

Poland: Recent Rule-of-Law Developments



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European Law Forum: Prevention • Investigation • Prosecution

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News

This news item continues the overview provided in [eucri](#)m 1/2020, p. 2 on actions/regulations that triggered controversies on maintenance of the rule of law in Poland.

- *May/June 2020*: The ECtHR informs the public of the [state of play of various applications](#) by Polish judges, lawyers, and citizens against the judicial reform in Poland. The cases are:
- *Grzęda v. Poland* (application no. 43572/18): premature termination of the mandate of a Supreme Administrative Court judge elected to the National Council of the Judiciary (NCL);
- *Xero Flor w Polsce sp. z o.o. v. Poland* (application no. 4907/18): company complaint over the Polish courts' refusals to refer legal questions to the Constitutional Court on the constitutionality of Polish acts and regulations. The complaint also targets the unlawful composition of the bench of judges at the Constitutional Court, which ruled on the inadmissibility of the company's constitutional complaint;
- *Broda v. Poland* and *Bojara v. Poland* (application nos. 26691/18 and 27367/18): dismissal of two judges before the end of their regular term of office by the Polish Minister of Justice on the basis of the new law on the organisation of the ordinary courts;
- *Żurek v. Poland* (application no. 39650/18): complaint about premature termination of a judge's mandate as a member of the NCL, his removal as spokesman of that organ, and the alleged campaign to silence him;
- *Sobczyńska and Others v. Poland* (applications nos. 62765/14, 62769/14, 62772/14 and 11708/18): refusal to appoint judges and a public prosecutor to fill vacant judicial posts; complaint about the administrative courts' and the Constitutional Court's refusals to examine their appeals, declining jurisdiction in that sphere.
- *Reczkowicz & others v. Poland* (application nos. 43447/19, 49868/19, and 57511/19): complaint about the constitution of the Polish Supreme Court, which decided on the cases of the applicants, as not being an "independent and impartial tribunal established by law". The applicants in this case refer in particular to the CJEU judgment of 19 November 2019 in Joined Cases [C-585/18](#), [C-624/18](#) and [C-625/18](#) (see [eucri](#)m 3/2019, p. 155) and subsequent rulings by the Polish Supreme Court, which found that the appointment procedure of judges of the Supreme Court involving the NCJ was illegal.
- 2 June 2020: The Chamber of Extraordinary Verification and Public Affairs (IKNiSP) [revokes a decision](#) by the NCJ that recommended a government-friendly judge become a Supreme Court judge. The IKNiSP, *inter alia*, argued using EU law whose full effectiveness must be ensured. It points out that the appointment procedure, which does not allow appeals, is contrary to Art. 47 CFR. In addition, the

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Chamber believes that the recommendation of the candidate is not in line with the reasoning of the CJEU's judgment of 19 November 2019 (see above).

- 3 June 2020: The European Commission threatens that the EU will **no longer provide EU cohesion funds** if Polish provinces do not respect EU values, in particular the principle of non-discrimination. In a letter to the heads of five Polish administrative provinces, two top officials of the **Commission identify local authorities that declared themselves “free from LGBT ideology”** or adopted “charters of family rights.” The letter clarifies that discriminatory actions against any citizens may negatively influence the amount of EU funds to Poland in the future. Beneficiaries must uphold common EU values. The Commission's intervention comes alongside an **EP resolution** of December 2019 that condemned the discriminatory actions of Polish local authorities against LGBT persons.
 - 9 June 2020: The Disciplinary Chamber of the Polish Supreme Court **deliberates on the lifting of the immunity** of judge *Igor Tuleya* who is a critical voice of the ruling PiS party. Although the chamber decided to uphold the judge's immunity, the meeting is criticized by judges and human rights associations. They found a clear breach of the CJEU's injunction of 8 April 2020 (see **eu crim 1/2020, p. 4**), which ordered Poland to suspend the work of the new disciplinary board.
 - 16 July 2020: The majority of MEPs in the LIBE Committee votes in favour of an **amended text** to the draft **interim report** by their chair *Juan Fernando López Aguilar* (S&D, ES) on how to proceed with the **Article 7(1) procedure** against Poland (for the interim report, see also **eu crim 1/2020, p. 4**). MEPs found “overwhelming evidence” of rule-of-law breaches in Poland and ask the Council and Commission to also keep an eye on fundamental rights. The motion for an EP resolution reiterates that Poland has systemically threatened the values of Art. 2 TEU, and the facts and trends constitute a clear risk of a serious breach thereof. Noting that the last hearing within the Article 7 procedure (which, in the end, may lead to sanctions against Poland) took place in December 2018, MEPs urge the Council to resume the Article 7 procedure and to finally act by finding that there is a clear risk of a serious breach by the Republic of Poland, so that the procedure can continue. In addition, the Council and the Commission are called on to interpret the principle of the rule of law within the procedure under Article 7(1) TEU in a broader sense and to include all EU core principles. The motion for the EP resolution is forwarded to the plenary, which is to vote on it in September 2020.
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