



Věra Jourová
Vice-President of the European Commission

Didier Reynders
Member of the European Commission

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Ares (2020) 7844443

Dear Professor Markiewicz,

We would like to thank you for the letter, accompanied by a list of signatures of over five thousand European judges and prosecutors, in which you express concerns about the developments regarding the rule of law in the European Union, in particular as regards Poland. In your letter, you call on the Commission to undertake further action aimed at ensuring that EU fundamental values are adhered to by the Member States.

Let us take this opportunity to thank your organisation for all your efforts to defend the rule of law in Poland and beyond. The rule of law is one of the common values upon which the European Union is founded; it is common to all Member States and is essential for the functioning of the EU as a whole. These core values bind us together and we must promote and uphold them, including in challenging times. Please be reassured of our determination to act for the protection of these values.

We understand the very difficult situation of many judges in Poland and constantly monitor the developments in the Polish judiciary. Polish judges are European judges. They should exercise their functions under guarantees of independence and without actions that bring a “chilling effect” on them and their activity.

Allow us to recall some recent actions taken by the European Commission in order to defend the independence of the judiciary in Poland. As you will be aware, on 29 April 2020, the Commission launched an infringement procedure by sending a Letter of Formal Notice to Poland regarding the new law on the judiciary of 20 December 2019, which entered into force on 14 February 2020. The Commission considers that the new law on the judiciary undermines the independence of Polish judges and is incompatible with the primacy of EU law. The new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. As the reply of the Polish Government did not address the concerns expressed by the Commission, on 30 October 2020 the Commission decided to take the next step in the infringement procedure by

Professor Krystian Markiewicz
President
Polish Judges' Association
E-mail: biuro@iustitia.pl

sending a Reasoned Opinion to Poland. The Polish Government replied on 30 December 2020 and the reply is being carefully analysed.

The Commission is also very concerned about recent decisions of the Disciplinary Chamber of the Supreme Court concerning the lifting of immunity of judges in the context of criminal investigations. The Commission considers that Poland violates EU law by allowing the Disciplinary Chamber of the Supreme Court – the independence and impartiality of which is not guaranteed – to decide on further matters which directly affect judges, in particular cases for the lifting of immunity of judges with a view to holding judges criminally responsible or detaining them, as well as cases concerning labour law and social security for Supreme Court judges and cases concerning the retirement of a Supreme Court judge. For this reason, on 27 January 2021 the Commission sent an additional Reasoned Opinion to Poland. The Polish Government has one month to take the necessary measures to comply with the Reasoned Opinion, otherwise the Commission may refer the case to the Court of Justice. The additional Reasoned Opinion adds a grievance to the ongoing infringement procedure regarding the new law on the judiciary, but does not replace the grievances that the Commission already set out in its Reasoned Opinion of 30 October 2020.

The Commission has also undertaken other steps to protect the rule of law in Poland. On 10 October 2019, the Commission decided to refer Poland to the Court of Justice regarding the new disciplinary regime for judges on the grounds that it undermines judicial independence by not offering the safeguards to protect Polish judges from political control. On 8 April 2020, following the Commission's request, the Court of Justice ruled that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges. This obligation to suspend applies until the Court will have rendered its judgment in the infringement procedure.

Not all the rule of law concerns can be pursued through infringement actions. This is why in recent years we have developed the Rule of Law toolbox by establishing the Rule of Law Mechanism with its annual Rule of Law Report. We also adopted the Regulation on the protection of EU budget establishing a mechanism which could be triggered when breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget.

Democracy, rule of law and fundamental rights need constant nurturing and joint action. There is no one single person or institution that can address all the concerns about rule of law and judicial independence in Poland. The Commission will continue to act to defend the rule of law. It is of tremendous importance that the Polish judges, civil society and citizens also demonstrate support for independent judiciary. This is why we want to thank you again, and your colleagues, for your continued work on these issues, for your dedication and engagement on both the Polish and European levels.

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The Commission will continue to follow closely the developments in Poland and remains strongly committed to upholding EU law and values in the interest of the citizens of Poland and of the rest of the European Union.

Yours sincerely,

e-signed
Věra Jourová

e-signed
Didier Reynders