



Press and Information

Court of Justice of the European Union

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Judgment in Case C-619/18
Commission v Poland

The Polish legislation concerning the lowering of the retirement age of judges of the Supreme Court is contrary to EU law

The measures at issue breach the principles of the irremovability of judges and judicial independence

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 was lowered to 65. The new age limit applied as from the date of entry into force of that law, and included judges of that court appointed before that date. It was possible for Supreme Court judges to continue in active judicial service beyond the age of 65 but this was subject to the submission of a declaration indicating the desire of the judge concerned to continue to carry out his duties and a certificate stating that his health allowed him to serve, and had to be authorised by the President of the Republic of Poland. In granting that authorisation, 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 that 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 declaration and certificate by 3 May 2018 inclusive and the President of the Republic of Poland had authorised them to continue in active service at the Supreme Court.

On 2 October 2018, the Commission brought an action for failure to fulfil obligations before the Court of Justice¹. 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, by granting the President of the Republic of Poland the discretion to extend the active judicial service of Supreme Court judges, Poland has infringed EU law².

By order of 15 November 2018, the President of the Court granted the Commission's request to decide this action under an expedited procedure.

The Commission underlined at the hearing that, despite the amendments made by the Law of 21 November 2018 to the provisions of the Law on the Supreme Court challenged in the present proceedings, it was not certain whether that Law of 21 November 2018 eliminated the alleged

¹ In addition, pending judgment by the Court, the Commission requested the Court, in the context of interim proceedings, to order Poland 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 carry out their duties in the same post, while benefiting from the same staff regulations, the same rights and employment 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 President's stead pending the appointment of a new First President; (4) communicate to the Commission, one month after service of the order of the Court at the latest, and every month thereafter, all the measures it has adopted or plans to adopt in order to fully comply with that order. By order of 17 December 2018, the Court granted in its entirety the Commission's request for interim measures, pending delivery of the judgment in the present case (see PR No [204/18](#)).

² The second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

violations of EU law and, in any event, there remained an interest in deciding this case in view of the importance of judicial independence in the EU legal order.

By its judgment delivered today, the Court points out, first of all, that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that those Member States share with it, the common values referred to in Article 2 TEU³. That premiss both entails and justifies the existence of mutual trust between the Member States and, in particular, their courts that those values upon which the European Union is founded, including the rule of law, will be recognised, and therefore that the EU law that implements those values will be respected.

Furthermore, although the organisation of justice in the Member States falls within the competence of the latter, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations under EU law. It follows that the Member States must put in place remedies sufficient to ensure effective legal protection, within the meaning of the Charter of Fundamental Rights of the European Union, in the fields covered by EU law. More specifically, every Member State must, under the second subparagraph of Article 19(1) TEU, ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in those fields meet the requirements of that protection. To ensure that a body such as the Supreme Court is in a position to offer such protection, maintaining its independence is essential. Consequently, the national rules called into question by the Commission in its action may be reviewed in the light of the second subparagraph of Article 19(1) TEU.

The Court next holds that the freedom of the judges from all external intervention or pressure, which is essential, requires certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, including the guarantee against removal from office. The principle of irremovability requires, in particular, that judges may remain in post provided they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. In the present case, the application of the measure consisting in lowering the retirement age of judges of the Supreme Court to judges already serving on that court results in the latter prematurely ceasing to carry out their judicial office. Such an application is acceptable only if it is justified by a legitimate objective, it is proportionate in the light of that objective and inasmuch as it is not such as to raise reasonable doubt in the minds of individuals as to the imperviousness of the court concerned to external factors and its neutrality with respect to the interests before it.

The Court rejects Poland's argument that the decision to lower to 65 the retirement age of the judges of the Supreme Court was taken with the goal of standardising that age with the general retirement age applicable to all workers in Poland and, in doing so, improving the age balance among senior members of that court. The explanatory memorandum to the draft Law on the Supreme Court, the implementation of a new mechanism allowing the President of the Republic to decide, on a discretionary basis, to extend the thus-shortened period during which a judge carries out his or her duties and the fact that the measure in question affected almost a third of the serving members of that court, including its First President, whose 6-year mandate guaranteed under the Constitution was shortened, are such as to raise serious doubts as to the real aims of that reform. In addition, that measure appears neither to be appropriate for the purposes of achieving the aims put forward by Poland nor to be proportionate. Consequently, **the Court holds that the application of the measure lowering the retirement age of the judges of the Supreme Court to the judges in post within that court is not justified by a legitimate objective and undermines the principle of the irremovability of judges, that principle being essential to their independence.**

Furthermore, the Court points out that the guarantees of the independence and impartiality of the courts require that the body concerned exercise its functions wholly autonomously, being protected

³ That provision provides, inter alia, that the Union 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.

against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions, with due regard for objectivity and in the absence of any interest in the outcome of proceedings. It observes, in this connection, that the conditions and the detailed procedural rules provided for under the Law on the Supreme Court with regard to a potential extension beyond normal retirement age of the period for which a judge of the Supreme Court carries out his or her duties do not satisfy such requirements. Such an extension is now subject to a decision of the President of the Republic, which is discretionary inasmuch as its adoption is not, as such, governed by any objective and verifiable criterion and for which reasons need not be stated. In addition, that decision cannot be challenged in court proceedings. Moreover, the National Council of the Judiciary, when required to deliver an opinion to the President of the Republic before the latter adopts his decision, has, as a general rule and in the absence of any rule obliging it to state reasons for them, merely delivered opinions, whether positive or negative, for which sometimes no reasons at all have been stated or for which sometimes purely formal reasons have been stated. Therefore, such opinions are not such as to be apt to provide the President of the Republic with objective information with regard to the exercise of the power with which he is entrusted for the purposes of authorising, twice and each time for a 3-year term, between the ages of 65 and 71, a judge of the Supreme Court to continue to carry out his or her duties. The Court concludes that that power is such as to give rise to reasonable doubts, inter alia in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to any interests before them.

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 judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" 📡 (+32) 2 2964106