



AEAJ



# Joint press release

August 28<sup>th</sup>, 2024

## **Four European organisations of judges are appealing to the European Court of Justice against the first instance order refusing them standing to challenge the Council’s approval of the Polish Recovery and Resilience Plan.**

While the situation in Poland has indubitably improved following the 2023 elections, judges targeted by unlawful sanctions by the previous regime have still not been rehabilitated. The order of the General Court of 4 June 2024<sup>1</sup> raises a question of principle in denying standing to the organisations. Moreover, it is out of step with developments in the jurisprudence of the European Court of Human Rights, which recognises the importance of more extensive standing to representative organisations defending objectives of significant societal relevance in its recent *KlimaSeniorinnen* judgment.<sup>2</sup>

The organisations had at the time<sup>3</sup> announced that they would study the order in detail, and deliberate within their respective boards on the opportunity of an appeal. That analysis and those deliberations have led all of the organisations to decide to appeal against the order of the General Court to the Court of Justice. They request the Court to set aside the order of the General Court, declare their applications admissible and refer the case back to the General Court to rule on the substance.

### Arguments raised in the Appeal

The Appeal challenges the order of the General Court in three regards.

First, the judges’ organisations challenge the reasoning of the General Court according to which Polish judges unlawfully made subject to sanctions, and often suspended, by the “Disciplinary

<sup>1</sup> Joined Cases T-530/22 to T-533/22, *Medel and Others v. Council*, EU:T:2024:363.

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-06/cp240091en.pdf>

<sup>2</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. n° 53600/20, CE:ECHR:2024:0409JUD005360020

<sup>3</sup> <https://medelnet.eu/joint-press-release-of-iaj-eaj-medel-acaj-and-judges-for-judges-on-the-court-order-of-the-general-court-of-4-june-2024/>

Chamber of the Supreme Court” were not directly concerned by the Council’s approval of a so-called “review procedure”. Although such a review procedure would delay the rehabilitation and reinstatement of the judges concerned, which according to the Court of Justice’s case-law should have happened with immediate effect, the General Court wrongly considered that it was merely “of a budgetary conditionality nature”.

Second, the appeal concerns the standing of judges generally – both in Poland and across Europe, who are affected by the failure to re-establish effective judicial protection and thus notably requiring them to fulfil their functions, including adjudicating cases concerning RRF funding, in precarious circumstances.

Third, the appeal challenges the failure of the General Court to recognise that, in the light of the particular circumstances of the case, where the legal system in Poland had become dysfunctional so that no viable remedy via the national judicial system was granted, the judges’ organisations should have been accorded a remedy in the EU courts. This is required in light of the fundamental right to an effective judicial protection (as provided in Article 19(1) TEU and Article 47 of the Charter) as well as the *KlimaSeniorinnen* jurisprudence of the ECtHR, where the ECtHR accorded more extensive standing to representative organisations defending objectives of significant societal relevance.

The appellants emphasise the importance of appropriate procedural tools to protect judicial independence and the rule of law at the level of the European Union.

## Background

On 28 August 2022, the four main European judges’ organisations had filed lawsuits in the EU General Court for annulment of the Council’s approval of the Polish Recovery and Resilience Plan (“RRP”).<sup>4</sup>

The judges’ organisations argue that the judicial milestones contained in the Polish RRP are inadequate safeguards regarding the rule of law and even constitute an unlawful regression below the level required by the established case-law of the Court of Justice.

In particular, they require Poland to institute “review proceedings” in respect of judges affected by decisions of the Disciplinary Chamber, which are inconsistent with the case law of the Court of Justice, by virtue of which the unlawful disciplinary measures imposed by the Disciplinary Chamber are null and void, without a review procedure first having to be run through.

Moreover, the milestones stop short of addressing a number of fundamental deficiencies in effective judicial protection identified in judgments of the Court of Justice, the European Court of Human Rights, pending infringement proceedings initiated by the Commission, as well as other documents of the EU institutions. This directly affects the ability of all judges to properly fulfil the functions which are incumbent on them by virtue of their offices, notably requiring them to work in conditions where trust in justice has not been re-established. It is akin to asking

<sup>4</sup> See previous Press Release: <https://medelnet.eu/four-european-organisations-of-judges-sue-eu-council-for-disregarding-eu-courts-judgements-on-decision-to-unblock-funds-to-poland/>

pilots to resume flying a crashed aeroplane after repairing only one engine and reassuring them that the wings and landing gear will be fixed later.

The cases brought by the four organisations were subsequently joined, made subject to the General Court's expedited procedure and allocated to its Grand Chamber.<sup>5</sup> Hungary, Poland and the European Commission intervened to support the Council.

On 4 June 2024, the General Court, ruling on a plea of inadmissibility raised by the Council of the EU rejected the actions as inadmissible because the organisations supposedly lacked the "direct concern" required by the relevant provision of the Treaty to be accorded standing (Article 263(4) TFEU).

The organisations continue to be represented by a Dublin-based legal team composed of Carsten ZATSCHLER SC, Emily EGAN MCGRATH SC, and Anne BATEMAN and Maeve DELARGY, solicitors, of Phillip Lee LLC, which has now been reinforced by Daniel SARMIENTO RAMÍREZ-ESCUADERO, abogado.

<sup>5</sup> See previous Press Release: <https://medelnet.eu/rule-of-law-lawsuit-against-the-polish-recovery-and-resilience-plan/>