C-555/24 P Medel v Council

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Speaking Points on Behalf of the Appellants

President, Advocate General, Members of the Court,

A – ***Introduction***

1 Judges are reluctant litigators. This is a case which our clients would very much have preferred not to have to bring in front of you. But the European ship of justice is on fire, and national judges – like the ones sitting behind us – are the ones in the engine room, in the first line of defence, taking the heat.

2 Together with Mr Sarmiento, I appear this morning for four well-known organisations representing the European Judiciary, drawing its membership from the national judiciary of all Member States of the European Union, as well as the world at large.

3 The principal reason for the case this morning – the trigger for the action – was the Rule of Law backsliding in Poland, as described in its many painful facets in your Court's case law. Specifically, national judges in Poland – including members of the Appellants – were made subject to disciplinary measures for doing nothing other than their duty as national judges. Notably, as they are required to, for applying the law, and doing so without fear or favour.

4 I do not need to remind you here that national judges form the foundation on which EU law is built, and the success of the European project depends on the independence and impartiality of national judges from national political processes and governments in order, also, to be trustworthy for the other Member States. To justify the mutual trust that is essential for the entirety of the EU construct to function.

5 (It is of course a matter of national competence to organise the court system – and the MS have the largest margin of appraisal as to how to do that.) But the outcome must be an independent and impartial judiciary – the whole construct depends on it.

6 The concrete case arises, briefly stated, because of a dispute regarding how Polish judges who were unlawfully subjected to disciplinary measures by the previous Polish government should be rehabilitated. According to your case-law,[1] seeing notably that the Disciplinary Chamber that purported to impose the disciplinary measures did not constitute an independent and

[1] Judgment of 15 July 2021 in Case C-791/19 P, Commission v Poland; Case C-487/19, W.Z..

impartial tribunal previously established by law, the measures should have been null and void, and rehabilitation of the judges affected should have been automatic.

7 However, instead, the EU institutions – both the Council and the Commission were involved – agreed with Poland to instead institute a "review procedure" (of uncertain outcome) as a condition precedent to any rehabilitation. Thus, put briefly, the Appellants' members seek their rehabilitation unencumbered by such an additional hurdle, whatever form such a review procedure might take.

8 The case today however turns not on the substance, but on admissibility, and notably on the question of whether the Appellants EAJ, Medel, AEAJ and Judges for Judges, and in particular their members affected by disciplinary measures have standing to challenge the milestones as accepted in those terms by the Council.

9 The General Court on 4 June 2024 dismissed the Appellant's case for lack of direct concern. In our submission, the General Court misapplied the notion of "direct concern" as it results notably from the Plaumann judgment of your court.

10 Let me move from the General to the Specific.

B – ***General Approach***

11 In our submission today, both the General Court, as well as the Respondents' approach are rooted in a static and formalistic conception of standing, one that treats the Plaumann criteria as immovable and the Treaties as frozen in time. The Appellants submit that this approach is incompatible with the Union's evolving constitutional framework, the adoption of the Charter of Fundamental Rights, the principle of effective judicial protection, and the dynamic role of associations in upholding the rule of law. The Treaties are living instruments. The Union has undergone profound transformation since Plaumann – politically, legally, and institutionally. Indeed, the very fabric which the (now) European Union is made of has changed since 1963.[2]

12 It is not least because of the Commission's redefining itself from its traditional technocratic role as systematic enforcer of EU law in favour of a more political stance, that a gap has appeared in the enforcement of the Union's foundational values, and the consequent shift of responsibility towards associations such as the Appellants, representing the first line of defence of the rule of law firewall. The Commission's insistence on a narrow reading of standing ignores this reality and risks hollowing out the Union's commitment to its foundational values.

13 As Mr Sarmiento will expand on in a moment, in making our submissions in relation to the Third Plea raised in this appeal, contrary to the spectre conjured up by the Respondents, none of the Appellant's arguments require a *contra legem* interpretation of the Treaties. While the words "*direct and individual concern*" appear in the FEU Treaty, the meaning to be given to those words is entirely a matter of the caselaw of the Court, and open to the interpretation of the Court. Pointing this out is not a request to "*set aside*" the conditions foreseen by the Treaty,

[2] Opinion of AG Emiliou of 12 June 2025 in *Nicoventures Trading Ltd*, C-731/23 P, EU:C:2025:435, para 131.

but an exhortation to the Court to interpret the terms of that Treaty in the light of the changing circumstances already alluded to.[3]

14 It will hopefully be rare that EU Institutions need to be checked by reference to the values enshrined in Articles 2 and 19 TEU. And it will hopefully be rarer still for judges, as members of the third power of the state, to have to come here to sound the alarm. But we live in uncertain times, and prudence dictates that this door should not be closed. Certainly not against the background of the exceptional specific circumstances of this case that I will turn to now. And certainly not in application of a sensible interpretation of the standing requirements that was designed to ensure that economic operators, like importers of clementines would not flood your court with cases concerning economic regulation and customs duties.

C – ***Specific application in the case***

15 We say that the Appellants have standing on a number of grounds, both in their own right as associations, as well as in their capacity as representatives for their members. Let me focus here on the latter situation, as put forward in our **First Plea**. Regarding the **Second Plea**, we would respectfully refer you – for now at least – to our written observations. Mr Sarmiento will address you – as mentioned already – on the wider considerations raised by our **Third Plea**.

16 In order to reach its conclusion, the General Court had to find that the Polish judges subject to unlawful disciplinary measures by the previous Polish government were not "directly affected" by, in particular, Milestones F2G and F3G, which foresaw that these judges were going to have to undergo an uncertain review procedure, rather than being reinstated as of right, as your case law requires.

17 A core error of the General Court is in paragraphs 87 to 89 of the Order, where it erred in its interpretation and application of the "direct link" requirement, as developed in Nord Stream 2, in concluding that milestones F2G and F3G did not alter the legal situation of judges affected by decisions of the Disciplinary Chamber.

For direct concern to arise, substance trumps form

18 The question is whether there was any real doubt that Poland would seek to comply with the "Super Milestones". The possibility for Poland not to give effect to the Milestones is in our submission purely theoretical[4] and their intention to act in conformity with it is not in doubt. [5]

19 That is precisely the test reflected in the case-law which we had relied upon in front of the General Court, and which we are grateful to the Judge Rapporteur to have captured in this first question. It will be unsurprising if we agree that this case-law is entirely transposable. We will

[3] Opinion of AG Emiliou of 12 June 2025 in *Nicoventures Trading Ltd*, C-731/23 P, EU:C:2025:435, para 140.
[4] paragraphs 44 and 52 of the judgment of 5 May 1998, Dreyfus v Commission, C-386/96 P, EU:C:1998:193
[5] judgment of 17 January 1985, Piraiki-Patraiki and Others v Commission, 11/82, EU:C:1985:18,

listen with interest as to how the Respondents put their submissions in this respect and would hope to be able to react in due course, should they disagree.

20 [It is sufficient for the effects on the applicant's position to arise "purely automatically on the basis of the EU rules alone without the application of other intermediate rules".[6] (Maria Montessori, Danish slaughterhouse case)]

21 That is the case here because:

– rehabilitation of the judges affected should have been automatic; the reason it no longer was automatic, was due to the agreement, encapsulated in the milestones, that a review procedure should be introduced, and would be compatible with EU law.

There was also no way that Poland was not going to implement the review procedure:

– the GC at 87 said that the milestone "merely imposed a condition … to … receive funding". BUT Poland clearly is counting on the disbursement of the RRF funding and it is fanciful to suggest that it would forego some € 60 bn – because, let us be clear, that would be the "penalty". the review procedure being a super-milestone, all of the RRF funding hinges on it;

– Poland suggested the milestones itself (in cooperation with the Commission); and

– the milestones in large part are binding by virtue of the judgment of your court in an infringement action against Poland.

22 The GC then says at 88 that the circumstance that the Contested Decision supposedly did not impose "specific obligations", or lay down "conditions" or "a specific rule". This however is, irrelevant. This is because in the case at hand any review procedure – irrespective of its specific features – would have an adverse effect on the legal situation of the Appellants' members. The mere fact that Poland is required by the Contested Decision to introduce a review procedure is therefore sufficient to give rise to standing on the part of the Appellants.

The Law of 9 June 2022 did not make it possible to fulfil milestones F1G to F3G;

23 It is true that the disciplinary chamber was disbanded by the law of 9 June 2022 (as recalled by the Polish government's submission of 25 November 2025). But it was replaced by the "Professional Liability Chamber" which the Commission itself held not to be an independent and impartial courts established by law (see Commission's submission in Order of the Vice-

[6] paragraph 54 of the judgment of 6 November 2018, Scuola Elementare Maria Montessori v Commission, Commission v Scuola Elementare Maria Montessori and Commission v Ferracci, C-622/16 P to C-624/16 P, EU:C:2018:873; paragraph 69 of the judgment of 30 June 2022, Danske Slagtermestre v Commission, C-99/21 P, EU:C:2022:510 + 45.

President of 21 April 2023 in Case C-204/21 R-RAP, *Commission v Poland*, EU:C:2023:334, paras 89-90).

24 Overarching point: even judges who are not affected by decisions of the Disciplinary Chamber are subject to a chilling effect in the exercise of their profession for such time as the situation of their peers affected by those decisions has not been clarified. That chilling effect cannot be switched off by the mere passage of a law.

25 More specifically, your case law was still not being complied with as at the time that this action was initially brought, on 28 August 2022, and still not when the General Court made its ruling.

26 In particular, as at the time when these applications were brought, contrary to C-791/19 continued violations

27 Poland now tells us in its 25 November answer to your question (§4(a)(i)-(iii)) that judgment C-791/19 was completely implemented/complied with. In our situation that seems to be inccorect,

– even on the face of the Polish Answers, §4(d) suggests that the allocation of cases to independent tribunals issue was only fixed as from 8 February 2024 (though based on a 18 June 2019 Regulation); NB here that 8 Feb is still before the 4 June 2024 cut-off set by the Court.

– Violation of Art 19(1) TEU by allowing the content of judicial decisions to be classified as a disciplinary offence (We are not aware of this violation being remedied and the Polish government's submission of 25 November 2025 does not refer to this aspect. *It mentions instead a decree of 15 February 2024 enabling the Minister to appoint a disciplinary officer in cases where another officer is conducting an investigation or disciplinary procedures concerning the content of a court ruling.*)

<u>Shortcomings in the independence and impartiality of the courts require a remedy</u>

28 For these reasons, there was de facto no complete system of remedies at the time the Appellants commenced their proceedings in front of the General Court. Judicial independence and impartiality had been undermined for years on end, illegitimate neo-judges had been appointed meaning that there was a factual impossibility to make references freely; not within a useful timeframe. The Rule of law is often eroded gradually, imperceptibly, but sometime very fast. It is slow to re-establish.

29 Judicial reforms in Poland are still in a state of deep crisis and political deadlock. On 12 November the Polish President refused to nominate 46 judges. Mr Sarmiento will now deal with the consequences of these circumstances and address the Third Plea.

President, Advocate General, Members of the Court,

30 As Mr. Zatchler just announced, I will be addressing the Third Plea of this appeal, focused on the standing of the associations and organisation themselves. In this regard, we will submit that the appellants should have standing through an interpretation of Article 263, paragraph four, together with the fundamental right to an effective legal remedy provided in Article 47 of the Charter.

31 In our view, the Order of the General Court has undertaken a purely formalistic analysis once again, failing to properly address the specific circumstances of the present case. And as you stated in NordStream 2, the "context" of a contested act is essential to determine the direct concern in which a non-privileged applicant brings an action before your courts.

32 Let me start by saying that, in contrast to what the interveners in this appeal argue, by this Plea, the appellants are **NOT** requesting that the Court should introduce an *actio popularis*.

33 Furthermore, the appellants are **NOT** requesting that the Court revert its case law on the standing of associations in actions for annulment.

34 What the appellants are asking from this Court in this Plea is that it interprets Article 263, paragraph 4 TFEU, in a way that is consistent with its previous case-law, but taking into account the context of the contested Decision, in particular the events taking place in a Member State, Poland, which have had, and still have, a significant impact on the proper functioning of its judiciary. The impact is of such extent that it has questioned the ability of Polish judges to rely on their rights to an effective legal remedy in Polish courts.

35 This feature, the ability of individuals to exercise their rights to an effective legal remedy, is at the very heart of your case-law. The last time that you had the opportunity to fundamentally review the case-law on standing requirements of non-privileged applicants, in the case of *Union de Pequeños Agricultores*, you stated that such a change was not needed, because non-privileged applicants can always rely on their right to an effective remedy in the Member States and raise a preliminary reference of validity to your court. However, what happens when such a right has become illusory, ornamental or inoperative? Do the traditional standards of standing still apply?

36 We believe that they do not. And as a result, the standing requirements in the case-law should be attuned to that reality.

* * *

37 To make our argument, let us look at the evolution of the context, in the sense of your judgment in NordStream 2, of this case. As is known, the Commission is of the view that the contested Milestones have been complied, and the funds have started to be disbursed since 2024, but the

reality is that Poland is going through a period of upheaval in the organisation and functioning of its courts.

38 First, the vast majority of the legislative measures that were at the root of your case-law on judicial independence in Poland are still mostly in place. Your case-law is being complied with in some aspects, but remains unimplemented in the majority of them. This is mostly due to the fact that both the previous and the current President of the Republic of Poland systematically veto any legislative measures that appears to undermine the previous illegal framework.

39 Second, and as Mr. Zatschler has just explained, most of the judges who were subject to disciplinary procedures have been reinstated, but others have not, and those who have had to undergo a review procedure before an unlawfully constituted chamber, an approach that is obviously not in line with your case law. The decisions of the previous and illegal Disciplinary Chamber have therefore been granted a degree of legitimacy by having to be revoked through a specific review procedure, instead of recognising them as null and void.

40 Third, close to 3000 illegally appointed judges are still performing their tasks, the so-called neo-judges, including close to 60% of the sitting judges of the Supreme Court. Your court has confirmed that the body that appointed them is in breach of the EU's standards of judicial independence. These judges are still performing judicial functions in Poland.

41 Fourth, the Constitutional Court and several chambers of the Supreme Court are disregarding or quashing decisions aimed at restoring standards of judicial independence in Poland. As a result, a sort of dual legal system has emerged, in which parts of the law remain loyal to the reforms that were declared illegal by your Court, and another part strives to comply with your case-law and international standards of judicial independence.

42 Is this the context in which a judge who, at the time of bringing this action, was disciplined, could exercise at ease its fundamental right to an effective legal remedy?

43 It appears to the appellants that, despite the laudable efforts of the current Polish authorities to reverse the illegal reforms and reinstate normality in the Polish judiciary, the crude reality is that the effective remedy to which your Court referred in *Union de Pequeños Agricultores* is far from being a reality in Poland. And so it was, at the time of bringing this application in 2022.

* * *

44 In the meantime, and *after* the delivery of the challenged Order of the General Court, the European Court of Human Rights delivered in Grand Chamber a seminal decision: the judgment in *KlimaSenniorinen vs. Switzerland*, which has significantly altered the standing rights of Associations, in particular of Associations representative of general interests, as is the case of the fight against climate change. In this ruling, besides making important considerations as to the substance of that case, the Strasbourg court also made a relevant finding extending the protection of Article 6 of the Convention to Associations entrusted with the promotion of

interests that are linked to existential events of significant societal importance, as is the case of the fight against climate change.

45 In our respectful view, we believe that the protection of judicial independence and, consequently, of the rule of law, is an existential matter for the Member States as liberal democracies, and also of the Union as a Union based on the values of liberal democracy. When an orchestrated and effective effort is invested in dismantling the very core of the rule of law (none other than the existence of independent judges that scrutinise and ensure compliance with the law), we face an existential event of significant societal importance that could lead to the breakdown of the liberal democratic order as we know it today. And this risk is not merely theoretical, as unfortunately we are all very much aware.

46 This is reinforced by the fact that regressions of the rule of law run the risk of becoming irreversible. In the same way that ethnocentric emissions, once they reach a certain level, can spiral into an irreversible process of climatic calamity, the same logic applies to willing initiatives to dismantle the checks and balances that keep a functioning liberal democracy fully operational. The proof is that, despite the current Polish government's efforts to introduce reforms to restore normality in the Polish judiciary, these efforts are far from being accomplished. And there is no certainty that such an outcome will be attained in the short or even medium term. Rule of law regressions can be reversible, but the more aggressive they are, and the longer they have been allowed to progress and metastasise, the higher the risk of irreversibility becomes.

47 Therefore, it is respectfully submitted that the interpretation of Article 47 of the Charter takes into account the ruling of the European Court of Human Rights in *KlimaSenniorinen*, on its findings on standing of associations, which focus on equivalent societal challenges as the ones being discussed here today.

* * *

48 We want to conclude with a reference to the consequences that the Council's approach in enacting the contested implementing decision has had more broadly on judicial independence and in the aims that the appellants pursue as associations and organisations of judges.

49 The Council will tell us now that the Milestones are non-binding or irrelevant. At most, they are the starting point for a conversation that will lead to verification and, ultimately, to a negotiation with the Polish authorities to eventually disburse the funds in the course of an ongoing negotiation. But it is precisely this logic that is perverse and intoxicates the very premise on which the rule of law is based.

50 What the Council is actually telling this Court is that the appellants have no standing because these milestones have no direct consequences on their situation as bodies entrusted with the protection of the status of judges in the Member States. But let me quickly summarise how such effects have an immediate reflection in their right to an effective remedy and the aims that these organisations pursue.

51 We are living through convoluted times, in which the rules-based international system appears to start mutating into a different order based on the art of the deal. Everything is on the table, from defence and security, our digital sovereignty, the protection of the environment…. The strong and the mighty have the upper hand now, and consequently, everything is on the table.

52 And how about the values on which liberal democracies are based? Are the values of Article 2 TEU, including the rule of law, also on the table? And if they are, and if the rule of law and judicial independence have now turned into bargaining chips to be exchanged in the broader framework of the deal… what is the place of judges in all of this?

53 I'm afraid that the answer is not very reassuring. But if the rule of law is on the table, that means that independent judges are on the menu.

54 What message is the Council sending when it tells a Member State that it can have access to EU funds only if it complies with ***some*** standards of judicial independence? And what is more worrying: what was the content of the conversations between the Commission and the Polish authorities prior to the proposal of the contested Milestones to the Council? Did they negotiate over auditing rules, digitalisation, or the green transition? Probably not. It is easy to imagine that the subject of those negotiations involved the degree of compliance that the Polish government of the time was willing to accept. *The art of the deal.*

55 The subsequent events only confirm these concerns. When the Commission decided to approve access to the funds in 2024, it was a decision based on the premise that the milestones had been achieved. But we know that it is not entirely true. Most of the illegal legislative reforms are still in place. Even the Professional Liability Chamber, which is the panel with jurisdiction to review the disciplinary measures imposed on judges, has been deemed to be in breach of your case law by the European Commission, as Mr Zatschler mentioned before. That never stopped the Commission from greenlighting the milestones, disbursing the funds, and even withdrawing the Article 7 proceedings launched during the period when the illegal reforms were enacted.

56 So, when the Council uses judicial independence as a bargaining chip in the context of a broader negotiation, the message to the judiciary is that their independence is part of the deal. The Associations and Organisations that represent and defend independent judges are sidelined, as they were when the Milestones were negotiated. And once we go down that road, we can imagine how badly it will end.

57 And I conclude: members of the Court, the values of Article 2 TEU are not a menu *à la carte*. The Member States cannot pick and choose which part of the rule of law they are willing to comply. And neither should the EU institutions, including the Council, be the arbiter of which parts of the rule of law apply to one Member State and which parts apply to another, by rewarding them selectively with access to EU funds.

58 It is in these circumstances that the Associations and Organisations that represent the judges, those who are the subject matter of the milestones, of the *deal*, need to be able to bring an action in court. In a *genuinely* independent court, as is your court and the General Court. And to do so

sooner, rather than later. Because if done late, it may actually be *too* late to stop the fire and save the ship from sinking.

Thank you