

Poland: Rule-of-Law Developments April-July 2022



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European Law Forum: Prevention • Investigation • Prosecution

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News

This news item continues the overview of recent rule-of-law developments in Poland (as far as they relate to European law) since the last update in [eu-crim 1-2022, 5-7](#).

- 14 April 2022: The ECtHR indicates an [interim measure in the case *Stępką v. Poland*](#) (application no. 18001/22). The ECtHR asks the Polish government, *inter alia*, that no immediately enforceable decision in respect of his immunity be taken by the Disciplinary Chamber of the Supreme Court until the final determination of his complaints by the European Court. The case concerns a Polish judge who is facing charges in disciplinary proceedings on “criminal negligence in relation to a judicial decision given in a criminal case”.
- 26 May 2022: [Newspapers report](#) that the Polish Parliament (*Sejm*) passed a bill that removes the controversial Disciplinary Chamber of the Supreme Court. It has been subject to numerous proceedings before European Courts which concluded that the Chamber is not in line with EU and CoE law. The new Polish law is to pave the way to the Commission’s approval of the Polish recovery and resilience plan – a precondition for Poland to receive money from the EU’s Recovery and Resilience Facility (RRF). The opposition voted against the bill saying that the changes are largely cosmetic.
- 30 May 2022: On the eve of the endorsement of the Polish national recovery and resilience plans, a coalition of legal and human rights associations ([KOS](#)) [address an open letter](#) to Commission President *Ursula von der Leyen*. They question as to whether the Commission has duly taken into account that the Polish government has not fulfilled the obligations resulting from the relevant rule-of-law judgments by the CJEU, in particular as regards the Polish disciplinary regime against judges and prosecutors. It is pointed out that the Act passed on 26 May 2022 only contains cosmetic changes. The liquidation of the Disciplinary Chamber is only ostensible, an obligation to reinstate judges who have been unlawfully suspended by the Disciplinary Chamber is not provided for, and the functioning of an independent and impartial disciplinary system for judges, preventing the inadmissible influence of the executive is not restored. It is also stressed that “[i]nvariably, the source of problems with the functioning of the Polish judiciary is the new National Council of the Judiciary (the so-called neo-NCJ), which was appointed defectively, is deprived of independence and has a decisive role in shaping the executive and legislative powers.”
- 1 June 2022: After months of dispute with Poland over the independence of the judiciary, the [Commission recommends the Council to approve Poland’s recovery and resilience plan](#). It involves €23.9 billion in grants and €11.5 billion in loans under the RRF. The disbursements are to be made subject to the fulfilment of milestones and targets. With regard to the independence of the judiciary, four

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milestones are mentioned, including a reform of the current disciplinary regime against judges and prosecutors.

- 7 June 2022: In [another open letter](#) to Commission President *Ursula von der Leyen*, Commission Vice-President *Věra Jourová*, and Commissioner for Justice *Didier Reynders*, Polish and international NGOs detail their critical analysis on the Polish NCJ. They explain why the functioning of the NCJ in its current form, in subordination to political authorities, undermines the guarantees of effective judicial protection (Art. 19(1) TEU), the right to a court established by law (Art. 47 CFR) and the effectiveness of the preliminary ruling procedure (Art. 267 TFEU).
- 9 June 2022: In a [resolution](#), MEPs criticise the Commission for having endorsed Poland's RRF plan. They call on the Council to not approve the plan until all open rule-of-law related infringements by Poland are remedied. MEPs stress that compliance with EU values is a prerequisite to have access to the Facility and that the rule of law conditionality mechanism is fully applicable here.
- 16 June 2022: The ECtHR finds a violation of Art. 6 ECHR (access to court) and Art. 10 ECHR (freedom of expression) in the [case *Żurek v. Poland*](#). The judges in Strasbourg conclude that the lack of judicial review of the decision to remove Mr Żurek from the National Council of the Judiciary (NCJ) had breached his right of access to a court. In addition, the accumulation of measures taken against Mr Żurek – including his dismissal as spokesperson of a regional court, the audit of his financial declarations and the inspection of his judicial work – had been aimed at intimidating him because of the views that he had expressed in defence of the rule of law and judicial independence.
- 12 July 2022: The ECtHR indicates an [interim measure in the case *Raczkowski v. Poland*](#) (application no. 33082/22). The case concerns a military judge, critic to the Polish government's judicial reforms and former vice-president of the NCJ – the constitutional body in Poland which is to safeguard the independence of courts and judges. He defends himself against disciplinary proceedings. The ECtHR asks Poland to ensure that the lifting of judicial immunity complies with the requirements of a "fair trial" as guaranteed by Art. 6 ECHR and that no decision be taken until the final determination of his complaints by the European Court. The case is similar to those of two Polish Supreme Court judges, *Włodzimierz Wróbel* and *Andrzej Stępka*, who were also granted interim measures on 8 February 2022 (→ [eucrim 1/2022, 38](#)) and 14 April 2022 (see above) respectively.
- 15 July 2022: The Commission decides to take the next step in the infringement procedure against Poland for EU law judgements handed down by its Constitutional Tribunal. The [Commission sends a reasoned opinion to Poland](#). The background to this are rulings of the Polish Constitutional Tribunal of 14 July 2021 and 7 October 2021 (→ [eucrim 3/2021, 135, 137](#)), in which provisions of the EU Treaties had been considered incompatible with the Polish Constitution and thus the primacy of EU law and the binding nature of decisions of the CJEU openly questioned;
- 18 July 2022: The chairman of the ruling PiS party, *Jarosław Kaczyński*, [reacts](#) to the milestones included in the Commission's endorsement of the Polish RRF plans and to the critical viewpoint by the European Parliament against the disbursement of EU money to Poland as long as rule-of-law issues are not solved (see above). "We have really demonstrated maximum goodwill. From the point of view of the treaties, we are under no obligation to listen to the Union on the justice system. None whatsoever," he stressed.
- 20 July 2022: A delegation of the EP's [Budgetary Control Committee concludes a fact-finding mission](#) to Poland looking into the disbursement of EU funds. After having spoken with politicians, prosecutors, judges, NGO representatives, journalists, audit authorities and recipients of EU funds, MEPs said that there are signs that the distribution of public funds, including EU money, is increasingly politicised. They also voiced concerns over the lack of independent verification of the spending of EU funds, the restrictions in place on Poland's national court of auditors, and the lack of transparency by the state institutions. MEPs will now assess the findings and follow up on the information received.

- 25 July 2022: The ECtHR gives notice to Poland of [37 applications concerning judicial independence](#) and requests the Polish governments to submit observations on these applications. The complainants argue that the judicial formation of the Supreme Court and the NCJ did not comply with the guarantee of an “independent and impartial tribunal established by law” as enshrined in Art. 6 ECHR.
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