

CJEU Rules on Independence of Poland's Disciplinary Chamber of the Supreme Court

News

Thomas Wahl

In its judgment of 19 November 2019, the Grand Chamber of the CJEU established criteria under which the new Disciplinary Chamber of the Polish Supreme Court can be considered independent and impartial. The judgment is based on a reference for a preliminary ruling brought by the Labour and Social Insurance Chamber of the Polish Supreme Court ([Joined Cases C-585/18, C-624/18, and C-625/18](#)).

In the cases at issue, Supreme Court judges protested against their early retirement, following the new Polish legislation lowering the retirement age of Supreme Court judges (see also case C-619/18 and the CJEU's judgment of 24 June 2019 in this case in [eucrim 2/2019, p. 80](#)). A new Disciplinary Chamber at the Supreme Court was established to hear such actions by a new 2017 law. The referring court, before which such actions were heard prior to the reform, calls into question whether the Disciplinary Chamber offers sufficient guarantees of independence under Union law and whether it can eventually disapply national legislation that transferred competence to the Disciplinary Chamber (for details about the case and the opinion of AG *Tanchev*, see [eucrim 2/2019, p. 81](#)).

The judges in Luxembourg first had to deal with several objections against the admissibility of the reference and rejected the arguments put forward by the Polish Public Prosecutor General, *inter alia*, as follows:

- Arg.: Laying down rules on the jurisdiction of national courts and national councils falls within the exclusive competence of Member States. ↔ As the CJEU has previously held, although the organisation of justice in the Member States falls within their competence, they are required to comply with their obligations deriving from EU law when exercising that competence.
- Arg.: The provisions of national law at issue do not implement EU law or fall within its scope and therefore cannot be assessed under that law (especially Art. 19 para. 1 subpara. 2 TEU and Art. 47 of the Charter). ↔ The applicants in the main proceedings are relying on the prohibition against discrimination in employment provided for by Directive 2000/78; thus, a situation is given in which the Member State “implements EU law” in the sense of Art. 51(1) of the Charter. In addition, Art. 19 TEU does not require that Member States be implementing EU law.
- Arg.: The CJEU is not allowed to interpret the Charter because it has to respect Protocol No. 30 on application of the Charter of Fundamental Rights of the European Union to the Republic of Poland and to the United Kingdom. ↔ The protocol does not concern the second subparagraph of Art.19(1) TEU, and it neither calls into question the applicability of the Charter in Poland, nor is it intended to exempt the Republic of Poland from its obligation to comply with the provisions of the Charter.

AUTHOR

Thomas Wahl

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

ISSN: 1862-6947

<https://eucrim.eu>



- Arg.: The reference is no longer necessary because the referring Labour and Social Insurance Chamber disregards the new composition and jurisdiction of the Polish courts. ↔ The arguments put forward concern matters of substance and cannot affect the admissibility of the questions referred.

As regards the substance of the questions, the CJEU reaffirmed that the Polish disciplinary regime must comply with the right to effective judicial protection as enshrined in Article 47 of the Charter. This means, in particular, that everyone is entitled to a fair hearing by an independent and impartial tribunal. The CJEU then reiterated its settled case law on the requirement that courts be independent:

- External dimension: The court concerned can exercise its functions entirely autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions;
- Internal dimension (linked to impartiality): An equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. This aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law;
- Any guarantees of independence and impartiality require rules, particularly as regards the composition of the body, and the appointment, length of service, and grounds for abstention, rejection, and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and as to its neutrality with respect to the interests before it;
- In accordance with the principle of the separation of powers, which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive;
- Organisational and procedural rules must be such as to preclude not only any direct influence, in the form of instructions, but also any more indirect forms of influence.

The CJEU concluded that it is up to the referring court to ascertain whether the framework of the new Disciplinary Chamber fulfills these requirements, but it provides several suggestions as to which specific factors should be considered:

For example, the mere fact that the judges of the Disciplinary Chamber were appointed by the President of the Republic of Poland does not infringe impartiality *if*, once appointed, they are free from influence or pressure when carrying out their role. The prior participation of the National Council of the Judiciary, which is responsible for proposing judicial appointments, would be acceptable *if* that body is itself sufficiently independent of the legislature, the executive, and the President of the Republic.

Furthermore, factors that characterise the Disciplinary Chamber more directly must also be taken into account, such as its exclusive jurisdiction, its constitution with newly appointed judges alone, and its high degree of autonomy within the Supreme Court.

Altogether, the judges in Luxembourg highlighted that, although any single factor is not capable of calling into question the independence of the Disciplinary Chamber *per se* and seen in isolation, this may conversely not be true once the factors are viewed together.

Ultimately, the Grand Chamber of the CJEU examined the legal consequences that occur if the referring court negates the independence of the Disciplinary Chamber, and concluded: "If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of

national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the above-mentioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.”

New Polish regulations on the disciplinary regime against judges are also the subject of infringement proceedings initiated by the Commission (Case C-791/19; see also [eucrim 2/2019](#), pp. 81-82). In [previous judgments](#), the CJEU had already declared the lowering of the retirement age for judges at the Supreme Court and at the level of ordinary courts to be incompatible with Union law.

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**