

Independence of the judiciary: European Commission takes second step in infringement procedure against Poland

The Commission has carried out a thorough analysis of the response of the Polish authorities to the [Letter of Formal Notice sent in July 2017](#) concerning the Law on the Ordinary Courts Organisation.

The European Commission maintains its position that the Polish Law is incompatible with EU law because by introducing a different retirement age for female judges (60 years) and male judges (65 years), it discriminates against individuals on the basis of gender. This is contrary to Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Directive 2006/54 on gender equality in employment.

The Commission also raises legal concerns that by giving the Minister of Justice the discretionary power to prolong the mandate of judges who have reached retirement age, as well as to dismiss and appoint Court Presidents, the independence of Polish courts will be undermined, contrary to Article 19(1) of the Treaty on European Union (TEU) read in connection with Article 47 of the EU Charter of Fundamental Rights. The new rules allow the Minister of Justice to exert influence on individual judges through, in particular, the vague criteria for the prolongation of their mandates and the lack of a time-frame to take a decision on the prolongation, thereby undermining the principle of irremovability of judges. Also the discretionary power to dismiss and appoint Court Presidents allows the Minister of Justice to exert influence over these judges when they are adjudicating cases involving the application of EU law.

The Commission has therefore moved to the next stage of the infringement procedure. The Polish authorities now have one month to take the necessary measures to comply with this Reasoned Opinion. If the Polish authorities do not take appropriate measures, the Commission may decide to refer the case to the Court of Justice of the EU.

Background

The College of Commissioners decided on 26 July 2017 to launch this infringement procedure as soon as the Law on the Ordinary Courts Composition entered into force – it had already been adopted by the Polish Parliament and was awaiting publication in the Polish Official Journal. The European Commission subsequently issued its Letter of Formal Notice, after the entry into force of the Law on 28 July, clearly setting out the Commission's legal concerns. The Polish authorities replied to the Letter of Formal Notice on 31 August 2017.

This infringement does not affect the ongoing rule of law dialogue with Poland, launched by the Commission in January 2016. The Commission issued a complementary (third) Rule of Law Recommendation on 26 July 2017, which also concerned this law, among other issues. First Vice-President Timmermans, on behalf of the Commission, will update the General Affairs Council on 25 September on the current state of play with the rule of law dialogue. 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.

For more information

[Press release on Letter of Formal Notice](#)

[Press release on Third Rule of Law Recommendation](#)

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