

Poland: Overview of Recent Rule-of-Law Developments



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Thomas Wahl

News

This news item continues an overview of recent developments on the rule-of-law situation in Poland as far as their relationship with European law is concerned (--> related links):

- 1 December 2020: The oral hearing in infringement [case C-791/19 against Poland](#) takes place at the CJEU. It addresses doubts about the powers, independence, and impartiality of the Disciplinary Chamber of the Supreme Court. The case was brought to the CJEU by the Commission on 10 October 2019 (--> [euCRIM 3/2019, 157-158](#)). The Polish government defends its reform of the judicial system, since it ensures that judges do not place themselves above the law; thus, the reform even increases judges' independence and impartiality. When the judges in Luxembourg asked about the lifted immunity of reform critic Judge *Igor Tuleya* (--> related link) by the said Disciplinary Chamber, the Polish government could not respond satisfactorily, citing the need to address obvious and blatant breaches of judicial law. In this particular infringement case, the CJEU had ruled on 8 April 2020 that the Polish Disciplinary Chamber must suspend its work for the time being and had granted the EU Commission's request for interim measures (C-791/19 R; --> [euCRIM 2/2020, 4](#)). The Polish government disregarded the ruling and allowed the Disciplinary Chamber of the Polish Supreme Court to make further decisions, such as lifting the immunity of judges with a view to prosecuting them if necessary. A decision by the CJEU in case C-791/19 is expected in the first half of 2021.
- 3 December 2020: Since the Polish government has allowed the contentious Disciplinary Chamber of the Supreme Court to further continue to decide on matters of Polish judges, which may affect their status and restrict their judicial activities, the [European Commission adds this point](#) to the recently launched infringement proceedings on 29 April 2020 (--> [euCRIM 1/2020, 4](#)). These infringement proceedings take action against the so-called Polish muzzle law that entered into force in February 2020 (--> [euCRIM 1/2020, 3](#)). The Commission considers the independence and impartiality of the Disciplinary Chamber not to be guaranteed and its powers and ongoing activity not in line with Art. 19 TEU / Art. 47 CFR. The Polish government has one month to react to this new grievance.
- 17 December 2020: [Advocate General Tanchev proposes](#) the CJEU deciding that Polish law that excludes legal review of the National Council of the Judiciary's assessment of judicial candidates to the Polish Supreme Court violates EU law. The opinion refers to a reference for preliminary ruling by the Polish Supreme Administrative Court in the context of legal proceedings of candidates against the appointment procedure of the National Council of the Judiciary ([Case C-824/18, A.B. and Others](#)). The AG also harshly condemns recent Polish legislation that denies the referring court both the possibility of successfully initiating preliminary ruling proceedings before the CJEU and the right to wait for a ruling from the CJEU. This undermines the EU principle of sincere cooperation. In addition, the AG

AUTHOR

Thomas Wahl

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

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clarifies that the referring court can directly apply Art. 19(1), second subparagraph TEU in order to disapply those national provisions that exclude the legal review and to declare itself competent to rule on the cases in the legal framework which was applicable before the adoption of that law. Polish courts must maintain the appearance of independence of the judges appointed in the procedures at issue.

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