

# Poland Update September 2021

## I. Disciplinary Chamber of Polish Supreme Court

On 15 July 2021 the Grand Chamber of the ECJ found the new disciplinary regime for Polish judges to be incompatible with EU law (Commission v Poland C-791/19):

The ECJ declared that Poland failed to guarantee

- the independence and impartiality of Disciplinary Chamber of the Supreme Court, which is responsible for reviewing decisions issued in disciplinary proceedings against judges
- that disciplinary cases are examined by a tribunal ‘established by law’ due to conferring on the President of the Disciplinary Chamber of the Supreme Court the discretionary power to designate the disciplinary tribunal with jurisdiction at first instance in cases concerning judges of the ordinary courts
- that disciplinary cases against judges of the ordinary courts are examined within a reasonable time.

On 14 July 2021 the ECJ issued an interim order in the case C-204/21, Commission v Poland, ordering the Disciplinary Chamber to halt a slew of its activities, such as lifting judicial immunities and suspending judges from work that were not covered by the earlier interim order in the case C-791/19.<sup>1</sup>

The head of Poland’s Supreme Court Manowska has ordered that no new cases to be sent to the Disciplinary Chamber. However, ongoing cases are not suspended by the Supreme Court, so that the head of the Disciplinary Chamber has to decide about the freezing of ongoing cases.<sup>2</sup>

More than 2000 judges from across Poland called on the government and the president of the Supreme Court to implement the CJEU rulings.<sup>3</sup>

On 22 July 2021, the ECtHR issued its third judgment concerning the rule of law crisis in Poland. In *Reczkowicz v. Poland* (43447/19) the ECtHR ruled that the Disciplinary Chamber of the Polish Supreme Court which dismissed the cassation complaint of the applicant did not meet the standard of a “right to a court established by law” guaranteed under Article 6 § 1 the Convention. The main reason for this finding was the fact that the panel of the Disciplinary Chamber was composed of judges appointed upon the motion of the National Council of Judiciary, which, after legislative changes adopted in 2017, ceased to be an independent body.<sup>4</sup>

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<sup>1</sup> <https://verfassungsblog.de/polexit-or-judicial-dialogue/>

<sup>2</sup> <https://euruleoflaw.eu/blog/>

<sup>3</sup> <https://ruleoflaw.pl/historic-appeal-of-2073-polish-judges-in-defense-of-eu-law/>

<sup>4</sup> <https://johan-callewaert.eu/de/disciplinary-chamber-of-the-polish-supreme-court-judgment-of-the-echr-in-reczkowicz-v-poland/>, [Hundreds of judges appointed in violation of the ECHR? – Verfassungsblog](#)

## II. Polish Constitutional Court

The case K 3/21 was brought before the Constitutional Court on application of Prime Minister Mateusz Morawiecki. He seeks for the Court to find that some of the core elements of the principle of primacy of EU law – such as the judges being able to disregard a domestic law that is not compatible with EU law and to use a prior domestic law that raises no such concerns – are incompatible with the Polish Constitution. The hearing was postponed to 22 September 2021 and is now adjourned to 30 September 2021<sup>5</sup>

The second crucial EU law related case was brought on application from the Disciplinary Chamber of the Polish Supreme Court (P7/20) to the Polish Constitutional Court. The Court found that the ECJ interim orders with regards to judges and courts are incompatible with the Polish Constitution.<sup>6</sup>

## III. Activities of the European Commission

The EC took two separate decisions, both related to decisions of the ECJ.

First, the EC decided to request ECJ to impose financial penalties on Poland to ensure compliance with the Court's interim measures order requested under Article 279 TFEU (of 14 July 2021). The order related to the functioning of the Disciplinary Chamber of the Polish Supreme Court and the suspension of further provisions of Polish law affecting judicial independence. The Commission is asking the Court to impose a daily penalty payment on Poland for as long as the measures imposed by the Court's order are not fully implemented.

Second, the Commission also decided to send a letter of formal notice under Article 260(2) TFEU to Poland, for not taking the necessary measures to comply fully with the judgment of the Court of Justice (of 15 July 2021) finding that Polish law on the disciplinary regime against judges is not compatible with EU law.<sup>7</sup>

## IV. Ombudsman

Parliament has chosen a new commissioner for human rights (Ombudsman). Marcin Wiacek, a lawyer and professor at the University of Warsaw, has replaced the outgoing Adam Bodnar.<sup>8</sup>

## V. European Network of Councils for the Judiciary (ENCJ)

Upon the decision of the Executive Board, the ENCJ convenes an Extraordinary General Assembly on 28-29 October 2021 in Vilnius to vote on the Polish Judicial National Council/Krajowa Rada Sadownictwa (KRS) expulsion from the Association. On 27 May 2020 the Executive Board of the ENCJ

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<sup>5</sup> <https://verfassungsblog.de/polexit-or-judicial-dialogue/>; <https://euruleoflaw.eu/blog/>,  
[https://twitter.com/j\\_jaraczewski/status/1440660988785684490?s=12](https://twitter.com/j_jaraczewski/status/1440660988785684490?s=12)

<sup>6</sup> <https://ruleoflaw.pl/constitutional-tribunal-ruled-cjeu-interim-orders-do-not-apply-in-poland/>,  
<https://verfassungsblog.de/polexit-or-judicial-dialogue/>

<sup>7</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4587](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4587)

<sup>8</sup> [https://www.euractiv.com/section/politics/short\\_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/](https://www.euractiv.com/section/politics/short_news/poland-elects-new-ombudsman-in-rule-of-law-standoff/)

already proposed to the ENCJ General Assembly to convene as soon as possible as the Covid-19 pandemic would allow it, that the KRS be expelled.<sup>9</sup>

## **VI. Reports with regard to proceedings against judges**

The Minister of Justice **suspended Judge Adam Synakiewicz** from Częstochowa for a month for challenging the status of neo-judges and implementing the judgments of the CJEU and ECtHR.<sup>10</sup>

Disciplinary commissioner Piotr Schab **suspended judge Piotr Gąciarek** for a month for a declaration made a few days earlier in which Gąciarek refused to adjudicate in a bench with a judge promoted by the new, political National Council of the Judiciary.<sup>11</sup>

**Judge Marta Pilsnik was suspended** by the Minister of Justice for her decision applying recent judgements of the ECJ and ECtHR regarding Poland.<sup>12</sup>

The Dean of the School of Law of University Kozminski decided that **judge Igor Tuleya is no longer allowed to teach at this university.**<sup>13</sup>

## **VII. Polish Judges Association IUSTITIA celebrates anniversary**

The Association of Polish Judges “**Iustitia**” celebrated its **31st anniversary** on 18 and 19 September 2021. For this reason, a gala took place in the European Solidarity Center in Gdansk. Among the guests were: Lech Wałęsa, the former President of the Supreme Court Małgorzata Gersdorf and the Vice-President of AEAJ, Holger Böhmann.<sup>14</sup>

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<sup>9</sup> <https://www.encj.eu/node/603>

<sup>10</sup> <https://ruleoflaw.pl/ziobro-breached-the-cjeu-judgment-and-suspended-judge-synakiewicz-for-applying-eu-law/>

<sup>11</sup> <https://ruleoflaw.pl/judge-piotr-gaciarek-was-suspended-by-ziobros-nominee-for-implementing-eu-law/>

<sup>12</sup> Judges for Judges on <https://twitter.com/judges4j/status/1438741006296436741?s=12>

<sup>13</sup> <https://twitter.com/judgesssp/status/1440265769632239625?s=12>

<sup>14</sup> <https://newsbeezer.com/polandeng/non-political-jurors-have-fun-at-the-iustitia-gala-video/>; [Iustitia has freedom in her heart, a sword in her hand, and millions of wonderful Poles behind her. Prof Krystian Markiewicz President of the Polish Judges Association Iustitia - Gala celebrating the 31st anniversary of the Polish Judges Association IUSTI - Stowarzyszenie Sędziów Polskich Iustitia](#)