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# **Rule of law in the recent case law of the CJEU and ECtHR**

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# Recent case-law

## ECHR

- Cotoră v Romania
- Tuleya v Poland

## CJEU

- Commission v Poland
- YP
- Inspekția Judiciară

## **Cotora v Romania (app. no. 30745/18; 17 January 2023)**

- **Complaint: Article 6 § 1 (right to a fair trial)**
- **the High Court of Cassation and Justice had not carried out a “sufficient review” to cure the flaws in the disciplinary proceedings in which the Judicial Disciplinary Board of the National Council of Judges and Prosecutors had issued its decision.**
- **the Judicial Disciplinary Board had refused to consider some of the evidence she had sought to adduce**

# Cotora v Romania

## A. Judicial Disciplinary Board

- (i) whether the Judicial Disciplinary Board had been a “tribunal” under Article 6 (1)
- (ii) whether the Judicial Disciplinary Board had been “independent” and “impartial”
- (iii) whether the Judicial Disciplinary Board proceedings had been “fair”

# Cotora v Romania

B. High Court of Cassation (see: Ramos Nunes de Carvalho e Sá v. Portugal [GC] case)

- Subject matter
- Procedural safeguards
- Grounds of the challenge

# Tuleya v Poland (21181/19 and 51751/20; 06.07.2023)

- a violation of Article 6 § 1 (criminal limb of Art. 6 applicable to immunity proceedings)
- a violation of Article 8 (the interference with his right to respect for his private life had not been “in accordance with the law”)
- a violation of Article 10 (no legitimate aim)

# Tuleya v Poland

- ‘the imposition or the threat of imposition of disciplinary liability in connection with the giving of a judicial decision must be seen as an exceptional measure and be subject to restrictive interpretation, having regard to the principle of judicial independence’ (para. 437)
- Since judges’ comments on changes in the judiciary which impacted on the guarantee of a fair trial were both acceptable and desirable, the national authorities should not prevent or discourage judges from expressing their opinions. On the contrary, States had positive obligations under the Convention to create a favourable

## Tuleya v Poland (see also *Żurek* case)

- ‘it appears that the measures taken by the authorities could be characterised as a strategy aimed at intimidating (or even silencing) the applicant in connection with the views that he had expressed in defence of the rule of law and judicial independence. The Court considers that the impugned measures undoubtedly had a “chilling effect” in that they must have discouraged not only the applicant but also other judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary’ (para. 544)



# Commission v Poland, C-204/21

(see also C-791/19)

- Status of Disciplinary Chamber – Article 19(1) TEU
- examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law - classified as a disciplinary offence - Article 19(1) TEU + Article 47 Charter + Article 267 TFEU;
- Law prohibiting any national court from verifying compliance with the requirements stemming from EU law relating to the guarantee of an independent and impartial tribunal – Article 19(1) TEU + Article 47 Charter

## Y.P. (C-615/20 and C-671/20)

- Q: From the point of view of the answers to the above questions, is it relevant that the Disciplinary Chamber and the Trybunał Konstytucyjny (Constitutional Court) do not guarantee effective judicial protection due to their lack of independence and the established infringements of the rules concerning the appointment of their members?’
- 91 Furthermore, it should be recalled that, in the event that, following judgments delivered by the Court, a national court finds that the case-law of a constitutional court is contrary to EU law, the

## ***Inspekția Judiciară, C-817/21***

- R.I. complains, rather, that it is impossible to bring disciplinary proceedings on account of the manner in which the Judicial Inspectorate is organised and operates.
- Q: ‘Must Article 2 and the second subparagraph of Article 19(1) [TEU], Decision 2006/928 ... and the guarantees of independence and impartiality imposed under EU law, be interpreted as precluding national legislation which allows the Chief Inspector of the Judicial Inspectorate to issue administrative acts of a normative nature (subordinate to the law) and/or an individual nature by

## ***Inspekția Judiciară, C-817/21***

Article 2 TEU and the second subparagraph of Article 19(1) TEU, read in conjunction with Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption,

must be interpreted as precluding national legislation:

- which confers on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges

# ***Asociația ‘Forumul Judecătorilor din România’ v Consiliul Superior al Magistraturii, C-216/21***

(3) Is (...) [the] principle [of judicial independence] infringed by the introduction of a system for promotion to a higher court which is based solely on a brief assessment of activities and conduct that is carried out by a board composed of the president of the court responsible for judicial review and of the judges of that court which, in addition to the periodic assessment of judges, separately carries out both assessments of judges for promotion purposes and the judicial review of judgments delivered by those judges?

(4) Is the principle of judicial independence, enshrined in the second

2. The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU and Article 47 of the Charter (...), must be interpreted as meaning that a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.

4. Decision 2006/928 must be interpreted as not precluding a piece of national legislation altering the scheme for the promotion of judges when, in the reports drawn up under that decision, the European Commission has not made any recommendation relating to such an

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