



As it has not suspended the application of the provisions of national legislation relating, in particular, to the areas of jurisdiction of the Disciplinary Chamber of the Supreme Court, Poland is ordered to pay the European Commission a daily penalty payment in an amount of €1 000 000

Compliance with the interim measures ordered on 14 July 2021 is necessary in order to avoid serious and irreparable harm to the legal order of the European Union and to the values on which that Union is founded, in particular that of the rule of law

By its judgment of 19 November 2019,¹ the Court of Justice, questioned by the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych (Supreme Court (Labour and Social Insurance Chamber), Poland) held, inter alia, that EU law precludes cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is neither an independent nor an impartial tribunal.² Subsequently, ruling on the disputes which had given rise to its request for a preliminary ruling, the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych, in its judgments of 5 December 2019 and of 15 January 2020, held in particular that the Izba Dyscyplinarna (Disciplinary Chamber, Poland) of the Sąd Najwyższy (Supreme Court, Poland) cannot, having regard to the circumstances in which it was formed, the extent of its powers, the composition of that chamber and the involvement of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) in its creation, be regarded as a court or tribunal within the meaning of EU or Polish law.

On 14 February 2020, the Law amending the Law relating to the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws ('the amending law') entered into force.

Considering that the provisions of national legislation in force infringe EU law, the Commission brought an action for failure to fulfil obligations before the Court of Justice on 1 April 2021.³

¹ Judgment of the Court of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, [C-585/18](#), [C-624/18](#) and [C-625/18](#) (see also Press Release No [145/19](#)).

² According to the Court, that is the case where the objective circumstances in which that court 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.

³ Case [C-204/21](#). In particular, according to the Commission, the amending law prohibits any national court from reviewing compliance with the EU requirements relating to an independent and impartial tribunal previously established by law. Furthermore, both the provisions establishing the exclusive jurisdiction of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Extraordinary Review and Public Affairs Chamber, Poland) of the Sąd Najwyższy to examine complaints and questions of law concerning the lack of independence of a court or judge and the provisions enabling the examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law to be classified as a disciplinary offence are contrary to EU law. Lastly, by conferring on the Disciplinary Chamber, whose independence and impartiality are not guaranteed, jurisdiction to hear and determine cases having a direct impact on the status of judges and trainee judges and the performance of their office, such as, first, applications for authorisation to initiate criminal proceedings against judges and trainee judges or to detain them and, second, cases relating to employment and social security law that concern judges of the Sąd Najwyższy and cases

Pending the judgment of the Court closing the proceedings in Case C-204/21 ('the final judgment'), the Commission asked the Court, in the context of proceedings for interim relief, to order Poland to adopt a series of interim measures.

By her order of 14 July 2021,⁴ the then Vice-President of the Court granted all the Commission's requests pending delivery of the final judgment.

Considering that Poland had not complied with its obligations under that order, on 7 September 2021 the Commission lodged an application requesting that Poland be ordered to pay a daily penalty payment in an amount likely to encourage that Member State to give effect as soon as possible to the interim measures imposed by the interim order.

Maintaining that a change in circumstances had taken place following the delivery of the order of 14 July 2021, Poland, for its part, lodged an application for cancellation of that order. By her order of 6 October 2021,⁵ the then Vice-President of the Court dismissed Poland's application.

By his order, made today, **the Vice-President of the Court orders Poland to pay the Commission a periodic penalty payment of €1 000 000 euros per day, from the date on which that order is notified to Poland and until such time as that Member State complies with the obligations arising from the order of 14 July 2021 or, if it fails to do so, until the date of delivery of the final judgment.**

Firstly, **regarding the request for the case to be referred to the Grand Chamber of the Court**, the Vice-President recalls that, according to the applicable rules,⁶ the Vice-President of the Court is him or herself to rule on applications for suspension of operation or for interim measures or to refer those applications immediately to the Court. It follows that it is for the Vice-President of the Court alone to assess, on a case-by-case basis, whether the applications for interim measures before him or her require referral to the Court for the purpose of their assignment to a formation of the Court. In the present case, the examination of the arguments put forward by Poland does not permit it to be established that the Commission's application requesting that a periodic penalty payment be imposed requires it to be assigned to a formation of the Court, with the result that there is no need to refer that application to the Court.

Secondly,⁷ **as regards the Commission's application requesting that a periodic penalty payment be imposed**, the Vice-President observes, first of all, that it is not apparent from the documents before the Court that the measures adopted by Poland would be sufficient to ensure the implementation of the interim measures concerned. He emphasises, in particular, that the decision whether or not to continue the examination of cases pending within the Disciplinary Chamber is adopted, as the case may be, by the President or members of that chamber, without the measures adopted by the First President of the Sąd Najwyższy requiring them to suspend that examination. On the basis of the evidence submitted by both parties, the Vice-President considers that the provisions of Polish legislation conferring jurisdiction on the Disciplinary Chamber in the cases referred to in the order of 14 July 2021 may still be applied in the Polish legal order. In addition, he notes that Poland does not challenge the Commission's claims that no national

relating to the compulsory retirement of those judges, Poland has infringed EU law. In addition, the contested provisions of national legislation infringe the right to respect for private life and the right to protection of personal data.

⁴ Case [C-204/21 R](#) (see also Press Release No [127/21](#)).

⁵ Case [C-204/21 R-RAP](#) *Poland v Commission* (see also Press Release No [180/21](#)).

⁶ Article 161(1) [of the Rules of Procedure of the Court of Justice], read in conjunction with Article 1 of Decision 2012/671/EU of the Court of Justice of 23 October 2012 concerning the judicial functions of the Vice-President of the Court (OJ 2012 L 300, p. 47).

⁷ The Vice-President also rejects Poland's argument that the application requesting that a periodic penalty payment be imposed is inadmissible on the ground that that application does not specify the amount of the periodic penalty payment which the Commission wishes the Court to impose. He notes, in particular, in that regard that neither the provisions of the FEU Treaty nor those of the Rules of Procedure establish an obligation for the Commission to propose to the Court a precise amount when requesting a penalty payment as an interim measure and that any imposition of a periodic penalty payment on the basis of an application which does not specify that amount is not liable to infringe the rights of defence of the Member State concerned, since that State is in a position to state in its observations, if appropriate in the alternative, the amount of the periodic penalty payment which it considers appropriate in the light of the circumstances of the case and its ability to pay.

measure had been adopted to implement several of the measures imposed by the order of 14 July 2021. The Vice-President also recalls that a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law and that those obligations are binding on all their authorities, including, for matters within their jurisdiction, the courts. In those circumstances, **he considers that it appears necessary to strengthen the effectiveness of the interim measures imposed by the order of 14 July 2021 by providing for the imposition of a periodic penalty payment on Poland in order to deter that Member State from delaying bringing its conduct into line with that order.**

Regarding the amount of that periodic penalty payment, the Vice-President emphasises, first of all, that the order of 14 July 2021 concerns interim measures, compliance with which is necessary in order to avoid serious and irreparable harm to the legal order of the European Union and, consequently, to the rights which individuals derive from EU law and the values⁸ on which that Union is founded, in particular that of the rule of law. Next, he observes, in particular, that the fact that Polish law has hindered the adoption of additional measures to comply with the order of 14 July 2021 cannot be taken into account in order to assess the amount of the periodic penalty payment to be imposed. The Vice-President also states that the Polish Government has not adduced evidence before the Court capable of establishing that the assertion that, despite the inadequacy of the measures adopted following the adoption of the order of 14 July 2021, Polish courts are complying in principle with that order is well founded. Lastly, the expressed intention to adopt, within a year, a series of measures intended to reform the Polish judicial system is not such as to prevent, in the absence of immediate action by Poland, the occurrence of serious and irreparable harm to the legal order of the European Union. In the light of the circumstances of the case and Poland's ability to pay, **the Vice-President has ordered Poland to pay the Commission a periodic penalty payment of €1 000 000 euros per day, from the date on which today's order is notified to that Member State and until such time as that Member State complies with the obligations arising from the order of 14 July 2021 or, if it fails to do so, until the date of delivery of the final judgment.**

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.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

⁸ Set out in Article 2 TEU.