

Poland: Rule-of-Law Developments January – April 2023



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European Law Forum: Prevention • Investigation • Prosecution

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News

This news item continues the overview of rule-of-law development in Poland (as far as they relate to European law) from 1 January to 30 April 2023. They follow up the last update in → [eucri](#)m 4/2022, 222-223.

- 13/16 January 2023: The Sejm (lower house of the Polish Parliament) passes the bill “*Projekt ustawy*” and transmits it to the Senate. The bill aims to make further reforms to the disciplinary regime in the Polish judiciary in order to meet the milestones as requested by the EU institutions for receiving money from the Recovery and Resilience Facility. The bill transfers the powers of adjudicating disciplinary cases against judges of the Supreme Court, Military Courts and ordinary courts from the Chamber of Professional Liability at the Supreme Court to the Supreme Administrative Court (SAC) of Poland. The Chamber of Professional Liability was only established in June 2022 to replace the controversial Supreme Court’s Disciplinary Chamber whose independence was called into question by the ECtHR and CJEU (→ [eucri](#)m 2/2022, 82). In addition, the bill makes further clarifications to the disciplinary grounds, thus supplementing amendments made in June 2022 to the disciplinary grounds introduced in 2020. Accordingly, disciplinary liability of judges would be excluded for the content of judgements or for assessments on the criteria of “a tribunal established by law” with regard to the appointment procedures of judges.
- 25 January 2023: The OSCE Office for Democratic Institutions and Human Rights (ODHIR) provides an opinion on the recent bill of 13 January 2023 (see above). ODHIR concludes that “the Bill introduces mechanisms to address some of the existing issues in the justice system, the efficiency and effectiveness of the proposed solution, as it is, remains doubtful.” ODHIR mainly criticizes that independence and impartiality of the SAC itself is not guaranteed since it is, to a significant degree, composed of neo-judges appointed by the still flawed National Council of the Judiciary (NCJ). Moreover, broad and vague disciplinary grounds for judges have not been repealed making the disciplinary regime still subject to potential arbitrariness.
- 6 February 2023: The Sejm’s Justice and Human Rights Committee rejects amendments to the bill “*Projekt ustawy*” (see above) put forward by the Polish Senate. The Senate, *inter alia*, proposed transferring disciplinary cases on judges and other legal professions to the Criminal Chamber of the Supreme Court (instead to the Supreme Administrative Court), declaring that the rulings of the Disciplinary Chamber of the Supreme Court are invalid, and eliminating the provisions of the Muzzle Act. EU Minister Szymon Szykowski *vel* Sęk argued that changes to the bill are impossible anymore because everything “has been accepted by the European Commission”.
- 15 February 2023: The European Commission refers Poland to the ECJ for violation of EU law by the Polish Constitutional Tribunal. The underlying infringement procedure against Poland was opened on

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[22 December 2021](#). The Commission tackles above all the Constitutional Tribunal's decisions of 14 July and 7 October 2021 in which it considered provisions of the EU Treaty incompatible with the Polish Constitution, thus questioning the primacy of EU law. According to the Commission, this case law not only infringes the general principles of autonomy, primacy, effectiveness, uniform application of Union law and the binding effect of CJEU rulings, but also Art. 19(1) TEU, which guarantees the right to effective judicial protection. Moreover, the Commission considers that the Constitutional Tribunal no longer meets the requirements of an independent and impartial tribunal previously established by law. The Polish government's was unable to dispel the Commission's concerns in the pre-phase of the Court proceedings.

- 16 February 2023: The Polish Government informs the Registry of the ECtHR that Poland [will not respect interim measures](#) indicated by the ECtHR on 6 December 2022 to reinstate three Polish judges in the criminal division of the Warsaw Court of Appeal. The Polish Government refers to a statement by *Piotr Schab*, President of the Court of Appeal in Warsaw, that "there were no factual or legal grounds for doing so". He pointed to the Constitutional Tribunal's judgment of March 2022 questioning the ECtHR's authority to intervene in cases concerning the judiciary (→ [eucrim 1/2022, 6](#)). This is the first time that Poland has refused to comply with the ECtHR's interim measures in such cases.
- 1/6 March 2023: The struggle between "old" judges and "neo-judges" at the Polish Supreme Court continues. *Małgorzata Manowska*, acting as the First President of the Supreme Court, has seemingly [refused to hand over files of CJEU rulings](#) questioning the legality of appointments of adjudicating judges by the politicised National Council of the Judiciary (NCJ). Judges at the Supreme Court further report that they are [arbitrarily moved](#) to other positions by the Court's President. In addition, Polish Minister of Justice, *Zbigniew Ziobro*, is alleged to continue his policy to [install his "own people"](#) as Presidents in Polish courts.
- 17 March 2023: More than 1700 judges and prosecutors sign a [letter defending Judge Joanna Knobel who acquitted](#) 32 defendants a few days before. The defendants were indicted for their protests in the Poznań Cathedral in October 2020 against the ruling of the Polish Constitutional Tribunal tightening the abortion law. Judge Knobel was attacked for the acquittal by the Polish Minister of Justice and the president of the NCJ. The letter reacts by giving support to the decision and by defending judicial independence.
- 23 March 2023: On the occasion of the latest developments on the Polish judiciary, a [discussion takes place](#) in the EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE). The opinion of ODHIR of 25 January 2023 on the compatibility of the bill "*Projekt ustawy*" with rule-of-law standards (cf. *supra*) was presented. The discussion focused on the problematic politicisation of the NCJ and the growing number of judges appointed after the NCJ's reform. Justice Commissioner *Didier Reynders* expressed concern about the situation in Poland, where the decisions of the CJEU and ECtHR on independence continue to be ineffectively implemented. Regarding the Art. 7-TEU-procedure, he called for the blockade in the Council to be resolved.
- 4/20 April 2023: The press reports that disciplinary commissioners [initiated disciplinary proceedings](#) against judges who took decisions in which they [challenged the status of neo-judges](#) at the bench applying the case law of the CJEU and ECtHR. The proceedings come despite a compromise found between the Polish government and the European Commission to reform the so-called muzzle law against Polish judges. The arrangement actually included to stop attacks against judges who apply EU law.
- 21 April 2023: In the infringement proceedings in Case C-204/21 between the Commission and Poland, the Vice-President of the ECJ [orders a reduction of the amount of the periodic penalty payment](#) against Poland from €1 million to €500,000 per day. In October 2021, Poland was ordered to pay € 1 million per day in order to give effect to interim measures set out previously in July 2021 (→ [eucrim 4/2021, 200](#) and [eucrim 3/2021, 135](#)). The measures aimed at complying with EU rule-of-law

standards after the Commission brought to Court Poland's reform of the organisation of the judiciary. The reduction of the daily penalty payment takes into account that Poland meanwhile put in place certain reform measures, in particular the abolishment of the controversial Disciplinary Chamber. However, the Vice-President's order also emphasises that the measures adopted are not sufficient to ensure that all the interim measures set out in the order of 14 July 2021 have been put into effect. In addition, it is clarified that the reduction has no retroactive effect.

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