



Palazzo di Giustizia - Piazza Cavour - 00193 Roma - Italia

Mrs Ursula von der Leyen,
President of the Commission of the European Union,

Dear Madam President,

As the Commission is aware, the European Association of Judges (EAJ) – an association of judges' associations in 44 European countries, including all the Member States of the European Union – is deeply concerned about the continuing and determined efforts of the government of the Republic of Poland to destroy the independence of the judiciary in Poland and to subordinate it totally to its executive power. In recent times the EAJ has received many representations from judges from across Europe voicing their fears not only for the position of individual judges in Poland but also for the damage being done beyond Poland to the mutual trust in the legal systems of the Member States which is fundamental to the working of the European legal order.

The Polish government's strategy of undermining the rule of law and the independence of the Polish judiciary has involved many steps which I think it unnecessary to rehearse in detail since they are well known to the Commission. The most immediately pressing concern for the EAJ at this particular moment is the Polish government's flagrant disregard of the interim or provisional order made by the Court of Justice of the European Union (Grand Chamber) on 8 April 2020 in Case C-791/19 R European Commission v Republic of Poland and the subsequent failure of the Commission to take steps to secure compliance.

As you are no doubt aware, Madam President, those proceedings concerned the establishment by Poland of a new "Disciplinary Chamber" (*Izba Dyscyplinarna*) as part of the Supreme Court to deal with disciplinary proceedings brought against judges. The establishment of the Disciplinary Chamber was held by the Polish Supreme Court to be unconstitutional; its membership is unlawfully appointed and lacks any semblance of the independence necessary to constitute a legitimate tribunal.

In its order of 8 April 2020, the Court of Justice ordered the Republic of Poland, pending final judgment in the case, immediately to suspend the application of the provisions establishing the jurisdiction of the Disciplinary Chamber¹. As is made plain in the Order (see paragraphs 44,

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The French text (there is no English version) of the operative part or "dispositif" of the Order reads –

"La République de Pologne est tenue, immédiatement et jusqu'au prononcé de l'arrêt qui mettra fin à l'instance dans l'affaire C-791/19,

– de suspendre l'application des dispositions de l'article 3, point 5, de l'article 27 et de l'article 73, paragraphe 1, de l'ustawa o Sądzie Najwyższym (loi sur la Cour suprême), du 8 décembre 2017 (Dz. U. de 2018, position 5), telle que modifiée, constituant le fondement de la compétence de l'Izba Dyscyplinarna (chambre disciplinaire) du Sąd Najwyższy (Cour suprême) pour statuer, tant en première instance qu'en instance d'appel, dans les affaires disciplinaires relatives à des juges ;

47 and 110), the effect of that suspension is that the members of the Disciplinary Chamber have no competence whatever to entertain any application or to take any decision.

Notwithstanding the plain terms of the Order of the Court of Justice, the members of the Disciplinary Chamber have continued to exercise their purported jurisdiction and to receive and decide applications against individual judges. They have been permitted to do so by the Polish government in blatant disobedience to the clear order of the Court of Justice.

The Disciplinary Chamber has thus entertained applications to waive judicial immunity from proceedings in respect of acts performed by a judge in the exercise of the judge's judicial function and to impose further disciplinary sanctions on the judge concerned such as suspending the judge from office and reducing or removing the judge's salary. The particular cases of Judge Igor Tuleya and Beata Morawiec, have received publicity which has surely come to the attention of the Commission; but the EAJ is aware of many other instances in which the Disciplinary Chamber continues to exercise its activity.

The personal consequences for these individual judges are of course immediate and severe.

But of wider and deeper concern to the judiciary of Poland struggling to maintain their independence, and to the wider European judiciary and citizenry, is the failure of the Commission to take steps to secure compliance by the Polish government with the clear order of the Court of Justice. They naturally look to the Commission as the guardian of the Treaties to react promptly and with vigour when faced with such a flagrant failure by a Member State to obtemper a clear and immediate requirement imposed by the Court of Justice.

Accordingly, Madam President, on behalf of the EAJ and, particularly the Polish judiciary, I ask in the strongest terms that you instruct the relevant departments of the Commission immediately to take all necessary steps to have sanctions and penalties imposed upon the Republic of Poland.

Naturally, if the EAJ can assist in this – or in any other aspect such as the need rapidly to progress proceedings instituted on 29 April 2020 respecting the “muzzle” law² - we will be very willing to do so.

THE EUROPEAN ASSOCIATION OF JUDGES

— *de s'abstenir de transmettre les affaires pendantes devant l'Izba Dyscyplinarna (chambre disciplinaire) du Sąd Najwyższy (Cour suprême) à une formation de jugement qui ne satisfait pas aux exigences d'indépendance définies, notamment, dans l'arrêt du 19 novembre 2019, A. K. e.a. (Indépendance de la chambre disciplinaire de la Cour suprême) (C-585/18, C-624/18 et C-625/18, EU:C:2019:982),*

et — de communiquer à la Commission européenne, au plus tard un mois après la notification de l'ordonnance de la Cour ordonnant les mesures provisoires sollicitées, toutes les mesures qu'elle aura adoptées afin de se conformer pleinement à cette ordonnance.”

² Which entered into force on 14 February 2020 and makes it a disciplinary offence for a judge to question the validity of any judicial appointment or the validity of any constitutional tribunal; and makes any examination of a question of a judge's independence the exclusive province of another unlawful organ namely the Extraordinary Control and Public Affairs Chamber.