

# Poland: Continued Update on Rule-of-Law Developments

Thomas Wahl

News

This news item continues the last update provided in December 2020 on the rule-of-law situation in Poland as far as it relates to European law. For a more detailed overview of ongoing developments in Poland, see also the webpage “[ruleoflaw.pl](http://ruleoflaw.pl)”.

- 2 March 2021: The CJEU decides in the preliminary ruling case [C-824/18 \(A. B. and Others v Krajowa Rada Sądownictwa\)](#). According to the CJEU, the procedure for appointing judges to the Supreme Court in Poland could violate EU law, due to the lack of effective judicial control of the decisions of the National Council of the Judiciary (KRS). In addition, there could be a violation of Art. 267 TFEU if the CJEU were to be prevented from exercising its preliminary ruling competence. It is ultimately up to the referring Polish court to decide on an infringement of the EU standards of judicial independence and impartiality. In the event of an infringement, the principle of the primacy of Union law obliges the national court to leave respective legislative amendments unapplied. The specific case concerns amendments regarding the nomination procedure of judges to the Polish Supreme Court in 2018 and 2019. They ultimately resulted in making it impossible to lodge appeals against decisions of the KRS concerning the proposal or non-proposal of candidates for appointment to judicial positions at the Supreme Court. Appeals that were still pending were declared closed. Five judges had opposed this in court. For the AG’s opinion in this case → [eucriM 4/2020, 257](#).
- 10 March 2021: In an *ad hoc* debate, [MEPs express concerns over attacks on the media](#) in Poland, Hungary, and Slovenia. MEPs call on the Commission and the Council to take action against governments that violate the principles of press freedom. Some MEPs were convinced that the events in Poland, Hungary, and Slovenia justify activation of the conditionality mechanism for the protection of the EU budget (→ [eucriM 3/2020, 174-176](#)).
- 11 March 2021: Poland and Hungary lodge actions with the CJEU against the agreed mechanism making protection of the EU’s financial interests conditional to adherence to rule-of-law values (→ [news under “Protection of Financial Interests”](#)). The cases are referred to as C-156/21 and 157/21.
- 31 March 2021: The [Commission refers an action to the CJEU](#) and applies for a declaration that the Polish “muzzle law” infringes Poland’s obligations under EU law. According to the Commission, the Polish law on the judiciary of 20 December 2019 that entered into force on 14 February 2020 (→ [eucriM 1/2020, 2-3](#)) undermines the independence of Polish judges and is incompatible with the primacy of Union law. The Commission sets out five different reasons why the Polish “muzzle law” violates provisions of EU law protecting judicial independence. One particularly critical point is that the law prevents Polish courts from submitting references for preliminary rulings on questions of independence to the CJEU. This includes threats to Polish judges about the use of disciplinary proceedings

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against them. The Commission has also asked the CJEU to order interim measures pending the delivery of the final judgment. The case is referred to as C-204/21.

- 15 April 2020: Advocate General *Evgeni Tanchev* criticises in two parallel cases the appointments of judges at newly-created chambers of the Polish Supreme Court. In the Opinion in [Case C-487/19](#), the composition of the “Chamber of Extraordinary Control and Public Affairs”, which had to decide on the transfer of a Polish regional court judge, was found to be inadequate. The compatibility of the composition of this chamber with the right to an independent court established by law pursuant to Art. 19(1)(2) TEU and Art. 47 CFR was questionable, as the single judge who made the decision ruled against the appointment before the conclusion of his appointment procedure and despite ongoing appeal proceedings. However, according to the AG, it is up to the referring court and not the CJEU to determine whether it was an independent court. In [Case C-508/19](#), the AG also criticises the proper appointment of judges to the Polish Supreme Court. In the context of disciplinary proceedings initiated against a Polish district court judge, the independence and impartiality of the single judge of the disciplinary chamber was called into question. Also here, it remains the task of the referring Polish court to determine whether there has been a manifest and deliberate violation of the European principles. In the event of such a finding, the decisions of the Supreme Court are to be left unapplied.
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