

Poland: Rule-of-Law Developments August-October 2022



eu crim

European Law Forum: Prevention • Investigation • Prosecution

Thomas Wahl

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 2-2022, 82-83](#).

- 19 August 2022: The EP publishes a [study](#) that carried out an in-depth analysis on the change of jurisprudence by the Polish courts, in particular the Polish Constitutional Tribunal, regarding the principle of the primacy of the EU law in relation to the Polish law since the Polish accession to the EU. The study was requested by the EP's JURI Committee. The authors recommend that the EU should give priority to reestablish the judicial independence in Poland.
- 19 August 2022: In a letter, the President of the Court of Appeal of Warsaw, *Piotr Schab*, confirmed that the [transfer of two judges](#) from the criminal division to the labour and social division of the court has been a penalty because the judges questioned the legality of the new national council of the judiciary (NCJ) and its appointment of neo-judges. The judges' approach was in accordance with the ECtHR and CJEU case law, but *Schab* and his deputy, who were appointed by Polish Minister of Justice *Zbigniew Ziobro*, disliked it.
- 25 August 2022: Based on decisions by the ECtHR, the CJEU and Polish courts, a judge of the Labour and Social Insurance Chamber of the Polish Supreme Court [challenged the legal status of a newly appointed judge](#) to the Chamber. He argued that the neo-judge's participation in benches would lead to the incorrect staffing of the court and would breach Art. 6 ECHR – the citizens' right to a hearing by an independent and impartial tribunal established by law.
- 28 August 2022: Four associations of judges lodge an [annulment action](#) with the General Court seeking the annulment of the Council's decision of 17 June 2022 that approved Poland's Recovery and Resilience Plan. The applicants rely on five pleas in law. They argue that the endorsement falls short of what is required to ensure effective judicial protection and disregard the judgments of the CJEU on the matter. The case before the General Court is referred as [T-532/22](#).
- 30 August 2022: Polish [President Andrzej Duda comments](#) on the annulment action by the four associations of judges regarding Poland's Recovery and Resilience Plan (see above). According to *Duda*, this is an undemocratic attempt that "judicial circles simply want power".
- 20 September 2022: The new "Chamber of Professional Liability" at the Polish Supreme Court, which replaced the former and illegal Disciplinary Chamber (→ [eu-crim 2/2022, 82](#)), holds that the [suspension of several judges](#) on the ground that they applied CJEU and ECtHR case law was illegal. The decision is a signal of opposition against the approaches by Polish Minister of Justice *Zbigniew Ziobro* and his allies to exercise repression against Polish judges who wanted to implement ECtHR and CJEU decisions that had declared judicial reforms in Poland illegal.

AUTHOR

Thomas Wahl

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

ISSN: 1862-6947

<https://eu-crim.eu>



- 6 October 2022: The ECtHR rules in [Juszczyszyn v. Poland](#) that the suspension of a Polish judge from his judicial office by the Polish Disciplinary Chamber of the Supreme Court violated Articles 6, 8 and 18 ECHR. The applicant had heard an appeal and reviewed whether the first instance judge complied with the requirement of independence. According to the Disciplinary Chamber, this compromised the dignity of the judicial office and grossly violated the law. In its reasoning, the ECtHR emphasises that the appointment of judges to the established Disciplinary Chamber of the Supreme Court violates Art. 6 ECHR. The Disciplinary Chamber did not fulfil the requirements of an "independent and impartial tribunal established by law", which also made the suspension unlawful in the sense of Art. 8 ECHR.
 - 17 October 2022: [30 Supreme Court Judges declare](#) that they cannot adjudicate in panels with neo-judges of the Supreme Court, i.e. judges nominated by the illegal, politicized National Council of the Judiciary (NCJ). They cite judgments of the CJEU, the ECtHR, but also the Polish Supreme Administrative Court and the Supreme Court, in which the legality of the NCJ and the appointments it had given to neo-judges was challenged. The judges argue that rulings given by such a panel with neo-judges will be defective, because it will be possible to overturn them and the State Treasury will have to pay compensation to the parties to the proceedings for that.
 - 18 October 2022: The [General Affairs Council discusses](#) developments in relation to the rule of law in Poland. This was not a formal hearing under Article 7(1) TEU, but simply a progress report. The focus was on concerns over the independence of the judiciary in Poland. The Commission informed the ministers about the recent reform of the disciplinary regime for Polish judges initiated by the Polish government. Poland was given the opportunity to make remarks and reportedly insisted that it had complied with all the requirements set out by the CJEU in its 2021 rulings.
-

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**