

Poland: Rule-of-Law Concerns Continue

Thomas Wahl

News

This news item continues the overview provided in previous eucriM issues ([eucriM 2/2020, 68](#) and [eucriM 1/2020, 2](#)) on the struggle between the EU and Poland as regards maintenance of the rule of law.

- August 2020: The [Civil Development Forum \(FOR\)](#) publishes the report “[Rule of Law in Poland 2020: A Diagnosis of the Deterioration of the Rule of Law From a Comparative Perspective](#)”. It summarizes the state of the rule of law in Poland after five years of the Law and Justice (PiS) party being in power and analyses the current situation from a comparative perspective of the EU countries.
- 17 September 2020: A wide majority of MEPs (513 to 148 votes, with 33 abstentions) adopts a [resolution](#) that calls on the Council to resume the Article 7 procedure against Poland and to determine the clear risk of a serious breach of the rule of law by the Republic of Poland. According to MEPs, there is “overwhelming evidence” of breaches of EU values by Poland. The resolution expresses several concerns over the legislative and electoral system, the independence of the judiciary, and fundamental rights in Poland. MEPs express their worries about increased intolerance and violence against LGBTI persons. In this regard, they deplored the mass arrest of 48 LGBTI activists on 7 August 2020 (the Polish “Stonewall”). The resolution points out that the current situation in Poland damages mutual trust, especially in the field of judicial cooperation in criminal matters, given that national courts have refused or hesitated to surrender Polish suspects under the European Arrest Warrant procedure due to profound doubts about the independence of the Polish judiciary. The Commission is called on to make full use of the available tools to address a clear risk of a serious breach of the Union values by Poland, in particular expedited infringement procedures and applications for interim measures before the Court of Justice, as well as budgetary tools. For the underlying report on this resolution prepared by MEP [Lópes Aguilar](#) (S&D, ES) [eucriM 2/2020, 68](#).
- 22. September 2020: The [Council for General Affairs](#) discusses the situation of rule of law in Poland and in Hungary. Commissioner of Justice [Didier Reynders](#) and Commission Vice-President [Vera Jourová](#) updated the Member States on the latest developments since the end of 2019. Both emphasise that there are still serious concerns over the guarantee of the rule of law. In its overview on Poland, the Commissioners focus on disciplinary sanctions for judges and the implementation of the CJEU’s order of 8 April 2020 on the Disciplinary Chamber of the Polish Supreme Court. The loss of trust affecting judicial cooperation between the Member States is also discussed. In the subsequent press conference, Minister of State for Europe at the Federal Foreign Office of Germany, [Michael Roth](#) says: “On the basis of very detailed reports from the Commission on the situation

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in Hungary and Poland, we have established that the conditions for terminating the Article 7 proceedings are not met and that the Council would continue the procedures.”

- September 2020: The registry of the ECtHR announces that it accepted the complaint by well-known Polish judge *Igor Tuleya* concerning disciplinary proceedings initiated against him in 2018 (Application no. 21181/19). The Polish government is requested to submit observations on the application. Tuleya adjudicated several cases that not only attracted widespread media coverage but also displeased the Polish ruling party, Law and Justice. He became a symbolic figure of resistance of the Polish judiciary against the Polish judicial reform introduced from 2016-2018. A set of seven disciplinary proceedings against Tuleya concern comments he had made in public or questions over his participation in public meetings, while others relate to his judicial activity. *Inter alia*, disciplinary proceedings followed after his decision to submit a preliminary ruling request to the CJEU on the new disciplinary regime for judges. Tuleya argues that the disciplinary proceedings breached his rights from Arts. 8, 10, and 13 ECHR, in particular because they destroyed his reputation as a judge and led to harassment against him. The ECtHR has found [13 applications by Polish judges and lawyers to be admissible](#) against the Polish reform of the judiciary (for pending cases [eucrim 2/2020, 68](#)).
 - 15 October 2020: In the case *Guz v. Poland* (Application no. 965/12), the European Court of Human Rights (ECtHR) rules in favour of a complaint brought forward by a Polish judge who was found guilty of a disciplinary offence. Polish courts found that the applicant, *Remigiusz Guz*, was guilty of “undermining the dignity of the office of a judge”, because he criticised a report on his work by another more senior judge as being “superficial, unfair and tendentious”. He upheld these remarks in the course of his promotion procedure before the national council of the judiciary. The ECtHR holds that the conviction of a disciplinary offence and the order of a warning following the impugned remarks breaches Mr. Guz’s right to freedom of expression (Art. 10 ECHR). The ECtHR orders Poland to pay the non-material damage (€6000) and the costs of the proceedings (€853).
 - 30 October 2020: [The Commission proceeds with the infringement procedure](#) against the recent Polish law that brought about amendments to the Polish judiciary. The law of December 2019 is also labelled the “muzzle law”, since it is believed to lead to political subordination of Polish judges ([à eucrim 1/2020, 2-3](#)). The Commission initiated an infringement procedure against the law on 29 April 2020 ([eucrim 1/2020, 4](#)). The Polish Government contested the reasoning put forward by the Commission and requested the discontinuation of the infringement procedure. By contrast, the Commission still believes that the law undermines judicial independence and is contrary to the primacy of EU law. The law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the CJEU. Therefore, the Commission took the second step in the infringement procedure and sent a reasoned opinion to the Polish Government. If Poland does not comply with the concerns voiced in the reasoned opinion within the next two months, the Commission can refer the case to the CJEU. (TW)
 - 18 November 2020: The controversial Disciplinary Chamber of the Polish Supreme Court [lifts the immunity of Warsaw judge Igor Tuleya](#). The 50-year-old lawyer *Tuleya* is one of the most prominent critics of the judicial reforms by the national conservative ruling party, PiS. The public prosecutor's office had demanded the waiver of his immunity. Among other things, it accuses him of exceeding his competences because he had allowed media representatives in the courtroom when the verdict was handed down in a procedure that was unpleasant for the PiS. The Disciplinary Chamber now overruled a decision of June 2020. After the waiver of immunity, which immediately became final, criminal prosecution against the judge is now possible. *Tuleya* is also no longer allowed to take part in trials and his salary will be reduced by 25 percent, the Supreme Court announced.
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