

# CJEU Confirms Interim Measures Against Polish Supreme Court Reform

## News

**Thomas Wahl**

Also after having heard the arguments of the Polish government, the CJEU confirmed interim measures against the reform of the retirement age of Supreme Court judges under new Polish law. By [order of 17 December 2018](#), the judges in Luxembourg granted the Commission's request for interim measures and upheld a provisional order of 19 October 2018 by the Vice-President of the Court (see euocrim 3-2018, 144). The full text of the order (referred to as [Case C-619/18 R](#)) is [available in French](#).

Despite taking into account the position of the Polish government, the CJEU acknowledged that the pleas raised by the Commission were justified in fact and law. All requirements for interim relief were fulfilled, in particular the urgency requirement, which presupposes that the interlocutory order avoids serious and irreparable harm to the interests of the EU.

In its reasoning, the CJEU emphasized that the application of the national legislation at issue is likely to cause serious damage to the EU legal order. The reason for this is that the independence of the Polish Supreme Court is not ensured until the delivery of the final judgments in the infringement proceedings. Failure to ensure the independency of the Supreme Court may have several consequences, e.g.:

- Preliminary ruling mechanism does not work properly;
- Lack of authority of the Supreme Court over the lower Polish courts;
- Mutual trust of the EU Member States and their courts is undermined in the Polish system, which can lead to the refusal of recognition and enforcement of judicial decisions made by Polish courts and, in the end, disturb the cooperation mechanism in the EU.

The CJEU also examined whether weighing up the interests involved support the granting of interim measures. The CJEU concluded that the EU's general interests in the proper working of its legal order predominates over Poland's interest in the proper working of the Supreme Court, given the fact that the application of the system before the reform is only maintained for a limited period.

It should be noted that the order of 17 December 2018 did not make final judgement on the substance of the action. This will be done at a later stage. The order for interim measures is also without prejudice to the outcome of the [main proceedings](#).

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