

# AG: References against Disciplinary Proceedings against Polish Judges at Ordinary Courts Inadmissible



## News

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On 24 September 2019, Advocate General *Tanchev* proposed that references for a preliminary ruling of two Polish district courts voicing doubt as to the compatibility of the new disciplinary regime introduced in Poland via judicial reforms in 2017 with Art. 19(1) subpara. 1 TEU should be declared inadmissible.

The cases are registered as [Joined Cases C-558/18 and C-563/18](#) (*Miasto Łowicz/ Skarb Państwa –Wojewoda Łódzki, joined parties: Prokuratura Regionalna w Łodzi, Rzecznik Praw Obywatelskich and Prokuratura Okręgowa w Płocku/VX, WW, XV*).

The cases at issue refer first to a civil law suit between the municipality of Łowicz and the State Treasury before the District Court of Łódź, and, second, to a criminal trial before the District Court of Warsaw against a gang whose defendants seek protection from the state because of their cooperation with the law enforcement authorities. Both district courts submit that they may take decisions that are not in favour of the State authorities; therefore they fear becoming the subject of disciplinary proceedings. The referring judges are concerned that the disciplinary regime introduced in Poland in 2017 may entail politically motivated disciplinary penalties, which infringes the second subparagraph of Art. 19(1) TEU.

AG *Tanchev* first affirmed that the situation in the main proceedings falls within the material scope of Art. 19(1) subpara. 2 TEU (the obligation for Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law). Accordingly, the CJEU is vested with the authority “to rule on structural breaches of the guarantees of judicial independence, given that Article 19 TEU is a concrete manifestation of the rule of law, one of the fundamental values on which the European Union is founded under Article 2 TEU.” Structural breaches of judicial independence inevitably impact on the preliminary ruling mechanism under Art. 267 TFEU and thus on the capacity of Member State courts to act as EU Courts.

However, AG *Tanchev* found that requirements on admissibility for a preliminary ruling have not been met in the present case. The reference does not sufficiently explain the relationship between the relevant provisions of EU law and the Polish measures in question. Furthermore, the AG observed that there seems to be mere subjective fear on the part of the referring court, because concrete disciplinary proceedings have not yet been initiated. Therefore, the questions remain hypothetical as to what makes the request inadmissible under Art. 267 TFEU.

The reference at issue is one of a series of proceedings before the CJEU in which Polish judges are taking a stand against the judicial reforms in Poland, which attack the rule of law. In total, they have brought forward

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around 14 references for preliminary rulings. In addition to these references, the Commission initiated infringement proceedings (see, *inter alia*, [Case C-619/18](#) and [Case C-192/18](#) on the lowering of the retirement rules for judges and public prosecutors – all reported in [eucrim 2/2019](#), pp. 80 et seq. and in this issue). In the Joined Cases [C585/18](#), [C-624/18](#) and [C-625/18](#), by judgment of 19 November 2019, the CJEU ruled on the independence of the Polish Disciplinary Chamber in cases involving Supreme Court judges taking legal action against their early retirement.

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