



To

Ms. Ursula Von Der Leyen

CC: Ms. Vera Jourova

Mr. Didier Reynders

President of the European Commission

Europe, September 30th, 2020

Four European Associations of Judges and Prosecutors took notice with great concern of the recent developments in Poland regarding the upcoming hearings by the Disciplinary Chamber: on October 5th, the hearing of Igor Tuleya on the context of an appeal case; on October 12th, the hearing of Beata Morawiec; on October 21st, the hearing of Irena Majcher; and on October 16th, the hearing of Prosecutor Krzysztof Parchimowicz.

The European Court of Justice (ECJ) has issued a number of judgments critical of Poland's compliance with EU law, in particular Case C-619/18, on 24 June 2019, and Case C-192/18, on 5 November 2019.

On 8 April 2020, upon request of the European Commission, the ECJ issued interim measures in case C-791/19 R, ordering the Disciplinary Chamber of the Polish Supreme Court to cease hearing disciplinary procedures against Polish judges, while the proceedings as to whether it is an independent body complying with the requirements of EU law are pending. This ruling is, obviously, mandatory to Poland.

However, in complete disregard of ECJ solid jurisprudence and circumventing the interim order by pointing to an alleged loophole, the Disciplinary Chamber continues its activities materialized now on these several hearings in a context of continuous attacks on Polish judges and their associations.



Judicial independence is a principle of EU law binding on all Member States of the European Union such as Poland and, according to ECJ, requires amongst other things:

“that the court concerned exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions”.

The flagrant absence of independence of the Disciplinary Chamber of the Supreme Court has led to both pending proceedings in the ECJ and an order of interim measures suspending among others article 27 of the Supreme Court Act of 8 December 2017 preventing that body from hearing any disciplinary proceedings, including the waiving of immunity for judges or prosecutors.

Firstly the actions taken by Polish authorities in recent times, openly disrespecting the interim measures issued by the ECJ, are a clear sign that Polish political authorities will continue to persecute independent judges and prosecutors that act in defense of the Rule of Law. Therefore, seen its role of guardian of the Treaties, the European Commission must act in a decisive way, in order to prevent the violation of ECJ orders and guarantee that the EU legal order is respected.

As underlined recently on an Open Letter adequately named “Before it is too late”, signed by 37 prominent academics: “The rule of law in Poland is not merely being attacked. It is being destroyed in plain sight.”

Secondly, the fundamental pre-requisite of Mutual Trust within national judiciaries that sustains EU Judicial Cooperation is now patently at peril as recent rulings demonstrated.

Therefore, we call upon the European Commission, in the person of its President:

- i) to urgently request the ECJ for a penalty payment regarding the continuing violation of its interim measures of 8 April 2020 in order to prevent the Disciplinary Chamber from proceeding with any activities until the final decision of proceedings in Case C 791/19.



- ii) to start new infringement procedures against Poland for breach of EU Law as recommended by the European Parliament in its resolution of 17 September 2020, seen its disrespect of ECJ's decisions and the continuous breach of EU Law's fundamental principle of respect for the Rule of Law;
- iii) to address the prosecuting authority headed by the Minister of Justice of Poland, which is also the current Prosecutor-General, urging it to abandon immediately these proceedings initiated in clear breach of European Law.

Edith Zeller m.p.

President of the Association of European Administrative Judges (AEAJ)

Filipe Marques m.p.

President of Magistrats Européens pour la Démocratie et les Libertés (MEDEL)

José Igreja Matos m.p.

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President of Judges for Judges