

Rule of Law: European Commission takes new step to protect judges in Poland against political control

Today, the European Commission decided to take the next step in an ongoing infringement procedure against Poland, by sending a reasoned opinion regarding the new disciplinary regime for Polish judges.

On [3 April 2019](#), the Commission launched this infringement procedure on the grounds that the new disciplinary regime undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control, as required by the Court of Justice of the EU.

Specifically, the Polish law allows ordinary court judges to be subjected to disciplinary investigations, procedures and sanctions on the basis of the content of their judicial decisions, including the exercise of their right under Article 267 of the Treaty on the Functioning of the European Union (TFEU) to request preliminary rulings from the European Court of Justice. Moreover, the new disciplinary regime does not guarantee the independence and impartiality of the Disciplinary Chamber of the Supreme Court, which is composed solely of judges selected by the National Council for the Judiciary, which is itself appointed by the Polish Parliament (Sejm). Furthermore, the new disciplinary regime does not ensure that a court 'established by law' will decide in the first instance on disciplinary proceedings against ordinary court judges. Instead, it empowers the President of the Disciplinary Chamber to determine, on an *ad-hoc* basis and with an almost unfettered discretion, the disciplinary court of first instance to hear a given case. The new regime no longer guarantees that cases are processed within a reasonable timeframe, allowing judges to be permanently under the threat of pending cases, and it also affects judges' right of defence.

Poland had 2 months to respond to the arguments put forward by the Commission in its letter of formal notice. Following a thorough analysis of the response from the Polish authorities, the Commission concluded that the response does not alleviate the legal concerns. The Commission has, therefore, decided to move to the next stage of the infringement procedure.

The Polish authorities now have 2 months to take the necessary measures to comply with this reasoned opinion. If Poland does not take appropriate measures, the Commission may decide to refer the case to the Court of Justice of the EU.

Background

The rule of law is one of the common values upon which the European Union is founded and common to all Member States. It is enshrined as such in Article 2 of the Treaty on European Union. The rule of law is essential for the functioning of the EU as a whole, for example with regard to the internal

market, cooperation in the area of Justice and Home Affairs, and ensuring that national judges, who are also EU judges, can fulfil their role in ensuring the application of EU law and can properly interact with the Court of Justice of the EU in the context of preliminary ruling procedures. The Commission's Communications of [3 April](#) and [17 July 2019](#) on the rule of law explain the existing toolbox for enforcing the rule of law and the Commission's actions and proposals to further strengthen that toolbox.

The European Commission, together with other Union institutions and the Member States, is responsible under the Treaties for guaranteeing 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 and then activate the Article 7(1) TEU procedure on [20 December 2017](#). 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.

In addition, on [2 July 2018](#), the Commission launched an infringement procedure on the Polish law on the Supreme Court, on the grounds of its retirement provisions and their impact on the independence of the Supreme Court. On [24 September 2018](#), the Commission decided to refer the case to the Court of Justice of the EU, which delivered its final judgement on [24 June 2019](#). The Court has found that lowering the retirement age of judges of the Supreme Court is contrary to EU law and breaches the principle of the irremovability of judges and thus that of judicial independence.

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

For More Information

[Press Release](#) – Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control