

Brussels, 21/06/2018

Dear Mr Liberadzki, Ms Łybacka and Mr Zemke,

Thank you for your letter of 7 March 2018 to President Juncker and myself in which you inform us about a conference on repressive measures against retired law enforcement and military officers in Poland and the call that its participants asked you to make on the Commission as regards the Polish legislation affecting the pension and retirement rights of former members of uniformed services in Poland.

The Commission is aware of the existence of a number of legislative initiatives in Poland that affect people who were employed by or cooperated with the previous regime, in particular: (i) the law on retirement benefits for officials of the police, the Internal Security Agency, Foreign Intelligence Agency, the Military Counterintelligence Service, Military Intelligence Service, Central Anticorruption Bureau, Border Guard, Government Protection Bureau and State Fire Service, and their families, adopted on 16 December 2016; (ii) the law on the National Revenue Administration (*Krajowa Administracja Skarbowa*), adopted on 16 November 2016; and (iii) the law on retirement benefits of professional soldiers and their families, tabled with the Sejm in December 2016, but not yet adopted.

Under the Treaties on which the European Union is based, the Commission has no general power to intervene with the Member States. It can do so only on matters of EU law. As the Commission has already stated in reply to a parliamentary question,ⁱ on the basis of the information available the legislation in question does not appear to relate to the implementation of EU law. EU non-discrimination legislation establishes a general framework for equal treatment in employment and occupation,ⁱⁱ and prohibits discrimination on certain (exhaustively enumerated) grounds; those grounds do not include political beliefs, nor membership of institutions such as the security organs of the Polish state prior to 1990.

Anyone affected by the above laws who considers that their rights or freedoms, as guaranteed by the European Convention on Human Rights, have been violated may lodge a complaint with the European Court of Human Rights.

As regards the question as to whether the legislation concerned violates basic constitutional principles, this illustrates once again the need for effective constitutional review of legislation in Poland. On several occasions in the past two years, the Commission has expressed concerns about the situation of the Constitutional Tribunal and the effectiveness of constitutional review, and invited the Polish authorities to address the problems identified as a matter of urgency. Most recently, on 20 December 2017, the Commission adopted a reasoned proposal (pursuant to Article 7(1) of the Treaty on European Union (TEU)) inviting the

Mr Bogusław Liberadzki, Vice-President of the European Parliament
Ms Krystyna Łybacka, Member of the European Parliament
Mr Janusz Zemke, Member of the European Parliament
60, rue Wiertz
1047 Brussels

Council to determine that there is a clear risk of a serious breach by Poland of the rule of law, which is one of the values referred to in Article 2 TEU.

Exchanges between the Commission and the Polish authorities have been taking place at all levels since January this year. The dialogue remains ongoing, as there is an urgent need to find solutions. The Commission is waiting to see concrete measures and is closely following developments in the Polish parliament in this regard.

Yours sincerely,



Vera Jourová

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- ⁱ http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2017-003_096&language=EN
ⁱⁱ *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.*