



To

Ms. Ursula Von Der Leyen, President of the European Commission

Mr. Charles Michel, President of the European Council

Mr. David Sassoli, President of the European Parliament

Europe, July 20th, 2021

Four European Associations of Judges and Prosecutors took notice with great concern of the recent developments in Poland in reaction to the decisions of the European Court of Justice of 15 July 2021 (Case C-791/19) and also of 14 July 2021 in the pending case C-204/21 (regarding the ‘Muzzle law’).

As known the Court granted on the 14th of July the Commission’s request to order the suspension of the application of national provisions relating to the Disciplinary Chamber and to the Extraordinary Control and Public Affairs Chamber, thereby broadening the scope of the order of 8 April 2020. And by judgement of the 15th of July the disciplinary regime for judges in Poland was found not compatible with EU Law.

The EU is based on the fundamental principle that every national judge within the EU acts as European judge. Furthermore, one of the fundamental prerequisites to be a judge is to abide by the law.

The Polish Constitutional Court in its judgement of 14th July 2021 – soon after the interim measures of the ECJ-order had been made public -found that EU measures regarding the system, principles and procedures of Polish courts are inconsistent with the Polish Constitution.

Firstly, it is not understandable how a national court, namely the Polish Constitutional Court in its judgement of 14th July 2021, can ignore constant jurisprudence of the CJEU (starting with the Portuguese Judges case already ruled in 2018, C-64/16) in which it was clarified that the ECJ has competence to rule on the guarantees of judicial independence, as they fall under EU law.

Secondly, reactions of the Polish Minister of Justice - who has publicly stated that this judgement of the Polish Constitutional Court would defend the Polish constitutional order against “interference, usurpation and legal aggression by organs of the European Union” - lack any consistency with the basic obligations assumed by all Member States when entering the European Union.



Thirdly, the reaction of the claimed First President of the Polish Supreme Court in her public statement of 16th July 2021, bluntly ignores the EU's legal order that is applicable to all EU State Members

Against the background of the judgement of the CJEU of 15th July 2021, by which it was clarified that the Disciplinary Regime - applicable to Polish judges - violates the independence and lacks effective legal protection standards, it is, for us, clearly unacceptable that the claimed First President of the Polish Supreme Court has re-activated the so-called Disciplinary Chamber of the Supreme Court in her public statement of 16th July 2021.

These reactions of the Polish authorities regarding the ECJ rulings violate the most fundamental legal principles underlying the EU legal order and show a process of systemic non-compliance with the ECJ rulings related to judicial independence and the impartiality of judges.

Let us stress that:

- European judges and prosecutors stand in solidarity behind our Polish colleagues who uphold the rule of law and have resisted the political attacks so far, despite the public smear campaigns, the threat of disciplinary procedures and the waivment of their judicial immunity on the back of farfetched criminal charges;
- European judges and prosecutors acknowledge the binding effect of the decisions of the ECJ particularly when protecting our essential values;
- European judges and prosecutors are committed to defend the independence of judiciaries and the rule of law.

Jean Monnet once said that “Europe will be forged in its crises”. This is the crisis of our times. The response we all will give to it – citizens and EU institutions – will determine the future of our Union.

Therefore, adding a positive note on the recent decision of European Commission to set a 7-day deadline for Poland to comply with CJEU's rulings regarding the Disciplinary Chamber, we call upon the European Commission, the European Parliament and the European Council:

- i) to act institutionally towards Polish national authorities and the heads of the Polish executive branch to immediately restore the rule of law;
- ii) to take all necessary measures and activate all instruments enshrined in the Treaties, in order to guarantee the respect for the EU legal order.

Edith Zeller m.p.



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Filipe Marques m.p.

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