



Presse et Information

Court of Justice of the European Union
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Judgment in case C-192/18
Commission v Poland

Polish rules relating to the retirement age of judges and public prosecutors, adopted in July 2017, are contrary to EU law

In today's judgment the Court, upholds the action for failure to fulfil obligations brought by the Commission against the Republic of Poland and held that that Member State had failed to fulfil its obligations under EU law, first, by establishing a different retirement age for men and women who were judges or public prosecutors in Poland and, second, by lowering the retirement age of judges of the ordinary courts while conferring on the Minister for Justice the power to extend the period of active service of those judges.

A Polish law of 12 July 2017 lowered the retirement age of judges of the ordinary courts and public prosecutors, and the age for early retirement of judges of the Sąd Najwyższy (Supreme Court), to 60 years for women and 65 years for men, whereas those ages were previously set at 67 years for both sexes. In addition, that law conferred on the Minister for Justice the power to extend the period of active service of judges of the ordinary courts beyond the new retirement ages thus set, which differ according to sex. Since the Commission took the view that those rules were contrary to EU law,¹ it brought an action for failure to fulfil obligations before the Court of Justice.

Firstly, the Court rules on the differences thus introduced by that law so far as concerns the retirement ages applying respectively to female judges and public prosecutors and to male judges and public prosecutors. In that regard, it points out, first of all, that the retirement pensions to which those judges and public prosecutors are entitled fall within Article 157 TFEU, under which each Member State is to ensure that the principle of equal pay for male and female workers for equal work is applied. The pension schemes at issue also fall within the scope of the provisions of Directive 2006/54 that are devoted to equal treatment in occupational social security schemes. Next, the Court holds that that law introduced directly discriminatory conditions based on sex, in particular as regards the time when the persons concerned may have actual access to the advantages provided for by the pension schemes concerned. Finally, it rejects the Republic of Poland's argument that the differences thus laid down between female judges and public prosecutors and male judges and public prosecutors regarding the age at which they have access to a retirement pension constitute a measure of positive discrimination. Those differences do not offset the disadvantages to which the careers of female public servants are exposed by helping them in their professional life and by providing a remedy for the problems which they may encounter in the course of their career. The Court accordingly concludes that the legislation at issue infringes Article 157 TFEU and Directive 2006/54.

Secondly, the Court examines the measure consisting in conferring upon the Minister for Justice the power to decide whether or not to authorise judges of the ordinary courts to continue to carry out their duties beyond the new retirement age, as lowered. In the light, in particular, of the judgment of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*,² it first of

¹ Article 157 TFEU; Articles 5(a) and 9(1)(f) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23); and the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union.

² Case : [C-619/18](#) *Commission v Poland (Independence of the Supreme Court)*

all adopts a position on the applicability and scope of the second subparagraph of Article 19(1) TEU, which obliges the Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. It states that the ordinary Polish courts may be called upon to rule on questions connected with EU law, and they must therefore meet the requirements inherent in such protection. In order to ensure that they are in a position to offer that protection, maintaining their independence is essential.

In accordance with settled case-law, such independence requires that the court concerned exercise its functions wholly autonomously and in an impartial manner. In that regard, the Court observes that the fact that an organ, such as the Minister for Justice, is entrusted with the power to decide whether or not to grant an extension to the period of judicial activity beyond the normal retirement age is, admittedly, not sufficient in itself to conclude that the principle of independence has been undermined. However, it finds that the substantive conditions and detailed procedural rules governing that decision-making power are, in the case in point, such as to give rise to reasonable doubts as to the imperviousness of the judges concerned to external factors and as to their neutrality. First, the criteria on the basis of which the minister is called upon to adopt his decision are too vague and unverifiable, and that decision does not need to state reasons and cannot be challenged in court proceedings. Second, the length of the period for which the judges are liable to continue to wait for the decision of the minister falls within the latter's discretion.

Furthermore, in accordance with equally established case-law, the necessary imperviousness of judges to all external intervention or pressure requires certain guarantees appropriate for protecting the individuals who have the task of adjudicating in a dispute, such as guarantees against removal from office. The principle of irremovability requires, in particular, that judges may remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. In the case in point, the combination of the measure lowering the normal retirement age of judges of the ordinary courts and of the measure consisting in conferring upon the Minister for Justice the discretion to authorise them to continue to carry out their duties beyond the new retirement age thus set, for 10 years in the case of female judges and 5 years in the case of male judges, fails to comply with the principle of irremovability. That combination of measures is such as to create, in the minds of individuals, reasonable doubts regarding the fact that the new system might actually have been intended to enable the minister to remove, once the newly set normal retirement age was reached, certain groups of judges while retaining other judges in post. Furthermore, as the minister's decision is not subject to any time limit and the judge concerned remains in post until the decision is adopted, any decision of the minister in the negative may be adopted after the person concerned has been retained in post beyond the new retirement age.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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