

CJEU: Polish Supreme Court Reform Infringes EU Law

Thomas Wahl



News

On 24 June 2019, the CJEU ruled that the Polish reform lowering the retirement age of the Supreme Court judges is contrary to EU law ([Case C-619/18](#)).

The CJEU reviewed the Polish reform law in light of Art. 19(1) subpara. 2 TEU, which obliges Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. This entails that judges be free from all external intervention or pressure and therefore requires certain guarantees appropriate for protecting those entrusted with the task of adjudicating in a dispute, including the guarantee against removal from office. The principle of irremovability of judges is essential for judicial independence, as required by Union law.

The CJEU rejected the argument brought forth by the Polish government that the reform is intended to standardise the judges' retirement age with the general retirement age applicable to all workers in Poland. The Court points to the explanatory memorandum of the draft law, which casts doubt as to the real aims of said reform. As a result, lowering the retirement age from 67 to 65 for the Supreme Court judges in post was not justified by a legitimate objective and thus undermined the principle of irremovability of judges.

Furthermore, the CJEU held that the conditions and procedures for a potential extension beyond the normal retirement age impair the independence of judges, because the President of the Polish Republic is given unlimited discretion that is not governed by any objective and verifiable criterion.

It is the first final judgment of the CJEU regarding allegations by the EU institutions vis-à-vis EU Member States for not upholding the rule of law. The CJEU's judgment of 24 June 2019 includes fundamental explanations on the Union's principles of the irremovability of judges and of judicial independence. It therefore also serves as a point of reference for discussions on the future strengthening of the EU's rule-of-law monitoring mechanism. This is also one of the priorities of the Finnish Council Presidency in the second half of 2019. The CJEU's decision also influenced the Commission's communication of 17 July 2019 in which it presented a new concept for strengthening the rule of law in the EU. In a [statement of 24 June 2019](#), the Commission highlighted the importance of the judgment.

In the case at issue, the CJEU, by decision of 17 December 2018, already granted interim measures that, *inter alia*, obliged Poland to suspend application of the legislation. A provisional order was issued by the Vice-President of the CJEU on 19 October 2018 in this case. For these decisions, see [eucrim 4/2019](#), p. 191 and [3/2018](#), p. 144. For the opinion of the Advocate General in the present case C-619/18, see [eucrim 1/2019](#), p. 4.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://eucrim.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

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



**Co-funded by
the European Union**