

Rule of law developments in Poland: May-October 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 developments in Poland (as far as they relate to European law) from 1 May to 31 October 2023. They follow up the overview in → [eucri](#)m 1/2023, 4-5.

- 26 May 2023: The “Sejm” (lower house of the Polish legislature) adopts the [law on the “State Commission for the examination of Russian interference in the internal security of Poland”](#). After signature of the law by Polish President *Andrzej Duda* on 29 May 2023, it entered into force on 31 May 2023. The State commission is designed as an administrative committee which is part of the public administration and whose members are appointed by the Sejm. It has to examine whether high-ranking officials acted or developed “activities” to the detriment of public interests in the period 2007-2022. The mandate includes examining and deciding whether a person should be deprived of the right to hold public office in connection with the management of public funds for up to ten years. The Commission is authorised to receive classified information, conduct hearings and further investigations and amend or repeal administrative decisions, even if they were confirmed by an administrative court. The law is also nicknamed “*Lex Tusk*” since the opposition fears that the State commission will above all examine activities between 2007 and 2014 when Tusk was Polish Prime Minister; Tusk is top candidate for the opposition for the parliamentary elections on 15 October 2023.
- 29 May 2023: The U.S. Department of Justice voices concerns over the “*Lex Tusk*”. [In a press statement](#), it is said that the new legislation could be misused to interfere with Poland’s free and fair elections. The government of Poland is called on “to ensure this law does not preempt voters’ ability to vote for candidate of their choice and that it not be invoked or abused in ways that could affect the perceived legitimacy of elections”.
- 30 May 2023: The European Commission issued a [press release](#) in which concerns are expressed with regard to the “*Lex Tusk*”. Citizens may be deprived of their right to a fair trial.
- 1 June 2023: [Several lawyers allege](#) that the “*Lex Tusk*” infringes the Polish constitution, Art. 6 ECHR and the fundamental values of the EU.
- 5 June 2023: The ECJ delivers its judgment in [Case C-204/21](#) - the action for failure to fulfil obligations brought by the Commission against the so-called “muzzle law” (laws amending the national rules relating to the organisation of the ordinary courts, the administrative courts and the Supreme Court of 20 December 2019 → [eucri](#)m 1/2020, 2-3 and [eucri](#)m 1/2021, 4). The Vice-President of the CJEU recently reduced the daily penalty payment to €500,000 by an order of 21 April 2023 at Poland’s request (→ [eucri](#)m 1/2023, 5), because Poland had at least partially complied with the requirements of the order for giving effects to interim measures dated 14 July 2021 (→ [eucri](#)m 3/2021, 135). In its [final judgment](#), the ECJ concludes that the Polish “muzzle law” infringed Union law. It reiterates its

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assessment that the Disciplinary Chamber of the Supreme Court does not satisfy the requirement of independence and impartiality. The disciplinary regime and its sanctions may prevent judges from referring questions to the CJEU for a preliminary ruling and are incompatible with the guarantees of access to an independent and impartial tribunal. The transfer of responsibility for reviewing the essential requirements for effective judicial protection to one single body (i.e. the Extraordinary Review and Public Affairs Chamber of the Supreme Court) is also contrary to EU law. Lastly, the obligation of judges to submit a written declaration indicating any membership of associations, non-profit foundations or political parties disproportionately interferes with their fundamental rights (right to protection of personal data, right to respect for private life). The today's judgment terminated the effects of the penalty payment orders against Poland. However, this does not affect Poland's obligation to pay the daily penalty payments due for the past.

- 8 June 2023: The [Commission opens an infringement procedure](#) against Poland alleging that the new law in Poland on the State Committee for the Examination of Russian influence on the internal security of Poland between 2007 and 2022 (nicknamed "Lex Tusk") violates EU law. The Commission sent a letter of formal notice to Poland and considers that the law unduly interferes with the democratic process, violates the principles of legality and of non-retroactivity of sanctions, and does not respect the right to an effective judicial remedy. In addition, the law is incompatible with EU data protection rules.
- 23 June 2023: Journalists examined [cases that have been decided by the Polish Supreme Court since 2019](#) and involved disputes between Polish authorities and media. They conclude that decisions taken by neo-judges, who were appointed by the conservative ruling party PiS after the judicial reforms initiated in 2018, favoured the authorities' stance.
- 6 July 2023: The [ECtHR rules](#) that there had been several violations of fundamental rights by Poland when the country initiated preliminary inquiries against Polish district judge *Igor Tuleya* on suspicion of disciplinary misconduct. Mr Tuleya is one of the most prominent critics of the judicial reforms of the national-conservative ruling party PiS. According to the ECtHR, the criminal limb of Art. 6 para. 1 ECHR (right to a fair trial) is applicable to the immunity proceedings against Mr Tuleya. This guarantee was violated because the Disciplinary Chamber of the Supreme Court, which had examined Mr Tuleya's case, had not been an "independent and impartial tribunal established by law", as already observed in previous judgments against Poland. In addition, there had been no lawful basis for the measures against Mr Tuleya which have had a significant impact on his right to private life (Art. 8 ECHR) and could be characterised as a strategy aimed at intimidating (or even silencing) him for the views that he had expressed (Art. 10 ECHR). In conclusion, the ECtHR held that Poland was to pay Mr Tuleya €30,000 in respect of non-pecuniary damage and €6,000 in respect of costs and expenses.
- 11 July 2023: The [European Parliament \(EP\) approves a resolution](#) in which the Polish authorities are urged to repeal the "Lex Tusk" (cf. supra). MEPs also submit that the Commission should pursue an expedited infringement procedure as soon as possible and apply to the CJEU for interim measures if the act remains in force. Furthermore, the EP expresses deep concerns over the recent amendments to the Polish Electoral Code that are not in line with international democratic standards.
- 13 July 2023: In its judgment in [Joined Cases C-615/20 \(YP and Others\) and C-671/20 \(M. M.\)](#), the ECJ deals with the question as to which extent Union law allows Polish courts to disregard resolutions of the Polish Disciplinary Chamber that waived the immunity of judges and reassigned their cases to other court panels. The case concretely concerns Polish judge *Igor Tuleya* who recently won his case also before the ECtHR (→ judgment of 6 July, supra). [The judges in Luxembourg state](#) that the resolutions were based on national provisions that the CJEU has held to be contrary to Union law (→ cf. judgment of 5 June 2023, supra). Given the authority attached to a judgment establishing a failure to fulfil obligations on the part of a Member State and the principle of the primacy of EU law, national courts are required to disapply an act ordering, in breach of EU law, a judge's suspension from

his or her duties. Consequently, Igor Tuleya must be able to continue to exercise jurisdiction in the proceedings before him and the panel, to which a case initially entrusted to Tuleya was reassigned, must refrain from ruling on that case.

- 27 July 2023: In an [urgent opinion](#), the [Venice Commission](#) of the Council of Europe recommends that the Polish authorities revoke the "Law on the State Commission to Investigate Russian Influence" at their earliest convenience. The Venice Commission is particularly concerned about the overly broad scope of application of the Law and the fact that core notions are formulated in an excessively vague manner. It concludes that the Law has a negative impact on the level playing field in the context of the upcoming autumn elections.
 - 3 August 2023: Polish [President Andrzej Duda signs off amendments](#) to the law establishing the State Commission for the Examination of Russian influence on the internal security of Poland. The amendments come after mounting international criticism of the law passed end of May 2023 (cf. supra). Accordingly, the possibility of a ban on holding office no longer applies. Nonetheless, the Commission should be entitled to announce that persons are unsuitable for public office as there is no guarantee that they represent Poland's interests. Moreover, it would now be possible to appeal against the Commission's decisions to the Warsaw Court of Appeal. It is criticised, however, that the capital's court, which deals with most cases involving parliament, government and central authorities due to its local jurisdiction, has been almost completely filled with loyal judges as part of the ruling parties' (PiS) restructuring of the judiciary. Opponents also point out that the law is still apt to discredit Polish opposition leader Donald Tusk.
 - 30 August 2023: Polish president [Andrzej Duda signs an amendment to the Penal Code](#) which introduces penalties for spreading disinformation, increases penalties for espionage and bans photographing and recording objects important for the security and defence of the state. In particular, the new law (dubbed "spy act") penalises the spreading of disinformation on behalf of a foreign intelligence service with the aim of inciting interference in the society and economy of Poland with at least 8 years of imprisonment. [Critics put forward](#) that the notion of disinformation is too vast in terms of content and that this provision could open the door to investigating whether journalists or NGOs have some kind of relationship with a foreign intelligence service, and whether their actions are intended to cause some kind of serious harm.
 - 11 October 2023: Ahead of the parliamentary elections, the [press reports](#) that the ruling national conservative PiS party and its cooperating partner, Suwerenna Polska (Sovereign Poland Party), have not respected the financial rules enshrined in the Electoral Code which are to ensure that all parties have an equal level playing field in the election campaign. The Electoral Code lays down strict rules how much money can be available for parties to finance their electoral campaigns. It is maintained that politicians from the ruling party have brushed off these rules and used public money to organise *de facto* party events, advertise party election promises, and to buy equipment for voters, ranging from laptops to pots.
 - 15 October 2023: In the [parliamentary elections](#), the national conservative party PiS ("Law and Justice") was once again the strongest force with around 35.4%, but this time it was not enough for an absolute majority. The second strongest party was the Civic Coalition (KO) with just under 31%. With a voter turnout of 74%, the highest figure since the transformation in 1989 was recorded. There are signs of a change of government, as the other parties in question have ruled out a coalition with the PiS.
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