

Commission Refers New Disciplinary Regime for Polish Judges to CJEU

News

Thomas Wahl

After Poland failed to address the Commission's concerns about the new disciplinary regime for Polish judges, set out in the reasoned Opinion of the Commission of 17 July 2019 (see [eucrim 2/2019](#), pp. 81-82), the Commission referred the case to the European Court of Justice on 10 October 2019. The Commission is mainly critical of the following issues:

- The possibility to initiate disciplinary investigations and sanctions against ordinary court judges is based on the content of their judicial decisions, including exercise of their right under Art. 267 TFEU to request preliminary rulings from the CJEU;
- The new Disciplinary Chamber of the Polish Supreme Court does not guarantee independence and impartiality in the composition and selection process, as required by EU law and CJEU case law;
- The President of the Disciplinary Chamber has almost unfettered discretion to determine the disciplinary court of first instance, so that the principle that a court is "established by law" is not respected;
- There are no guarantees that disciplinary proceedings against judges are processed within a reasonable timeframe;
- The judges' defence rights are undermined.

The case is registered at the CJEU as [C-791/19](#). The Commission applied for an expedited procedure, which is also in line with its new concept to strengthen the rule of law, as presented in the Commission Communication of 17 July 2019 (see [eucrim 2/2019](#), p. 79).

The new disciplinary regime against Polish judges of ordinary courts is also subject to a reference for preliminary ruling ([Joined Cases C-558/18 and C-563/18](#)). On 24 September 2019, AG *Tanchev* proposed declaring these references inadmissible; they were brought to the CJEU by two Polish district courts. Other reforms of the Polish judicial system that were introduced by Poland two years ago and that seek to increase political influence in the justice sector will keep the CJEU busy, since they are subject to other infringement proceedings and references for preliminary rulings. In total, Polish courts have made references for preliminary rulings in about 14 cases. On 19 November 2019, the Grand Chamber of the CJEU already indicated that the new Disciplinary Chamber of the Supreme Court, which is responsible for deciding complaints by Supreme Court judges, may infringe the guarantees of independence and impartiality. On 24 June 2019, the CJEU ruled that the Polish reform lowering the retirement age of Supreme Court judges is contrary to EU law (Case C-619/18, see [eucrim 2/2019](#), p. 80). On 5 November 2019, the CJEU declared that the new retirement scheme for Polish judges and public prosecutors at the ordinary court level is not in line with EU law.

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Published in
2019, Vol. 14(3) [eucrim](#) pp 157
– 158

ISSN: 1862-6947
<https://eucrim.eu>



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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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