

Rule of law in the recent case law of the CJEU and ECHR

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Agenda



Case law of the CJEU regarding rule of law in 2023

C-817/21, *Inspekția Judiciară*

C-204/21, *Commission vs Poland (Indépendance et vie privée des juges)*

C-615/20 and C-671/20, *YP and others*

C-107/23 PPU, *Lin*

C-216/21, *Asociația 'Forumul Judecătorilor din România'*

C-718/21, *Krajowa Rada Sądowictwa*



Case law of the ECHR regarding rule of law in 2023

Bragado and others against Spain, 53193/21

Tuleya against Poland, 51751/20

Wałęsa against Poland, 50849/21

Case law of the CJEU

- ▶ Polish and Romanian cases but there are concerns in other MS
- ▶ Mainly preliminary ruling procedure, including one urgent
- ▶ One infringement proceedings
- ▶ Average duration: more than 2 years

Case law of the CJEU – C-817/21

- ▶ **Article 2 TEU and Article 19(1)(2) TEU**, read in conjunction with **Commission Decision 2006/928/EC [Cooperation and Verification Mechanism]** preclude national legislation:

- ▶ which confers on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities and the appointment of a deputy director;
- ▶ where, first, those members of staff and the deputy director alone are competent to conduct a disciplinary investigation against that director, next, their careers depend largely on the decisions of that director and, finally, the term of office of the deputy director will end at the same time as that of the director,

when that legislation is not designed in such a way that there can be **no reasonable doubt, in the minds of individuals**, that the powers and functions of that body will not be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

- ▶ [Para 32] the fact that the case concerns an important aspect of the organisation of the courts of the MS concerned is not, as such, a reason that establishes the exceptional urgency necessary to justify an expedited procedure
- ▶ [Paras 58 and 59] It is ultimately for the referring court to rule on that matter and to assess the legislation at issue in the main proceedings as such and **in its national legal and factual context**

C-817/21 (II)

- ▶ The national legal and factual context
 - ▶ the wider context of reforms concerning the organisation of the Romanian judiciary the purpose or effect of which is to reduce the guarantees of independence and impartiality of Romanian judges
 - ▶ the specific rules for appointing the Chief Inspector may be of some importance, if they indicate that the Chief Inspector is closely linked to the executive or the legislature
 - ▶ the Chief Inspector's actual practice in the exercise of his or her powers – reference to the reports from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism

Case law of the CJEU – C-204/21

- ▶ Regarding the infamous Muzzle Law
- ▶ Number of issues:
 - ▶ the notion of *disciplinary offence*
 - ▶ prohibiting any national court from reviewing compliance with the requirements arising from EU law relating to the guarantee of an independent and impartial tribunal previously established by law
 - ▶ exclusive jurisdiction of the Polish Supreme Court's Chamber of Extraordinary Review and Public Affairs to examine complaints and questions of law concerning the lack of independence of a court or a judge
 - ▶ the judges' rights to respect for private life and to the protection of personal data
- ▶ The Commission's action upheld in its entirety
- ▶ [Paras 60-80] Fascinating read on *the jurisdiction of the Court of Justice, the rule of law and the independence of the judiciary, and the primacy of EU law*

Case law of the CJEU - C-615/20 and C-671/20

- ▶ Reference to Case C-204/21
- ▶ [Para 76] National courts are required to disapply an act ordering, in breach of EU law, a judge's suspension from his duties
 - ▶ [Para 77] The panel to which a case initially entrusted to suspended judge was reassigned must refrain from ruling on that case and that the competent judicial bodies must reassign that case to suspended judge
- ▶ [Paras 88-92] Neither the national provisions prohibiting national courts, on pain of disciplinary penalties, from examining the binding nature of the act ordering the suspension, nor the case law of a constitutional court which does not permit such an examination, can preclude the disapplication of the said act

Case law of the CJEU – C-107/23 PPU

- ▶ The principle of the primacy of EU law precludes national legislation or a national practice under which the ordinary national courts of a Member State are bound by the decisions of the constitutional court and by those of the supreme court of that Member State and cannot, for that reason and at the risk of incurring the disciplinary liability of the judges concerned, disapply of their own motion the case-law resulting from those decisions, even if they consider, in the light of a judgment of the Court, that that case-law is contrary to provisions of EU law having direct effect

Case law of the CJEU – C-216/21

- ▶ **Article 19(1)(2) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter**, does not preclude a piece of national legislation pursuant to which the scheme for the promotion of judges to a higher court is based on an assessment, carried out by a board composed of (i) the president of that higher court and (ii) members of that court, of the work and conduct of the persons concerned, **provided that** the substantive conditions and procedural rules governing the adoption of decisions relating to effective promotion are such that they cannot give rise to **reasonable doubts, in the minds of individuals**, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once they have been promoted

Case law of the CJEU – C-718/21

- ▶ Inadmissibility of the request for a preliminary ruling from the Polish Supreme Court's Chamber of Extraordinary Control and Public Affairs
 - ▶ **The consequence of all the factors, both systemic and circumstantial, which characterised the appointment, within the Chamber of Extraordinary Control and Public Affairs, of the three judges constituting the referring body in the present case, is that the Chamber does not have the status of an independent and impartial tribunal previously established by law for the purposes of Article 19(1)(2) TEU, read in the light of Article 47(2) of the Charter.**
 - ▶ **The combination of all those factors is such as to give rise to reasonable doubts in the minds of individuals as to the imperviousness of the persons concerned and the panel in which they sit with regard to external factors, in particular the direct or indirect influence of the national legislature and executive and their neutrality with respect to the interests before them. Those factors are thus capable of leading to a lack of appearance of independence or impartiality on the part of those judges and that body likely to undermine the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.**
- ▶ What are the consequences of such inadmissibility?

Case law of the ECHR - Bragado

- ▶ Breach of Article 6(1) of the Convention due to decision of the Spanish Constitutional Court
- ▶ Case concerning the General Council of the Judiciary and the process of the renewal of its members
- ▶ **Problem at EU level:** on 26th January 2024 the European Commission proposed to hold a structured dialogue on the implementation of the recommendation in the 2022 and 2023 Rule of Law Reports for Spain.

Case law of the ECHR - Tuleya

- ▶ Breach of Articles 6(1), 8 and 10 of the Convention
- ▶ Case concerning disciplinary proceedings against a Polish judge (on of the one of the most active and outspoken critics of the judicial reforms undermining the rule of law standards and judicial Independence in Poland)
- ▶ Disciplinary Chamber of the Supreme Court is not an *independent and impartial tribunal established by law*
- ▶ See also Case C-615/20 and C-671/20, *YP and others*

Case law of the ECHR - Wałęsa

- ▶ Breach of Articles 6(1) and 8 of the Convention
- ▶ Case concerning former Polish President being accused of collaboration with the secret services under the communist regime
- ▶ The Supreme Court's Chamber of Extraordinary Review and Public Affairs is not an *independent and impartial tribunal established by law*
- ▶ See also Case C-718/21, *Krajowa Rada Sądownictwa*