



Rule of Law: European Commission launches infringement procedure to safeguard the independence of judges in Poland

Brussels, 29 April 2020

Today, the European Commission launched an infringement procedure by sending a Letter of Formal Notice to Poland regarding the new law on the judiciary of 20 December 2019, which entered into force on 14 February 2020.

The new law on the judiciary undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. Moreover, the new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. After carrying out an analysis of the legislation concerned, the Commission concluded that several elements of the new law violate EU law:

First, the Commission notes that the new law broadens the notion of disciplinary offence and thereby increases the number of cases in which **the content of judicial decisions can be qualified as a disciplinary offence**. As a result, the disciplinary regime can be used as a system of political control of the content of judicial decisions. The new law violates 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, which establish a right to an effective remedy before an independent and impartial court. It is incompatible with the requirements of judicial independence as established by the EU Court of Justice.

Second, the Commission notes that the new law grants the new Chamber of Extraordinary Control and Public Affairs of the Supreme Court the sole competence to rule on issues regarding judicial independence. This **prevents Polish courts from fulfilling their obligation to apply EU law or request preliminary rulings** from the EU Court of Justice. The new law is incompatible with the principle of primacy of EU law, the functioning of the preliminary ruling mechanism as well as with requirements of judicial independence.

Third, the Commission notes that the law **prevents Polish courts from assessing, in the context of cases pending before them, the power to adjudicate cases by other judges**. This impairs the effective application of EU law and is incompatible with the principle of primacy of EU law, the functioning of the preliminary ruling mechanism and requirements of judicial independence.

Finally, the Commission notes that the new law introduces provisions **requiring judges to disclose specific information about their non-professional activities**. This is incompatible with the right to respect for private life and the right to the protection of personal data as guaranteed by the Charter of Fundamental Rights of the EU and the General Data Protection Regulation.

Next step

The Polish Government has two months from this date to reply to the Letter of Formal Notice.

Background

The rule of law is one of the fundamental principles and values upon which the European Union is founded. It is enshrined as such in Article 2 of the Treaty on European Union. The Rule of Law is also essential for the functioning of the EU as a whole for example for the internal market and cooperation in the area of justice, freedom and security, which is based on mutual cooperation and recognition. It also ensures 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 in the context of preliminary ruling procedures. The Commission, together with other 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 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.

Due to lack of progress through the Rule of Law Framework, on [20 December 2017](#), the Commission triggered the Article 7(1) procedure for the first time, by submitting 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. There were already several debates and three hearings on the Rule of Law in Poland in the General Affairs Council.

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 referred this case to the Court of Justice of the EU on [20 December 2017](#). On 5 November 2019, the Court of Justice issued a final judgement in the case, confirming in full the position of the Commission.

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 referred the case to the Court of Justice of the EU. On 17 December 2018, the Court of Justice issued a final order imposing interim measures to stop the implementation of the Polish law on the Supreme Court. On 24 June 2019, the Court of Justice issued a final judgement in the case, confirming in full the position of the Commission.

On [3 April 2019](#), the Commission launched an infringement procedure on the grounds that the 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. On [10 October 2019](#), the Commission referred this case to the Court of Justice of the EU. On [14 January 2020](#), the Commission decided to ask the Court of Justice to impose interim measures on Poland, ordering it to suspend the functioning of the Disciplinary Chamber of the Supreme Court. On 8 April 2020, the Court of Justice ruled that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges, confirming in full the position of the Commission. This order applies until the Court will have rendered its final judgment in the infringement procedure.

A new law of 20 December 2019 amending a series of legislative acts governing the functioning of the justice system in Poland, entered into force on 14 February 2020. Today, the Commission sent a Letter of Formal Notice to Poland regarding this new law on the judiciary.

For more information

[Infringements database](#)

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