

**Towards a new substantial standard of judicial independence within the EU?
Constitutional, comparative, and empirical study of Polish and Romanian courts' reactions to CJEU
and ECtHR developments.
(summary)**

1. On 23 November 2023, the European Court of Human Rights (ECtHR) decided on the long-waiting case *Wałęsa v. Poland*. It unanimously declared that Poland violated the right to an independent and impartial tribunal established by law. Moreover, ECtHR held that the violation had originated from systemic problems with the judiciary reforms. Due to its pilot nature, one may say that the judgement ends the series of Polish cases concerning judicial independence in Strasbourg. Others, including me, would instead argue the judgement only confirms the direction taken a few years ago by the ECtHR. Instead of ending, it opens a new chapter for a debate on judiciary independence. Firstly, the new laws must enforce the judgement, bringing new challenges. Secondly, the courts must follow the judgement, which may cause new approaches and understandings of judicial independence. Thirdly, the judgement must be conceptualised under academic typologies and doctrines. We may observe a remarkably analogous situation within the scope of EU law. After a series of judgments concerning judicial independence in Poland, the Court of Justice of the European Union (CJEU) is expected to decide the case *Commission v Poland*, which concerns the primacy of the EU law and the lack of independence of the Constitutional Tribunal in Poland. Meanwhile, the national lawmakers (i.e., in Poland and Romania) reformed the judiciary systems (sometimes abusing comparative arguments to provide a veil of justifications for the reforms). And the CJEU ruled on a series of issues relating to the independence of Romanian judges. At the same time, the other legal orders experienced new challenges concerning the political practice towards judges (i.e. in Spain and Italy). The new cases are pending. So, we may expect the subsequent developments (on both legislative and judicial levels) caused by the EU case law. The question of judicial independence is no less significant now than when the malfunctioning judiciary reforms entered into force. The project is future-oriented and not only immersed in the past case law.

2. The project aims to analyse the current, pending and expected judgements of CJEU, ECtHR, and national apex courts' (constitutional and supreme courts) reactions to the European developments regarding judicial independence. The project addresses the following questions: (a) How do we understand judicial independence after the CJEU and ECtHR case law? (b) What is the constitutional response to European developments? (c) what are the reasons and the scope of the resistance of the constitutional courts in Poland and Romania towards the European developments? (d) Do the national apex courts honestly follow the CJEU and ECtHR case law, or do they refer to the European Tribunals only ornamentally? (e) How many definitions and contexts of their applications of judicial independence may we find in the ECtHR, CJEU or constitutional court judgements?

3. The project proposes to address the topic by mixing empirical (systemic content analysis and in-depth interviews with judges) and doctrinal methods and applying a bottom-up perspective (starting from how judicial independence is understood and in which context the courts and judges use it). The methods are expected to produce more up-to-date and realistic findings on courts' understanding of judicial independence. Such a relationship may offer a critical evaluation of theory and case law and help identify current challenges for judicial independence within the EU at the national and supranational levels. On the one hand, the proposed combination of traditional methods allows to focus on *law in books* by collecting, describing, cataloguing (considering similarities and differences), evaluating and commenting on the importance (from national and supranational perspectives) of cases and legal provisions. On the other hand, using empirical methods, mainly systemic content analysis, shifts the project's focus towards a more realistic approach.

4. The project focuses on European case law and two countries (Poland and Romania), which share a common constitutional transformative experience of the last decade in the XX century. They also share similar judicial challenges regarding judicial independence, as the recent case law of CJEU demonstrated, and they also have recently experienced calls to reform the judiciary systems. In both countries, constitutional courts started to undermine the primacy of EU law and CJEU developments concerning judicial independence.

5. The project aims to produce descriptive, interpretive, empirical, and normative outcomes. This will enable monitoring of changes in the understanding of judicial independence by courts. Additionally, the research findings may be beneficial for other scholars who are tracking similar case laws in other EU countries.