

Rule of Law: European Commission refers Poland to the European Court of Justice to protect the independence of the Polish Supreme Court

Today, the European Commission decided to refer Poland to the Court of Justice of the EU due to the violations of the principle of judicial independence created by the new Polish Law on the Supreme Court, and to ask the Court of Justice to order interim measures until it has issued a judgment on the case

The new Polish law on the Supreme Court lowers the retirement age of Supreme Court judges from 70 to 65, putting 27 out of 72 sitting Supreme Court judges at risk of being forced to retire. This measure also applies to the First President of the Supreme Court, whose 6-year mandate, set out in the Polish Constitution, would be prematurely terminated.

According to the law, which entered into force on 3 April 2018, judges affected by the lowered retirement age are given the possibility to request a prolongation of their mandate, which can be granted by the President of the Republic for a period of three years, and renewed once. There are no clear criteria established for the President's decision and no judicial review is available if he rejects the request. Moreover, the only safeguard proposed by the Polish authorities is a non-binding consultation of the National Council for the Judiciary, a body which is now composed in violation of European standards on judicial independence.

The European Commission maintains that the **Polish law on the Supreme Court is incompatible with EU law as it undermines the principle of judicial independence, including the irremovability of judges**, and thereby Poland fails to fulfil its obligations under Article 19(1) of the Treaty on European Union read in connection with Article 47 of the Charter of Fundamental Rights of the European Union.

The Commission sent a [Letter of Formal Notice to the Polish authorities on 2 July 2018](#) concerning the Law on the Supreme Court, and followed this with a [Reasoned Opinion on 14 August 2018](#). **The response of the Polish authorities on both occasions has failed to alleviate the Commission's legal concerns.**

The implementation of the contested retirement regime for Supreme Court judges in Poland is being accelerated and is creating a **risk of serious and irreparable damage** to judicial independence in Poland, and therefore of the EU legal order. The independence of national courts and tribunals is essential for the functioning of judicial cooperation between EU Member States, and particularly for the preliminary ruling mechanism under Article 267 TFEU.

The Commission has therefore moved to the next stage of the infringement procedure, **deciding to refer the case to the Court of Justice** of the EU. With its referral, **the Commission has also decided to ask the Court of Justice to order interim measures, restoring Poland's Supreme Court to its situation before 3 April 2018**, when the contested new laws were adopted. Finally, **the Commission has decided to request an expedited procedure** at the Court of Justice, to obtain a final judgment as soon as possible.

Background

The rule of law is one of the common values upon which the European Union is founded. It is enshrined in Article 2 of the Treaty on European Union. The European Commission, together with the European Parliament and the Council, is responsible under the Treaties for guaranteeing the respect of the rule of law as a fundamental value of our Union and making sure that EU law, values and principles are respected.

Events in Poland led the European Commission to open a dialogue with the Polish Government in January 2016 under the Rule of Law Framework. The process is based on a continuous dialogue between the Commission and the Member State concerned. The Commission keeps the European Parliament and Council regularly informed.

On [29 July 2017](#) the Commission launched an infringement procedure on the Polish Law on Ordinary Courts, also on the grounds of its retirement provisions and their impact on the independence of the judiciary. The Commission referred this case to the Court of Justice on 20 December 2017. The case is pending before the Court.

On [20 December 2017](#), due to a lack of progress through the Rule of Law Framework, the Commission activated the Article 7(1) procedure for the first time, and submitted a Reasoned Proposal for a Decision of the Council on the determination of a clear risk of a serious breach of the rule of law by Poland. Article 7(1) of the Treaty on European Union provides for the Council, acting by a majority of four fifths of its members, to determine that there is a clear risk of a serious breach by a Member State of the common values referred to in Article 2 of the Treaty.

At the General Affairs Council hearing on the rule of law in Poland on 26 June 2018, in the context of the Article 7(1) procedure, no indication was given by the Polish authorities of forthcoming measures to address the Commission's outstanding concerns. Given this fact, and the lack of progress on this issue in the Rule of Law dialogue with Poland, the Commission issued a Letter of Formal Notice to Poland on [2 July 2018](#), clearly setting out the Commission's legal concerns. The Polish authorities replied to the Letter of Formal Notice on 2 August 2018, rejecting the Commission's concerns. The Commission subsequently sent a Reasoned Opinion to the Polish authorities on the matter on [14 August 2018](#), and received a response on 14 September 2018, which again failed to alleviate the Commission's legal concerns.

On 18 September 2018, a second hearing on the rule of law in Poland was organised in the General Affairs Council in the context of the Article 7(1)

procedure. The Polish authorities again stood by their position and refused to propose any measures to address the concerns of the Commission and other Member States.

This infringement procedure does not stop the ongoing rule of law dialogue with Poland, which is still the Commission's preferred channel for resolving the systemic threat to the rule of law in Poland.

For more information

On the general infringements procedure, see [MEMO/12/12](#)

[Press release on the Reasoned Opinion concerning the law on the Supreme Court](#)

[Press release on the Letter of Formal Notice concerning the law on the Supreme Court](#)

[Press release on the Reasoned Proposal, the Fourth Rule of Law Recommendation, and the infringement procedure concerning the law on the Ordinary Courts Organisation](#)