

Mutual recognition of judgments and limitations of judicial independence in the Member States

***Agnieszka Frąckowiak-Adamska
Uniwersytet Wrocławski***

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Area of Freedom, Security and Justice (AFSJ)

Article 3(2) TEU

Title V of the TFEU — Articles 67 to 89

- policies on border checks, asylum and immigration;
- **judicial cooperation in civil matters;**
- **judicial cooperation in criminal matters;**
- police cooperation

Mutual recognition - 10 framework decisions + 2 directives + 1 regulation

FD 2002	European Arrest Warrant
FD 2003	<i>the execution of orders freezing property or evidence</i>
FD 2005	mutual recognition of financial penalties
FD 2006	<i>confiscation orders</i>
FD 2008	taking account of convictions in the Member States of the European Union in the course of new criminal proceedings
FD 2008	mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
FD 2008	mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty
FD 2008	<i>European evidence warrant</i>
FD 2009	decisions rendered in the absence of the person concerned at the trial
FD 2009	decisions on supervision measures as an alternative to provisional detention
Directive 2011	on the European Protection Order
Directive 2014	on European Investigation Order – implementation: 2017
Regulation 2018	on mutual recognition of freezing orders

14 regulations with recognition clause based on mutual trust in civil matters

44/2001	<i>(Brussels I)</i>
1346/2000	<i>insolvency</i>
2201/2003	<i>(Brussels II bis)</i>
805/2004	European Enforcement Order
1896/2006	European order for payment procedure
861/2007	small claims
4/2009	maintenance
650/2012	succession
1215/2012	(Brussels I bis)
606/2013	protection measures in civil matters
655/2014	European Account Preservation Order
2015/848	insolvency (new)
2016/1103	matrimonial property regimes
2016/1104	property consequences of registered partnerships
2019/1111	(Brussels II ter)

Area of Freedom, Security and Justice (AFSJ)

Article 67 TFEU

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

effectiveness

versus

protection of fundamental rights

CJEU Opinion 2/13, para 191 - mutual trust

„[...] That principle requires, particularly with regard to the [AFSJ], each of those States, **save in exceptional circumstances**, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law”

➤ **Presumption of compliance with fundamental rights by other Member States**

C-411/10 N.S., C-404/15 Aranyosi, C-216/18 LM – absolute mutual trust is excluded

C-681/13, Diageo Brands, § 63

„the rules on recognition and enforcement laid down by Regulation No 44/2001 are based on **mutual trust in the administration of justice** in the European Union. It is that trust which the Member States accord to one another’s **legal systems** and **judicial institutions**.”

Legal systems: Charter / ECHR / national bills of rights

Mutual trust in **judicial institutions**



Foto: Paweł Supernak/PAP



<http://www.imperialtransilvania.com>

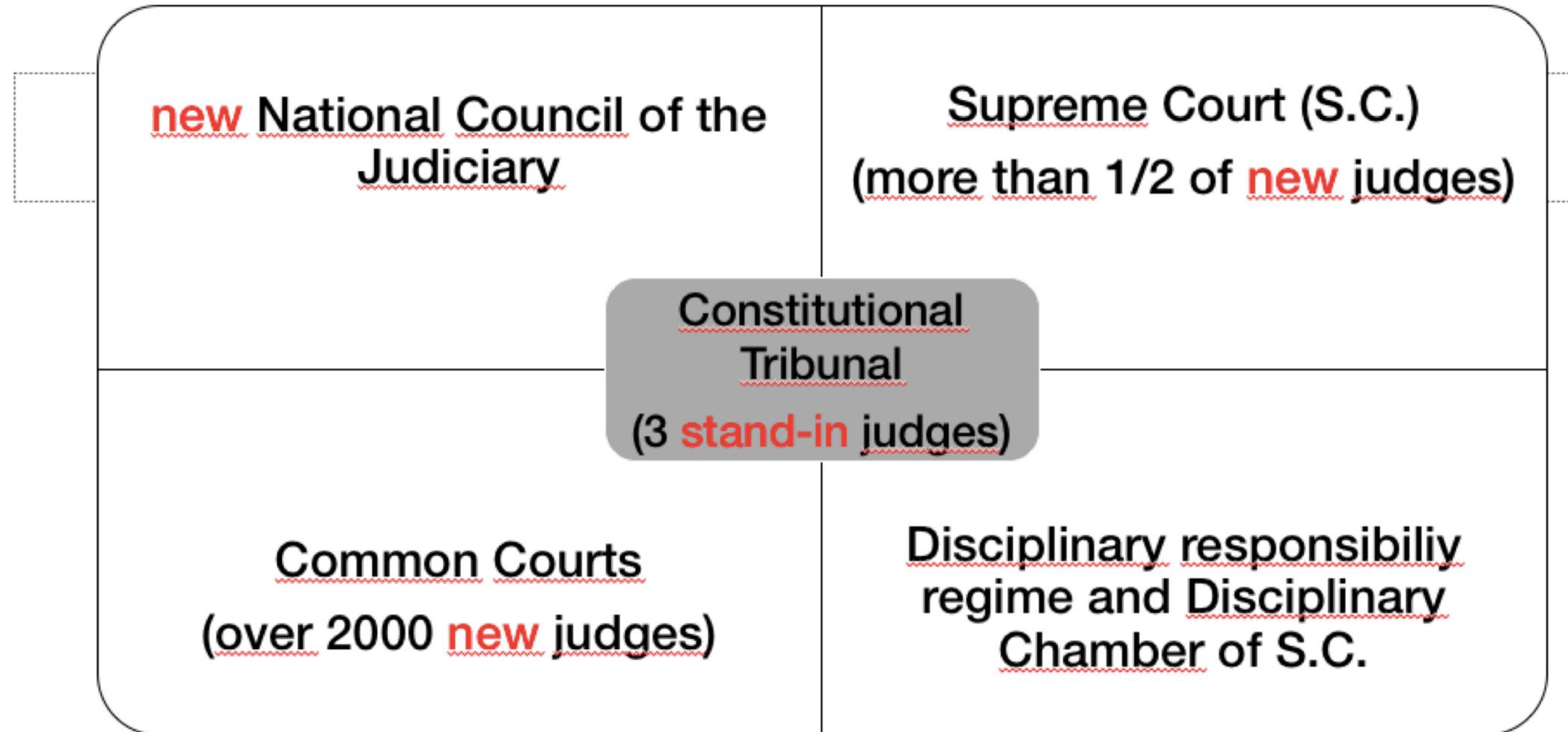


Author: Thema Newsroom

But what if the independence of the judiciary in one
Member State is curtailed?

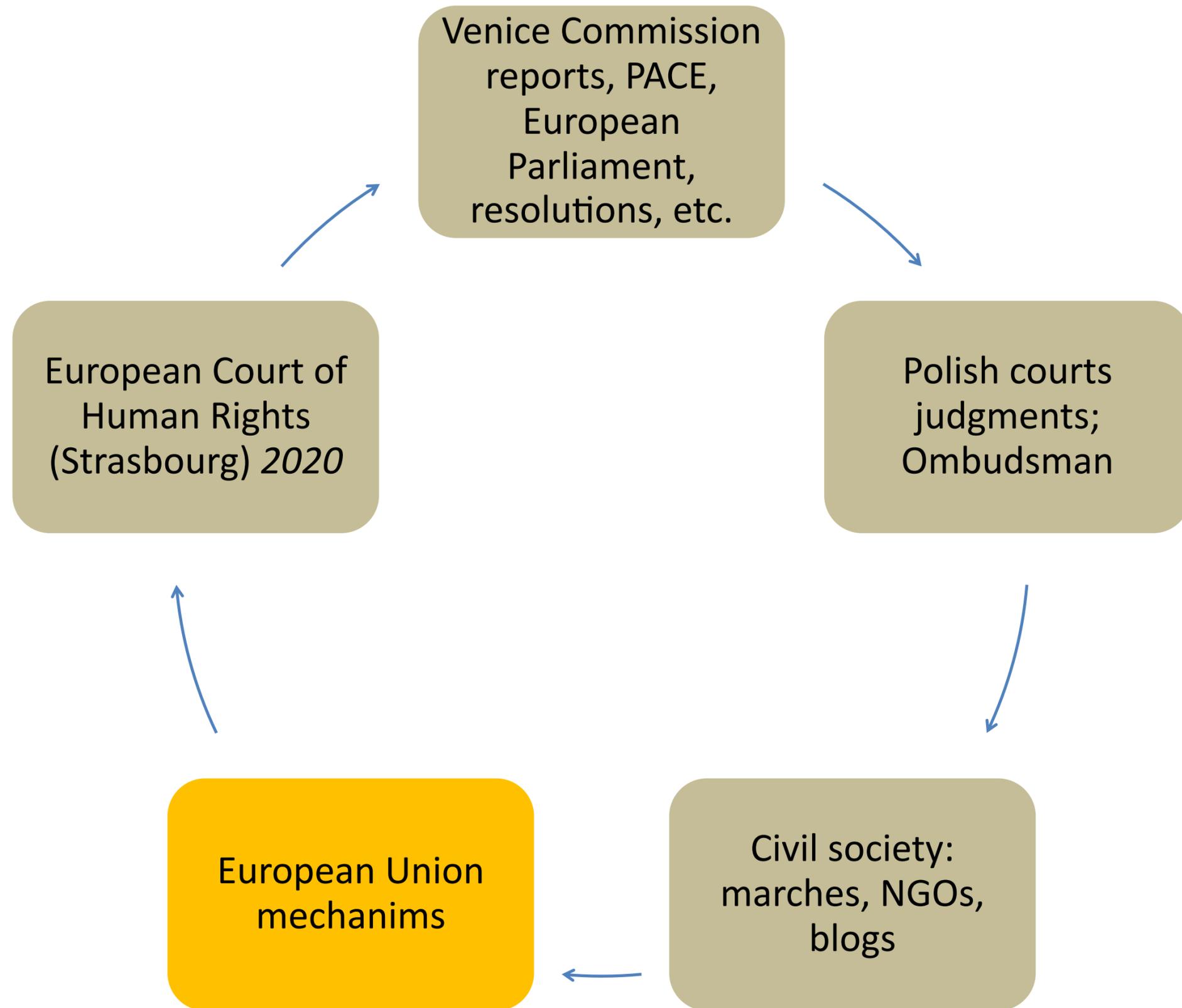
Should courts in other States continue to trust rulings from
this country?

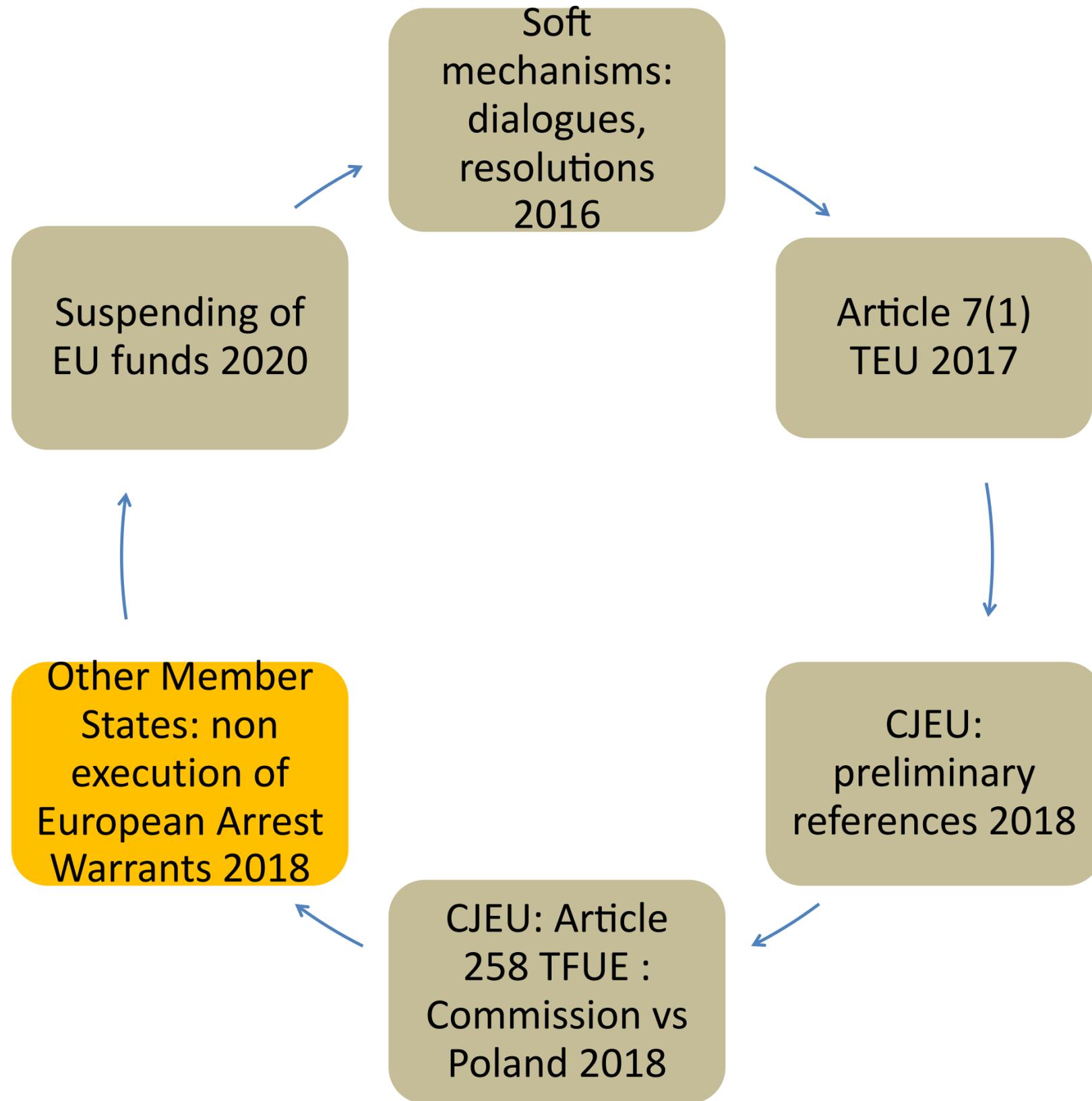
„Reforms of the judiciary” in Poland since 2015 – over 30 laws increasing the influence of the executive and legislative powers over the justice system



TOP-10 AUTOCRATIZING COUNTRIES, 2010–2020

		CHANGE	LDI 2010	LDI 2020	REGIME TYPE 2010	REGIME TYPE 2020
1	Poland	-0.34	0.83	0.49	Liberal Democracy	Electoral Democracy
2	Hungary	-0.32	0.68	0.37	Electoral Democracy	Electoral Autocracy
3	Turkey	-0.29	0.40	0.11	Electoral Democracy	Electoral Autocracy
4	Brazil	-0.28	0.79	0.51	Electoral Democracy	Electoral Democracy
5	Serbia	-0.27	0.51	0.24	Electoral Democracy	Electoral Autocracy
6	Benin	-0.26	0.55	0.29	Electoral Democracy	Electoral Autocracy
7	India	-0.23	0.57	0.34	Electoral Democracy	Electoral Autocracy
8	Mauritius	-0.23	0.73	0.50	Liberal Democracy	Electoral Democracy
9	Bolivia	-0.18	0.41	0.231	Electoral Democracy	Electoral Autocracy
10	Thailand	-0.17	0.34	0.17	Electoral Autocracy	Closed Autocracy





Refusal of execution of European Arrest Warrant (EAW) C-216/18 LM

- a general suspension of the EAW mechanism is only possible if a decision is taken by the European Council and the Council under Article 7(2) and (3) TEU
- Until then, national courts executing EAWs should apply a two-prong test established for the case of a potential breach of fundamental rights in another Member State (the *Aranyosi* test)

Refusal of execution of European Arrest Warrant (EAW) C-216/18 LM

Executing court - two-prong test :

1. if strong evidence of **systemic or generalised deficiencies**
(reasoned proposal of Article 7(1) TEU → rebutal of presumption of mutual trust)



2. **individual** case assessment

➤ obligation to refrain from giving effect to the EAW **only if a real risk** of a breach of the fundamental right to a fair trial in **individual** case

Refusal of execution of European Arrest Warrant (EAW) C-216/18 LM

individual case assessment

- The executing authority should thus determine firstly “specifically and precisely, **to what extent those deficiencies are liable to have an impact at the level of the courts** of that Member State which have jurisdiction over the proceedings to which the requested person will be subject”.
- it should verify whether there is a real risk of breach of his/her fundamental right to an independent tribunal if he/she is surrendered to that Member State **having regard to his/her personal situation, the nature of the offence for which he/she is being prosecuted, and the factual context at the basis of the EAW**

**Joined Cases C-354/20 PPU and C-412/20 PPU, Openbaar Ministerie v. L and P
(Indépendance de l'autorité judiciaire d'émission), Judgment of the Court of Justice
of 17 December 2020 (Grand Chamber), EU:C:2020:1033**

- in 2020 by the Rechtbank (District Court) Amsterdam in two cases, concerning L and P.
- The Dutch court considered that the legislative changes in Poland had reached the point where there was a real risk of a breach of the fundamental right to an independent court for any suspect in the issuing Member State.
- It asked whether it could skip the second prong of the LM test (the specific assessment)

The CJEU confirmed LM

C-563/21 PPU, Openbaar v. Y, Judgment of the Court (Grand Chamber) of 22
February 2022, EU:C:2021:1019

C-480/21, W O, J L v. Minister for Justice and Equality, Order of the Court (Eighth
Chamber) of 12 July 2022, EU:C:2022:592

A. Frąckowiak-Adamska, *Trust until it is too late! Mutual recognition of judgments
and limitations of judicial independence in a Member State: L and P*
Common Market Law Review,
Vol. 59, Iss. 1 (2022), pp. 113 – 150

<https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/59.1/COLA2022006>