



## PRESS RELEASE No 201/22

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Advocate General's Opinion in Case C-204/21 | Commission v Poland (Independence and private life of judges)

### **Advocate General Collins: Poland's law amending rules on the organisation of its ordinary courts and on its Supreme Court infringes EU law**

*The infringement of EU law consists of depriving national courts of the possibility to ensure that EU law is applied by an independent and impartial tribunal in all cases, conferring on the Disciplinary Chamber of the Supreme Court jurisdiction over matters relating to the status of judges and violating the rights of judges to respect for private life and to the protection of personal data*

Following the adoption by Poland on 20 December 2019 of a law amending, in particular, national rules on the organisation of the ordinary courts and on the Supreme Court (the Amending Law), the Commission brought an action against that Member State seeking declarations that it had infringed various provisions of EU law. The Commission asserts that the Amending Law limits or excludes the possibility for a national court to ensure that individuals claiming rights under EU law have access to an independent and impartial tribunal previously established by law. The Commission also claims that, inasmuch as the Amending Law conferred on the Disciplinary Chamber of the Supreme Court (the Disciplinary Chamber), whose independence and impartiality are not guaranteed, jurisdiction over matters relating to the status of judges, that law affects the independence of judges whose status is subject to review by the Disciplinary Chamber. Moreover, the Commission alleges that, by obliging judges to provide information on their public and social activities in associations and non-profit foundations, including membership of a political party, prior to their appointment, and to publish that information, the Amending Law infringes their rights to respect for private life and to the protection of personal data.

The Commission also asked the Court to order Poland, pending the judgment on the merits of this infringement action, to suspend the application of a number of the provisions of the Amending Law. By order of 14 July 2021,<sup>1</sup> the Vice-President of the Court assented to the Commission's application for those interim measures. On 27 October 2021, the Vice-President of the Court ordered<sup>2</sup> Poland to pay the Commission a periodic penalty payment of € 1 000 000 per day until it fully complies with the order of 14 July 2021 or, if it fails to do so, until the date of delivery of the judgment in Case C-204/21.

In his Opinion delivered today, Advocate General Anthony Michael Collins, first holds that the Amending Law grants the Extraordinary Review and Public Affairs Chamber of the Supreme Court (the Extraordinary Chamber) exclusive jurisdiction to rule on complaints alleging, inter alia, the lack of independence of a judge or a court and to provide a remedy in that context. In this regard, the Advocate General emphasises that reserving jurisdiction to rule on this matter to the Extraordinary Chamber does not **in itself** prevent national courts from examining whether a judge or

<sup>1</sup> Order of 14 July 2021, Commission v Poland ([C-204/21 R](#), see also Press Release No [127/21](#)).

<sup>2</sup> Order of 27 October 2021, Commission v Poland ([C-204/21 R](#), see also Press Release No [192/21](#)).

a court satisfy the requirement of independence. On the contrary, if those courts have doubts as to whether the requirement of independence has been observed, they can refer that question to the Extraordinary Chamber for decision. The Advocate General thus proposes that the Court dismiss the Commission's action to the extent that it challenges the legality of the exclusive jurisdiction conferred upon the Extraordinary Chamber.

Second, the Advocate General points out that the Amending Law **prevents all Polish courts from raising or addressing the question as to whether a judge has been legally appointed or can exercise judicial functions.** In the Advocate General's view, this prohibition extends beyond the obligation for a court to refrain from reviewing the act of appointment of a judge by the President of the Republic and **prevents Polish courts from examining questions as to the independence of the composition of a court.**

Third, the Advocate General observes that, under the Amending Law, **the examination by a judge of compliance with the requirements of an independent and impartial tribunal previously established by law**, including a decision to refer the matter to the Court of Justice for a preliminary ruling, **may constitute a disciplinary offence.** Since the Disciplinary Chamber does not meet the requirements of independence and impartiality,<sup>3</sup> there is an increased risk that **the relevant provisions of the Amending Law will be so interpreted as to facilitate the use of the disciplinary regime to influence judicial decisions.**

Fourth, Advocate General Collins points out that, although the **Disciplinary Chamber does not constitute an independent and impartial judicial body**, the Amending Law conferred jurisdiction upon it to hear and determine cases having a direct impact on the status of judges and trainee judges and the performance of their office. These cases entail applications to authorise the initiation of criminal proceedings against judges and trainee judges or to detain them, cases relating to employment and social security law that concern Supreme Court judges and cases relating to their compulsory retirement.

The Advocate General therefore considers that **the provisions of the Amending Law on the prohibition on judges examining questions regarding the independence of a court, the corresponding disciplinary regime and entrusting the Disciplinary Chamber with jurisdiction in those matters all breach the requirement of an independent and impartial tribunal within the meaning of EU law.** Advocate General Collins thus proposes that **the Court uphold the Commission's action with respect to those pleas.**

Finally, as to the obligation on judges to declare their membership of a political party, an association or a post in a non-profit foundation, and to publish those data, the Advocate General takes the view that such a requirement may lead to the **processing of sensitive data** within the meaning of the GDPR. In this context, he emphasises that Poland has not indicated what measures it has taken to safeguard the right of judges to the protection of such personal data and their right to respect for their private life, **which in itself constitutes a breach of these rights.**

**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:** 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

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<sup>3</sup> Judgment of 15 July 2021, *Commission v Poland* (C-791/19, see also Press Release No 130/21).

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

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