

# Rule of Law Developments in Poland: Mid October 2023 - Mid January 2024



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European Law Forum: Prevention • Investigation • Prosecution

## News

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This news item continues the overview of the rule-of-law developments in Poland (as far they relate to European law issues) from 16 October 2023 to mid-January 2024. They follow up the overview in [euCRIM 2/2023, 111-113](#).

- 24 October 2023: Applications by four Polish judges against the lowering of the retirement age for Polish judges and the related procedure are [successful before the ECtHR](#). The four female judges complained about legislative amendments that had lowered the retirement age for judges from 67 to 60 for women, and to 65 for men, and had made the continuation of a judge's duties after reaching retirement age conditional upon authorisation by the Polish Minister of Justice and by the National Council of the Judiciary ("the NCJ"). The complaints were lodged to the ECtHR in 2018 and 2019 ([applications nos. 25226/18, 25805/18, 8378/19 and 43949/19, Pająk and Others v. Poland](#)). The ECtHR found that the decisions taken in respect of each applicant by the Minister of Justice and by the NCJ had constituted arbitrary and unlawful interference, in the sphere of judicial independence and protection from removal from judicial office, on the part of the representative of executive authority and the body subordinated to that authority. It concluded that the applicants' right of access to a court (Art. 6(1) ECHR) had thereby been impaired in its very essence. In addition, the ECtHR found that the legislation complained of violated Art. 14 ECHR (prohibition of discrimination).
- 24 October 2023: In an English translation at [ruleoflaw.pl](http://ruleoflaw.pl), [journalist Bartosz T. Wieliński reflects on the question where Poland, the fifth largest EU country, would have been today had it not been for the eight years under the PiS government](#).
- 7 November 2023: The still ruling PiS government tries to [push through a loyal judge](#) as candidate for the position of judge at the Court of Justice of the European Union.
- 15 November 2023: The [General Affairs Council discusses the state of play of the Article 7\(1\) TEU procedure](#) concerning Poland. The Commission that launched the procedure in 2017 informs ministers about developments since the last hearing in May 2023. Concerns with regard to the Supreme Court, the National Council for the Judiciary and the role and case law of the Polish Constitutional Tribunal remain. The Commission also points out that the reform of the disciplinary regime applicable to Polish judges undertaken by the Polish authorities had not entered into force yet. Ministers stress the importance of addressing all the issues regarding judicial independence and rule of law in Poland. They express the hope that Poland will soon address the concerns raised. The Council will remain seized of the matter.

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- 12 December 2023: An English translation of an [interview given by designated Polish Minister of Justice, Adam Bodnar](#), under the new Tusk government is published. Bodnar outlines priorities to regain trust in the Polish judiciary and his plans to undo modifications of the Polish judicial system under the previous PiS government. His most important three priorities are the unblocking of funds by the European Commission under the national recovery and resilience plan, Poland's accession to the European Public Prosecutor's Office and the reduction of the tension between the executive and the judiciary.
- 21 December 2023: The [ECJ declares](#) a request for preliminary ruling by the Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court inadmissible since the chamber does not constitute a "court or tribunal" for the purpose of EU law ([Case C-718/21 L.G.](#)). Said chamber had to decide on an appeal by a Polish judge disputing a resolution of the National Council of the Judiciary ("the KRS") with regard to his retirement. The ECJ first refers to the 2021 ECtHR judgment in *Dolińska-Ficek and Ozimek v. Poland* which has already found that two adjudicating panels of the Extraordinary Review Chamber are neither established by law nor independent. Second, the ECJ refers to a decision by the Polish Supreme Administrative Court that annulled the appointment of judges in the adjudicating panel of the Extraordinary Review Chamber. Against this background, the ECJ holds that the presumption that the requirements of a "court or tribunal" within the meaning of Article 267 TFEU are met is rebutted with regard to the referring body.
- 9 January 2024: The ECJ declares two references for preliminary ruling inadmissible. In the [Joined Cases C-181/21 and C-269/21](#) (*G. and Others v M.S. and X.*), Polish judges made requests to the ECJ in order to assess compliance of the composition of adjudicating panels at ordinary courts (dealing with consumer protection cases) with EU law, in particular Art. 19(1) TEU and Art. 47 CFR, because the panels had judges who were appointed by the politicized National Council of the Judiciary ("the KRS"). In both cases, the ECJ denied the "necessity" of the requests. In Case C-181/21, the ECJ holds that only the panel of three judges responsible for the main proceedings, and not one judge of that panel alone, had jurisdiction to refer the questions raised in that case to the CJEU. In its reasoning in Case C-269/21, the ECJ states that the referring court does not have jurisdiction to "recuse" a judge forming part of the panel of another court which called an order of the referring court into question.
- 17 January 2024: In an [analysis](#), which is part of the international project [PATFox "Pioneering anti-SLAPP Training for Freedom of Expression"](#), it is found that Polish courts increasingly and more frequently award compensations to demonstrators for political harassment by the Polish police and prosecutor's offices that happened in recent years.

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