

Rule-of-Law Developments in Other EU Countries



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News

Beyond Poland and Hungary, also other EU countries are eyed regarding upholding the value of rule of law. In the following, main recent developments are summarised:

- Malta – 20 April 2021: The CJEU, sitting in for the Grand Chamber, sees no violation of EU law regarding the Maltese current legislation on the appointment of members of the judiciary ([Case C-896/19 – *Repubblika v Il-Prim Ministru*](#)). According to this legislation, the Maltese Prime Minister has a decisive power in the appointment of members of the Maltese judiciary. A reform in 2016 established a Judicial Appointments Committee, which assesses candidates and provides an opinion to the Prime Minister. The CJEU rejects arguments against the independence and impartiality of judges in the light of Art. 19(1) TEU that were put forward before the Maltese Constitutional Court by an organisation promoting the rule of law in Malta. In the present case, there are several rules that circumscribe the leeway available to the Prime Minister to exercise his power, so that the independence of the judiciary appears to be guaranteed.
- Romania – 18 May 2021: [The CJEU \(Grand Chamber\) rules](#) on six joined cases concerning the rule of law in Romania. The cases deal with a series of reforms in the area of the judiciary between 2016 and 2019 (→ [euclid 3/2020, 163](#) – [Joined Cases C-83/19; C-127/19](#) and [C-195/19; C-291/19; C-355/19](#) and [C-397/19](#)). Romania has been under special scrutiny since its accession to the EU in 2007, because not all EU standards on the rule of law had been reached at that time. The Cooperation and Verification Mechanism (CVM) was established for Romania's accession by Commission Decision 2006/928 (→ [euclid 3/2018, 144-145](#)). The CJEU first affirms that Decision 2006/928 is binding on Romania and that the country is obliged to take the appropriate measures to achieve the so-called benchmarks set in the Decision. Furthermore, the CJEU rules – in continuation of its existing case law since 2018 – that the organisation of the judiciary, including the public prosecutor's office, falls in principle within the competence of the Member States. However, the requirements of Union law must be taken into account. The judges in Luxembourg clarify the criteria of EU law (in light of Art. 2 and 19(1) TEU) that must be maintained in the EU Member States. In particular, effective judicial protection must be guaranteed by independent courts. Against this background, the establishment of a specialised section of the Public Prosecutor's Office with exclusive competence to investigate offences committed by judges and prosecutors was only compatible with EU law under certain conditions. This measure must be justified by objective and verifiable requirements for the sound administration of justice. Furthermore, the danger must be excluded that this department is used for political control over the activities of these judges and prosecutors. The introduction of personal liability of judges for miscarriages of justice must also be limited to clearly described exceptional cases. Under no circumstances should it be used to exert pressure on the judicial activity. Ultimately, the CJEU

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clarified that, in accordance with settled case-law, the primacy of EU law also means a primacy over national constitutional law. Hence, constitutional law cannot deprive national courts of disapplying national law, which cannot be interpreted in conformity with EU law. In accordance with these criteria, the Romanian referring courts are now to examine the judicial reforms.

- Romania – 8 June 2021: [The Commission presents the CVM report on Romania](#). It assesses to which extent Romania has made progress to address all the recommendations under the Cooperation and Verification Mechanism (CVM) since 2019. The report notes that a renewed impetus has been given in 2021 to reverse the backtracking of the judicial reforms in 2017-2019. As a result, there is progress across all the remaining CVM recommendations and many are on the path to being fulfilled if progress remains steady. However, Romania must translate their commitments into concrete legislative and other measures, and it must take into account the CJEU's judgment of 18 May 2021 (see above). The CVM will only end when all the benchmarks set in the Commission's Decision are satisfactorily fulfilled.
- Czechia – 10 June 2021: [The European Parliament demands EU action against rule of law breaches and conflicts of interest in Czechia](#). MEPs criticise the slow investigation against the Czech Prime Minister *Andrej Babiš* into his conflict of interest in the misuse of EU funds. A recently carried out audit confirmed that *Babiš*, as prime minister, influenced the allocation of EU subsidies to Agrofert, an agrochemical conglomerate that he himself founded and controls. MEPs also voice concerns over the political pressure on independent Czech media as well as the country's previous prosecutor-general. They demand that the conflict of interest must be fully addressed. This may include that *Babiš* or other members of his government fully abstain from EU decision-making that might directly or indirectly concern the interests of the Agrofert group. MEPs call on the Commission to activate the conditionality mechanism for the protection of the EU budget if it confirms breaches of the rule of law. MEPs also call for improvements in the reporting and monitoring of EU finances.

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