

# AG: Polish Reform Introducing New Retirement Rules for Judges Incompatible with EU Law

## News

Thomas Wahl

On 20 June 2019, Advocate General *Tanchev* presented his [opinion](#) on whether the new retirement rules for Polish judges and prosecutors violate EU law. The case ([C-192/18](#)) is an action for failure to fulfil obligations (Art. 258 TFEU), which was brought by the European Commission. The Commission brought forward two complaints against the Polish reform, which introduces new retirement rules in the justice sector:

- The retirement age for judges of common law courts, public prosecutors, and judges of the Supreme Court was lowered to 60 for women and 65 for men, when it was previously 67 for both sexes;
- The Minister of Justice was vested with discretion to prolong the period of active service of individual common law court judges beyond the new retirement ages, when that power was previously exercised by the National Council of the Judiciary.

The AG first concluded that the introduction of different retirement ages for female and male judges is not in line with the EU's secondary law prohibiting discrimination on the grounds of sex. In particular, Poland cannot rely on the discretionary provisions of EU law to set different retirement ages for men and women in public social security schemes.

Second, AG *Tanchev* found that the legislative lowering of the retirement age of judges, together with the discretionary power for the Minister of Justice to extend the active period of judges, does not give the necessary guarantees for judicial independence. In particular, this package is considered to be inconsistent with the objective element of impartiality as protected under the ECtHR case law. Therefore, Poland has also breached its obligations in this regard.

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