

Commission Continues to Struggle with Poland on Rule-of-Law Compliance



News

Thomas Wahl

The controversy between the European Commission and Poland entered into another round in summer 2018. On 2 July 2018, the Commission decided to [launch an infringement procedure against Poland](#) regarding the Polish law on the Supreme Court.

The Commission is of the opinion that Poland's recent reforms – reducing the retirement age of Supreme Court judges and prematurely terminating the current mandate of the First President of the Supreme Court – undermine the principle of judicial independence, including the irremovability of judges. Therefore, Poland has failed to fulfil its obligations under Art. 19(1) TEU and Art. 47 of the CFR.

The Commission decided to take this step since the dialogue with Poland as part of the “Art. 7 procedure” ended in a political deadlock in June 2018. For the first time ever, the Commission provoked the “Art. 7(1) procedure” in December 2017. The procedure refers to Art. 7 TEU, which gives the Council – acting by a four-fifths majority of its members – the possibility to determine that there is a clear risk of a serious breach of the common values referred to in Art. 2 TEU by an EU Member State. The procedure may end in the suspension of rights of the accused country, including voting rights, if the breach is not eliminated.

The Commission stressed that the above-mentioned infringement proceeding does not stop the rule of law dialogue with the Polish government. The infringements proceeding started with a “Letter of Formal Notice” on 2 July 2018 setting out the Commission's legal concerns as to the Polish law on the Supreme Court. Since Poland's answer to this letter did not alleviate the concerns, the Commission send a [Reasoned Opinion to Poland on 14 August 2018](#). Poland had one month to adequately react to the Commission's legal concerns, but failed to do so.

As a result, on 24 September 2018, the Commission [referred the matter to the Court of Justice](#). It also asked the Court to order interim measures until it issues a judgment on the case and to treat the case under an expedited procedure.

The infringement procedure is the second one against Poland for potential violations of the EU value of the rule of law. On 20 December 2017, the Commission brought an infringement procedure before the CJEU regarding the Polish Law on Ordinary Courts. In this context, the Commission similarly argued that the retirement provisions and their impact on the independence of the judiciary do not comply with EU standards. This procedure is currently pending with the CJEU.

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