

Rule of Law: European Commission takes next step in infringement procedure to protect the independence of the Polish Supreme Court

The new Polish law on the Supreme Court lowers the retirement age of Supreme Court judges from 70 to 65, which puts 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, current judges affected by the lowered retirement age are given the possibility to request a prolongation of their mandate by the President of the Republic, which can be granted for a period of three years, and renewed once. There are no criteria established for the President's decision and no judicial review is available if the request is rejected. The Commission believes that the introduction of a consultation of the National Council for the Judiciary (NCJ) does not constitute an effective safeguard, as claimed by the Polish authorities. The NCJ's opinion is not binding and is based on vague criteria. Moreover, following the reform of 8 December 2017, the NCJ is now composed of judges-members appointed by the Polish Parliament, in violation of European standards on judicial independence.

The Commission has carried out a thorough analysis of the response of the Polish authorities to the [Letter of Formal Notice sent by the Commission on 2 July 2018](#) concerning the Law on the Supreme Court. **The response of the Polish authorities does not alleviate the Commission's legal concerns.**

The European Commission maintains its position 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 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 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 invoked 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 College of Commissioners decided on 27 June 2018 to empower First Vice-President Frans **Timmermans** in agreement with President **Juncker** to launch this infringement procedure. The Commission decided on 2 July 2018 to issue a Letter of Formal Notice, clearly setting out the Commission's legal concerns. The Polish authorities replied to the Letter of Formal Notice on 2 August 2018.

This infringement 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 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](#)