



EUROPEAN COMMISSION

Ursula von der Leyen
The President

Brussels, 11 JAN. 2021
Ares (2020) 5999225

Dear Members of the European Association of Judges,

Thank you for your letter in which you express concerns about developments regarding the rule of law in Poland, in particular in relation to the activities of the Disciplinary Chamber of the Supreme Court as regards removing judges' judicial immunities.

I would like to underline my appreciation for your Association's engagement in promoting the rule of law in the European Union. I recall that the Commission considers that there is a clear risk of a serious breach of the rule of law in Poland. For this reason, on 20 December 2017 the Commission adopted a reasoned proposal in accordance with Article 7(1) of the Treaty on European Union (TEU). The key consideration for the Commission to activate the Article 7(1) TEU procedure was that the cumulative effect of the reforms carried out by the Polish government is to restrict the independence of the judiciary and impinge on the separation of powers in Poland.

Since then, the Commission has taken forward a number of infringement procedures against Poland in relation to the independence of the judiciary. In particular, on 29 April 2020, the Commission launched an infringement procedure by sending a letter of formal notice to Poland regarding the law on the judiciary of 20 December 2019, which entered into force on 14 February 2020. The Commission considers that the new law on the judiciary undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. The new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. As the Polish Government reply did not address the concerns expressed by the Commission, on 30 October 2020 the Commission decided to take the next step in the infringement procedure by sending a reasoned opinion to Poland. The Government has two months to take the necessary measures to comply with the reasoned opinion, otherwise the Commission may refer the case to the Court of Justice.

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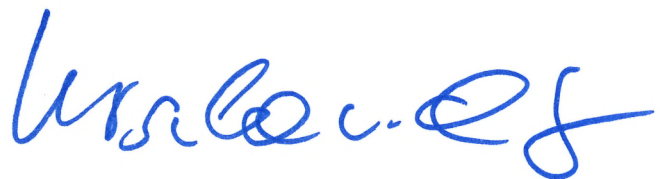
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The Commission is also concerned by recent decisions of the Disciplinary Chamber of the Supreme Court to lift the immunity of judges in the context of criminal investigations. The Commission considers that Poland is violating EU law by allowing the Disciplinary Chamber – whose independence and impartiality is not guaranteed – to decide on further matters which directly affect judges, in particular cases for the lifting of immunity of judges with a view to holding judges criminally responsible or detaining them. The same claim of violation of EU law applies to cases concerning labour law and social security for Supreme Court judges and cases concerning the retirement of a Supreme Court judge. For this reason, on 3 December 2020 the Commission sent an additional letter of formal notice to Poland. The Government has one month to reply. This letter adds a grievance to the ongoing infringement procedure regarding the law on the judiciary.

On 10 October 2019, the Commission decided to refer Poland to the Court of Justice regarding the new disciplinary regime for judges on the grounds that it undermines judicial independence by not offering safeguards to protect Polish judges from political control. On 14 January 2020, the Commission decided to ask the Court of Justice to impose interim measures on Poland, ordering it to suspend the functioning of the Disciplinary Chamber of the Supreme Court. On 8 April 2020, the Court of Justice ruled that 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. This obligation to suspend applies until the Court has rendered its judgment in the infringement procedure.

The Commission has also taken other steps to protect the rule of law in Poland. On 24 June and 5 November 2019, the Court of Justice of the European Union held that Polish legislation concerning the lowering of the retirement age for Supreme Court judges and ordinary court judges was in breach of EU law on judicial independence. The Commission also monitors developments with the rule of law in all Member States and adopted its first annual Rule of Law Report on 30 September 2020. The Commission will continue to follow closely developments in Poland and remains strongly committed to upholding EU law and values, in the interest of the citizens of Poland and the rest of the European Union.

Yours faithfully,



Ursula von der Leyen