

Commission Launches Another Infringement Procedure Against Poland



News

Thomas Wahl

The Commission has targeted another aspect of judicial reform in Poland. On 3 April 2019, the Commission launched a new infringement procedure against Poland. It addresses the recently introduced disciplinary regime for judges.

The Commission believes that the disciplinary regime is contrary to the obligations arising from Art. 19(1) TEU in conjunction with Art. 47 CFR, which enshrine the right to an effective remedy before an independent and impartial court.

First, the new rules can subject ordinary court judges to disciplinary investigations, procedures, and, ultimately, to sanctions on account of the content of their judicial decisions. Second, the newly created Disciplinary Chamber, which has been empowered to review decisions in disciplinary proceedings against judges, is not a court “established by law.” Regarding the disciplinary proceedings, the Commission criticises the undue restriction of judges’ procedural rights and the rights of the defence.

A second line of argumentation by the Commission involves non-compliance with Art. 267 TFEU – the right of courts to request preliminary rulings from the CJEU. According to the new disciplinary regime, judges may even face disciplinary proceedings for their decisions to refer questions to the European court.

Poland now has two months to react to the letter of formal notice in which the Commission opened the new infringement procedure.

This is the third infringement procedure against Poland. On [29 July 2017](#), the Commission launched an infringement procedure against the Polish Law on Ordinary Courts, on the grounds of its retirement provisions and their impact on the independence of the judiciary. The case was referred to the CJEU on [20 December 2017](#) (Case C-192/18).

On [2 July 2018](#), the Commission launched an infringement procedure against the Polish Law on the Supreme Court, on the grounds of its retirement provisions and their impact on the independence of the Supreme Court. The case was referred to the CJEU on [24 September 2018](#) (Case C-619/18). The CJEU granted the Commission’s application on interim measures by order of 17 December 2018 (see eucriM 4/2018, p. 191).

In addition to the infringement procedures, the above-mentioned Article 7 procedure is still ongoing. It allows the Council to determine the clear risk of a serious breach of the rule of law by Poland. The procedure may end with the Council triggering a sanctioning mechanism: certain rights deriving from application of the EU

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ISSN: 1862-6947

<https://eucriM.eu>



treaties to the EU country in question may be suspended, including the voting rights of that country in the Council.

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The project is co-financed by the Union Anti-Fraud Programme (UAFB), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by
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