

Commission Advances Infringement Procedure Against New Disciplinary Regime for Polish Judges



News

Thomas Wahl

On 17 July 2019, the [Commission took the next step in the infringement procedure against Poland](#), eyeing the Polish law that introduced a new disciplinary regime for ordinary court judges. The Commission has now sent a reasoned opinion to Poland after dissatisfaction with the Polish government's response to a letter of formal notice launched in April 2019.

The Commission is concerned that Poland has introduced the possibility to initiate disciplinary investigations and sanctions against ordinary court judges on the basis of the content of their judicial decisions, including exercise of their right under Art. 267 TFEU to request preliminary rulings from the CJEU. Other critical arguments put forward by the Commission are:

- Due to its composition and selection process, the new Disciplinary Chamber of the Polish Supreme Court is not independent and impartial as required by EU law and CJEU case law;
- The President of Poland's Disciplinary Chamber has such excessive discretionary powers that it is not ensured that a court "established by law" will decide on disciplinary proceedings against ordinary court judges in the first instance;
- It is not guaranteed that disciplinary proceedings against judges are processed within a reasonable timeframe, which undermines the judges' defence rights.

Poland now has two months to react to the arguments of the Commission. If, afterwards, the Commission still considers Poland not to have remedied the complaints, it can bring an action before the CJEU for Poland's failure to fulfil the obligations under EU law.

The question of independence of the Disciplinary Chamber of the Supreme Court is also the subject of a reference for a preliminary ruling ([Joined Cases C-585/18, C-624/18 and C-625/18](#)). On 27 June 2019, the Advocate General recommended that the CJEU find incompatibility with EU law in this case, since the Disciplinary Chamber is not sufficiently independent.

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