend the active judicial service of Supreme Court judges, Poland has infringed EU law.<sup>3</sup>

Pending judgment by the Court, the Commission has requested the Court, in the context of interim proceedings, to order Poland<sup>4</sup> to adopt the following interim measures: (1) suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges; (2) take all necessary measures to ensure that the Supreme Court judges concerned by the provisions at issue may continue to perform their duties in the same post, while continuing to enjoy the same status and the same rights and working conditions as they did before the Law on the Supreme Court entered into force; (3) refrain from adopting any measure concerning the appointment of judges to the Supreme Court to replace the Supreme Court judges concerned by those provisions, or any measure concerning the appointment of a new First President of the Supreme Court or indicating the person tasked with leading the Supreme Court in its First

<sup>1</sup>As regards Supreme Court judges who will reach the age of 65 between 4 July 2018 and 3 April 2019, they are to retire on 3 April 2019, unless they file the necessary statement and certificate before 3 April 2019 and the President of the Republic of Poland grants them permission to continue in active service at the Supreme Court. As regards Supreme Court judges appointed to the Supreme Court before 3 April 2018 who will reach the age of 65 after 3 April 2019, their continuing in active service beyond the age of 65 is subject to the general rules, namely the submission of a statement and a certificate and the consent of the President of the Republic of Poland.

<sup>2</sup>Case [C-619/18](#).

<sup>3</sup>Second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>4</sup>Supported by Hungary.

President's stead pending the appointment of a new First President; (4) inform the Commission, one month after being notified of the order of the Court at the latest, and every month thereafter, of all the measures it has adopted or plans to adopt in order to fully comply with that order.

By order of 19 October 2018, the Vice President of the Court provisionally granted all those requests pending the making of an order closing the interim proceedings.<sup>5</sup>

In today's order, the Court recalls that the court hearing an application for interim relief may order interim measures only if (1) it is established that such an order is justified, *prima facie*, in fact and in law (*fumus boni juris*) and (2) those measures are urgent in so far as, in order to avoid serious and irreparable harm to the interests of the EU as represented by the Commission, it must be necessary for those measures to be enacted and produce their effects before a final decision is reached. Where necessary, the court hearing the application for interim relief must also weigh up the interests involved.

First, regarding the *fumus boni juris* requirement, the Court emphasises that that requirement is met where at least one of the pleas in law put forward by the applicant for interim measures in support of the main action appears, *prima facie*, not unfounded. In the present case, the arguments put forward by the Commission do not appear, *prima facie*, unfounded and it cannot therefore be excluded that the provisions of national legislation at issue jeopardise the principles of the irremovability of judges and of judicial independence and, consequently, infringe Poland's obligation to ensure effective legal protection in the fields covered by EU law.

Secondly, regarding the urgency requirement, the Court recalls that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the future final decision, in order to ensure that there is no lacuna in the legal protection provided by the Court. For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief. In the present case, the Commission claims that applying the provisions of national legislation at issue pending delivery of the judgment of the Court regarding the action for failure to fulfil obligations brought by the Commission ('the final judgment') is likely to cause serious and irreparable damage to the EU legal order. According to the Court the independence of national courts and tribunals is essential to the proper working of the preliminary ruling mechanism. It is also crucial in the context of EU measures in the field of judicial cooperation in civil and criminal matters, which are based on mutual trust between Member States *vis-à-vis* their respective legal systems. Consequently, the fact that, because of the application of the provisions of national legislation at issue, the independence of the Supreme Court may not be ensured pending delivery of the final judgment is likely to cause serious damage to the EU legal order and, accordingly, to the rights that individuals derive from EU law, and the values, set out in Article 2 TEU,<sup>6</sup> on which the EU is based, including that of the rule of law. Moreover, because of the authority of the decisions of the Supreme Court over the lower Polish courts, the fact that, in the event that the provisions of national legislation at issue are applied, the independence of that court may not be ensured pending delivery of the final judgment is likely to undermine the trust of the Member States and their courts in the Polish legal system and, as a result, in that State's observance of the rule of law. The fact that, because of the application of the provisions of national legislation at issue, the independence of the Supreme Court may not be ensured pending delivery of the final judgment could lead the Member States to refuse to recognise and enforce judicial decisions made by the Polish courts, which is likely to cause serious and irreparable damage to EU law. Therefore, the Court considers that the Commission has established that, in the event of a refusal to grant the requested interim measures, the application of the provisions of national legislation at issue pending delivery of the final judgment is likely to cause serious and irreparable damage to the EU legal order. Consequently, the Court considers that the urgency of the interim measures requested by the Commission is established.

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<sup>5</sup>See Press Release No. [159/18](#).

<sup>6</sup>That provision states, in particular, that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Thirdly, the Court examines whether weighing up the interests involved supports granting interim measures. It notes that the general interest of the Union in the proper working of its legal order could be seriously and irreparably affected, pending the final judgment, if the interim measures requested by the Commission were not ordered but the main action were to be upheld. By contrast, Poland's interest in the proper working of the Supreme Court is not likely to be thus affected in the event that the interim measures requested by the Commission are granted but the main action is dismissed, given that that grant would merely have the effect of maintaining, for a limited period, the application of the legal system which existed before the adoption of the Law on the Supreme Court. In those circumstances, the Court considers that weighing up the interests involved supports granting the interim measures requested by the Commission.

Consequently, the Court **grants the Commission's request for interim measures.**

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**NOTE:** The Court will deliver final judgment on the substance of this case at a later date. 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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