

CJEU Stops Application of New Polish Law on Supreme Court Judges

Thomas Wahl

On 19 October 2018, the Vice-President (VP) of the European Court of Justice ordered interim measures in the infringement proceedings against Poland regarding Poland's reform of the Supreme Court. The proceedings (case C-619/18) were launched by the European Commission at the end of September 2018 (registered at the Court on 2 October 2018). The VP argued that Poland infringes the principle of the independence of judges with its reform on the retirement age of Supreme Court judges and on the wide discretion of the Polish President to extend the active judicial service of Supreme Court judges (cf. eucrim 2/2018, p. 80). The VP's order (full text only available in French and Polish) states that all conditions for interim relief are fulfilled.

First, the Commission sufficiently established that the order is justified, *prima facie*, in fact and in law (*fumus boni juris* requirement).

Second, the order is also deemed urgent, so as to avoid serious and irreparable damage to the interests of the EU, meaning that the effects of the order are justified before a final decision is reached. The VP emphasized that the provisions of national legislation have already begun to be applied. The CJEU must also ensure that decisions of the Polish Supreme Court are taken in full respect of the individuals' fundamental right to an independent court or tribunal. In this context, the VP reiterated that the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right of cardinal importance to guarantee that all the rights which individuals derive from EU law, will be protected. Thus, the very nature of the infringed right in itself gives rise to serious and irreparable damage. In the present case, it must additionally be taken into account that the Polish Supreme Court is a court of last instance and therefore has the authority to establish *res judicata* before the CJEU can decide on the infringement procedure.

Third, the VP held that the weighing-up of interests involved is also in favour of ordering interim measures, because the immediate application of the new national legislation would mean the EU is faced with a *fait accompli* should the action to fulfill obligations be upheld by the CJEU.

As a result, Poland has been ordered, *inter alia* to act as follows:

- Suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges;
- Take all necessary measures to ensure that the Supreme Court judges affected by the provisions at issue can continue to perform their duties in the same position and enjoy the same status as before;

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- Refrain from adopting any measure concerning the appointment of new judges to the Supreme Court to replace the Supreme Court judges concerned;
- Communicate to the Commission all the measures it has adopted or plans to adopt in order to fully comply with said order.

The order is without prejudice to the final judgment of the action for failure to comply with obligations under EU law. The CJEU will rule on the substance of the case at a later stage.

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