



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-558/18 and C-563/18
Miasto Łowicz / Skarb Państwa – Wojewoda Łódzki, joined parties:
Prokuratura Regionalna w Łodzi, Rzecznik Praw Obywatelskich and
Prokuratura Okręgowa w Płocku /VX, WW, XV

Advocate General Tanchev: the Court should declare that the requests for a preliminary ruling relating to the national measures establishing a regime for disciplinary proceedings against judges in Poland are inadmissible

There is insufficient explanation in the orders for reference about the link between these measures and the relevant provisions of EU law

In 2017, Poland introduced a reform of its justice system, including a new regime for disciplinary proceedings against judges. In their references, the referring courts indicate that the Minister for Justice has gained influence over the initiation and conduct of disciplinary proceedings against judges, and the legislative authorities have gained influence over the composition of the Krajowa Rada Sądownictwa (National Council of the Judiciary), the body responsible for selecting the group of judges who are eligible for appointment to the Disciplinary Chamber of the Supreme Court which examines disciplinary cases involving judges. The referring courts consider that as a result of the adopted model for disciplinary proceedings, disciplinary courts may become a tool for removing persons who issue decisions of which the authorities disapprove and there may be a paralysing effect on judges through the threat of initiating disciplinary proceedings for judicial decisions issued, thereby constituting a direct threat to judicial independence and giving rise to the risk that the judiciary will be used for political ends. In addition to this, the referring courts express fear of retribution if they do not adjudicate in favour of the State, an apprehension which stems from abuse of the disciplinary process under the new regime.

Case C-558/18 concerns an action brought by the City of Łowicz ('the municipality') against the State Treasury represented by the Governor of Łódź Province ('the State Treasury') before the Sąd Okręgowy w Łodzi, Wydział I Cywilny (District Court, Łódź, First Civil Division). The municipality claims that, for the years 2005 to 2015, it received insufficient subsidies for the performance of tasks delegated by the central government, and seeks payment of 2 357 148 Polish zlotys (PLN) to cover those costs. The referring court indicates that it is likely that the judgment in the case will be unfavourable to the State Treasury. This has caused the referring court to experience a real fear that, in the event that a particular decision is taken in the case, disciplinary proceedings will be initiated against the members of the formation ruling in that case.

Case C-563/18 concerns a criminal action brought by the Prokuratura Okręgowa w Płocku (District Public Prosecutor's Office in Płock) against VX, WW and XV ('the defendants') before the Sąd Okręgowy w Warszawie VIII Wydział Karny (District Court, Warsaw, Eighth Criminal Division). According to the order for reference, the main proceedings concern the inquiry of the District Public Prosecutor's Office in Płock into the activities of members of an organised criminal group which carries out, inter alia, assassinations and kidnappings of persons with the aim of obtaining money for their release. The defendants admitted to the criminal allegations against them, and applied for co-operative witness status due to their cooperation with the law enforcement authorities. In consequence, the referring court indicates that it will have to decide whether to apply the extraordinary mitigation of a penalty pursuant to the Polish criminal code. The application of such a milder penalty has caused the referring court to experience a real fear that, in the event that a particular decision is taken in the case, this may result in disciplinary proceedings being initiated against the members of the formation ruling in that case.

The referring courts harbour doubts whether the new regime for disciplinary proceedings against judges in Poland is consistent with EU law¹.

In today's Opinion, Advocate General Evgeni Tanchev first examines whether the situation in the main proceedings falls within the material scope of EU law.

He finds that the referring courts in the present cases are bodies which 'could' rule, as courts or tribunals under Article 267 TFEU, on questions concerning the application or interpretation of EU law. Therefore, based on the Court's case-law, the referring courts fall within the material scope of the second subparagraph of Article 19(1) TEU and that provision is applicable in the present cases. The Advocate General considers that 'the fields covered by EU law' under the second subparagraph of Article 19(1) TEU include an authority vested in the Court to rule on structural breaches of the guarantees of judicial independence, given that Article 19 TEU is a concrete manifestation of the rule of law, one of the fundamental values on which the EU is founded under Article 2 TEU², and Member States are bound under the second subparagraph of Article 19(1) TEU to 'provide remedies sufficient to ensure effective legal protection'. Structural breaches of judicial independence inevitably impact on the preliminary ruling mechanism under Article 267 TFEU and thus on the capacity of Member State courts to act as EU Courts. Consequently, in the view of the Advocate General, the situation in the main proceedings falls within the material scope of EU law.

Second, the Advocate General conducts an assessment of the admissibility of the requests for a preliminary ruling.

He recalls that, in accordance with established case-law, it is essential that the referring court provides some explanation of the reasons for the choice of the provisions of EU law which it seeks to have interpreted and of the link which it establishes between those provisions and the national legislation applicable to the main proceedings. The Advocate General emphasises that where the Court's reply to a question referred would lead it to deliver an advisory opinion on a problem which is general or hypothetical in nature, the Court finds such questions inadmissible.

The Advocate General considers that in the present cases, the orders for reference do not provide sufficient explanation of the relationship between the relevant provisions of EU law and the Polish measures in question. In contrast with other cases in which the Court has been asked to assess the compatibility of national measures relating to the reform of the justice system in Poland with the guarantees of judicial independence under the second subparagraph of Article 19(1) TEU, there is a lack of information in the case-file concerning which provisions of Polish law are incompatible with those guarantees and why. Moreover, the orders for reference are concerned with an element of subjective bias with respect to the impact of the new disciplinary regime on the referring judges' capacities to adjudicate independently. In the absence of a dispute between interested parties with respect to this issue, it is difficult to determine whether judicial independence has been tainted by subjective bias, which is a separate exercise from assessing objective independence.

The Advocate General observes that in the present cases, the orders for reference indicate that the interpretation of the second subparagraph of Article 19(1) TEU is necessary for the decisions to be given in the main proceedings on the grounds that the referring courts fear that, in the event of a particular decision being taken in those proceedings, disciplinary proceedings will be initiated against the judges of those courts. It follows that the initiation of disciplinary proceedings has not yet occurred. On the basis of the orders for reference, the referring courts have merely a subjective fear which has not crystallised into disciplinary proceedings and remains hypothetical.

¹ Second subparagraph of Article 19(1) TEU which provides that 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.'

² 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.

He concludes that the question whether there is a structural breach of judicial independence under the second subparagraph of Article 19(1) TEU remains hypothetical in the circumstances of the main proceedings, due to the absence of sufficient information as to how this breach has occurred and why, both of which are compounded by the lack of crystallisation of a dispute between interested parties with respect to judicial independence.

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.

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