



4.8.2022

## NOTICE TO MEMBERS

**Subject: Petition No 0165/2019 by J.K. (Polish) on the establishment of a European Parliament special committee of inquiry into the functioning of the Polish public prosecution service**

### 1. Summary of petition

The petitioner calls for a special committee of inquiry to be set up to look into alleged problems with the functioning of the Polish public prosecution service. The petitioner maintains that citizens' rights are being breached in Poland as a result of the unconstitutional changes that have been made to the legal order since the current Polish government came to power in 2015. The issues raised by the petitioner include the merger of the offices of Prosecutor General and Minister of Justice, and the politicisation of law enforcement agencies.

### 2. Admissibility

Declared admissible on 3 June 2019. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 4 August 2022

The Commission considers that there is a clear risk of a serious breach of the rule of law in Poland. For this reason, the Commission adopted, on 20 December 2017, a reasoned proposal in accordance with Article 7(1) TEU. The key consideration for the Commission to activate the Article 7(1) of the Treaty on European Union (TEU) procedure was that the cumulative effect of the different components of the reform limiting the independence of the judiciary and infringing upon the separation of powers in Poland. The common pattern of these reforms is that the executive and legislative powers can now interfere with the entire structure of the justice system.

The Commission has also undertaken other steps to protect the rule of law in Poland. In particular, on 31 March 2021, the Commission decided<sup>1</sup> to refer Poland to the Court of Justice of the European Union (CJEU) regarding the law on the judiciary of 20 December 2019 and the continued activities of the Disciplinary Chamber of the Supreme Court as regards cases concerning judges. On 22 December 2021, the Commission launched an infringement procedure against Poland concerning the Constitutional Tribunal and its case law. This procedure is ongoing<sup>2</sup>.

As regards the prosecution services, the Commission refers to its 2022 Rule of Law Report: Country Chapter on the rule of law situation in Poland<sup>3</sup>, where it concluded that concerns regarding the functioning of the prosecution service in Poland persist. The offices of Minister of Justice and Prosecutor-General continue to be occupied by the same person. In addition, the practice of seconding prosecutors, already considered by Polish courts to be a form of demotion and discrimination, continues to be used by superior prosecutors. Instructions binding on prosecutors reportedly continue to be issued in concrete cases. The instrumentalisation of the prosecution service is further exemplified in cases in which a preliminary ruling request was made and by the opening of a criminal investigation in a case concerning judges of the Court of Justice. Furthermore, the National Prosecutor's Office issued instructions binding on all prosecutors recalling the allegedly non-binding force of judgments of the European Court of Justice and of the European Court of Human Rights (ECHR) as well as requesting prosecutors to report to the National Prosecutor's office and to the Disciplinary Officer cases in which judges question the status of other judges. Prosecution services are also seized in the context of actions undertaken by judges<sup>4</sup>.

In view of the above findings, the Commission recommended to Poland, in the context of the 2022 Rule of Law Report, to separate the function of the Minister of Justice from that of the Prosecutor-General and ensure functional independence of the prosecution service from the Government.

### Conclusion

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.

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<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1524](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524)

<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_7070](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7070)

<sup>3</sup> [https://ec.europa.eu/info/sites/default/files/48\\_1\\_194008\\_coun\\_chap\\_poland\\_en.pdf](https://ec.europa.eu/info/sites/default/files/48_1_194008_coun_chap_poland_en.pdf)

<sup>4</sup> References indicating sources of the information presented can be found in the Country Chapter on the rule of law situation in Poland, pp. 10-11.