



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 47/20

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Order of the Court in Case C-791/19 R
Commission v Poland

Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges

The pleas of fact and of law put forward by the Commission justify the grant of interim measures

In 2017, Poland adopted the new disciplinary regime for judges of the Sąd Najwyższy (Supreme Court, Poland) and the ordinary courts. Specifically, under that legislative reform, a new Chamber, the Izba Dyscyplinarna (the Disciplinary Chamber) was created within the Sąd Najwyższy. The jurisdiction of the Izba Dyscyplinarna thus covers, inter alia, disciplinary cases concerning judges of the Sąd Najwyższy and, on appeal, those concerning judges of the ordinary courts.

Taking the view that, by adopting the new disciplinary regime for judges, Poland had failed to fulfil its obligations under EU law,¹ on 25 October 2019 the Commission brought an action before the Court of Justice.² The Commission claims, inter alia,³ that the new disciplinary regime does not guarantee the independence and impartiality of the Izba Dyscyplinarna, composed exclusively of judges selected by the Krajowa Rada Sądownictwa (the National Council of the Judiciary; 'the KRS'), the fifteen judges who are members of which were elected by the Sejm (the lower chamber of the Polish Parliament).

By its judgment of 19 November 2019,⁴ the Court, on the basis of a question referred by the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych (Supreme Court – Labour and Social Insurance Chamber), found, inter alia, that EU law precluded cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal.⁵ Subsequently, the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych, ruling on the cases which gave rise to its order for reference, in its judgments of 5 December 2019 and 15 January 2020, held specifically that, having regard to the circumstances in which it was

¹ The second subparagraph of Article 19(1) TEU and the second and third subparagraphs of Article 267 TFEU.

² Case [C-791/19](#) Commission v Poland

³ In addition, according to the Commission, the new disciplinary regime: (1) allows the content of judicial decisions to be treated as a disciplinary offence so far as concerns judges of the ordinary courts, (2) fails to guarantee that disciplinary cases are examined by a court 'established by law' inasmuch as it confers on the President of the Izba Dyscyplinarna the discretionary power to designate the disciplinary court competent at first instance in cases concerning judges of the ordinary courts, (3) fails to guarantee that disciplinary cases against judges of the ordinary courts are heard within a reasonable period inasmuch as it confers on the Minister for Justice the power to appoint a Disciplinary Representative of the Minister for Justice and fails to guarantee the rights of the defence of judges of the ordinary courts who are accused since it provides that acts connected with the designation of counsel and that counsel's conduct of the defence do not have a suspensory effect on the course of the disciplinary proceedings and that the disciplinary court is to conduct the proceedings despite the justified absence of the notified accused or his counsel, (4) allows the right of courts to refer questions for a preliminary ruling to the Court of Justice to be limited by the possibility of the initiation of disciplinary proceedings.

⁴ Case: [C-585/18](#), [C-624/18](#) A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court) and [C-625/18](#); 'A.K and Others' see Press Release No [145/19](#).

⁵ According to the Court, that is the case where the objective circumstances in which the court concerned was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law.

formed, the extent of its powers, its composition and the involvement of the KRS in its constitution, the Izba Dyscyplinarna cannot be regarded as a tribunal for the purposes of either EU law or Polish law. After those judgments, the Izba Dyscyplinarna continued to perform its judicial functions.

In those circumstances, on 23 January 2020, the Commission⁶ requested the Court of Justice, in proceedings seeking interim relief, to order Poland to adopt the following interim measures: (1) to suspend, pending the judgment of the Court of Justice on the action for failure to fulfil obligations ('the final judgment'), the application of the provisions constituting the basis of the jurisdiction of the Izba Dyscyplinarna of the Sąd Najwyższy to rule, both at first instance and on appeal, in disciplinary cases concerning judges; (2) to refrain from referring the cases pending before the Izba Dyscyplinarna before a panel whose composition does not meet the requirements of independence defined, in particular, in A.K and Others, and (3) to communicate to the Commission, at the latest one month after notification of the order of the Court of Justice imposing the requested interim measures, all the measures that it has adopted in order comply in full with that order. Moreover, the Commission reserved the right to submit an additional request seeking that payment of a fine be ordered were it to be apparent from the information notified to the Commission that Poland had not complied in full with the interim measures ordered following its request for interim relief.

In the order delivered today, the Court first rejects the arguments of Poland as regards the inadmissibility of the application for interim relief brought by the Commission. In particular, as regards its jurisdiction to order the interim measures at issue, the Court points out that, although the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law. It is thus for each Member States to ensure that the disciplinary regime applicable to judges of the national courts which are part of their system of legal remedies in the fields covered by EU law complies with the principle of the independence of the judiciary, inter alia by ensuring that the decisions delivered in disciplinary proceedings brought against the judges of those courts are reviewed by a body which itself satisfies the guarantees inherent in effective judicial protection, including that of independence. In those circumstances, the Court has jurisdiction to order interim measures for the suspension of application of provisions concerning the powers of the Izba Dyscyplinarna so far as concerns the disciplinary regime for judges.

Next, it recalls that the interim measures may be ordered by the court hearing the application for interim relief only if (1) it is established that granting such a measure is justified, *prima facie*, in fact and in law (*fumus boni juris*) and (2) those measures are urgent in that it must be necessary, in order to avoid serious and irreparable harm to the interests of the EU, represented by the Commission, that they are made and produce their effects before the final decision is reached. The court hearing the application for interim relief must, where appropriate, also weigh up the interests involved.

First, in respect of the condition in relation to the existence of *fumus boni juris*, the Court points out that that condition is met where at least one of the pleas in law relied on by the applicant for interim measures in support of the main action appears, *prima facie*, not unfounded. In the present case, without ruling on the merits of the arguments relied on by the parties in the action for failure to fulfil obligations, the Court finds that, having regard to the facts to which attention has been drawn by the Commission and to the criteria for interpretation provided, in particular, by the judgment of 24 June 2019⁷ and by AK and Others., the arguments concerning the lack of a guarantee as to the independence and impartiality of the Izba Dyscyplinarna put forward in the action for failure to fulfil obligations, appear, *prima facie*, not unfounded.

Secondly, as regards the condition in relation to urgency, the Court notes that purpose of proceedings seeking 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 afforded by the Court. For the

⁶ Supported by: Belgium, Denmark, the Netherlands, Finland and Sweden.

⁷ Case: [C-619/18](#) Commission v Poland (Independence of the Supreme Court), see Press Release No [81/19](#).

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 harm to the party seeking the interim protection. In the present case, the Commission submits that the application of the national provisions at issue until delivery of the final judgment may cause serious and irreparable harm with regard to the functioning of the EU legal order. According to the Court, a guarantee as to the independence of the Izba Dyscyplinarna , as the court competent to rule in disciplinary cases concerning the judges of the Sąd Najwyższy and of the ordinary courts, is essential in order to preserve the independence both of the Sąd Najwyższy and of those courts. For the judges of the Sąd Najwyższy and the ordinary courts, the mere prospect that they may be subject to disciplinary proceedings which may be referred to a body whose independence would not be guaranteed is likely to affect their own independence. The Court points out that the fact that the independence of the Sąd Najwyższy may not be guaranteed is likely to cause serious damage to the EU legal order and thus to the rights which individuals derive from EU law and to the values, set out in Article 2 TEU,⁸ on which the EU is founded, in particular the rule of law. Consequently, the application of the national provisions at issue, inasmuch as they confer jurisdiction for ruling in disciplinary cases concerning judges of the Sąd Najwyższy and of the ordinary courts to a body, namely the Izba Dyscyplinarna , whose independence might not be guaranteed, is likely to cause serious and irreparable harm to the harm to the EU legal order. In those circumstances, the Court takes the view that the urgency of the interim measures applied for by the Commission is established.

Thirdly, the Court examines whether a weighing-up of the interests supports the grant of the interim measures applied for by the Commission, It observes that granting those measures would entail neither the dissolution of the Izba Dyscyplinarna nor, accordingly, the removal of its administrative and financial services, but solely the provisional suspension of its activity until delivery of the final judgment. Moreover, inasmuch as granting those measures would mean that the processing of cases pending before the Izba Dyscyplinarna must be suspended until delivery of the final judgment, the harm resulting for the individuals concerned from the suspension of those cases would be less that that resulting from the examination of those cases by a body, namely the Izba Dyscyplinarna , whose lack of independence and impartiality cannot, prima facie, be ruled out. In those circumstances, the Court takes the view that a weighing-up of the interests in the present case points towards granting the interim measures applied for by the Commission.

As a result, the Court **grants the Commission's application for interim measures.**

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.

Unofficial document for media use, not binding on the Court of Justice.

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

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⁸ 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.