EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 259 (2024)
07.11.2024

Applications concerning independence and impartiality of Polish Supreme Court struck out

In its decisions in the cases of Dudek and Lazur v. Poland and I.G. v. Poland and 19 other applications (applications nos. 41097/20, 39577/22, 42668/21 and 19 others) the European Court of Human Rights has unanimously struck the applications off its list of cases. The decisions are final.

The cases concerned proceedings involving the applicants decided by formations of the Polish Supreme Court, which they alleged had not been "independent and impartial tribunal[s] established by law". The applications came in the context of the reorganisation of the judicial system in Poland in what had been described by many observers as a "rule-of-law crisis".

In *Dudek and Lazur* the Court accepted unilateral declarations by the Government, including an admission of a breach of Article 6 (right to a fair trial) of the Convention and an offer of compensation.

In the other cases, the Court accepted the friendly settlement agreed between the parties.

As there was no reason to continue examination, the Court struck the applications off its list.

Currently around 700 cases against Poland on the Court's docket concern the alleged breach of the right to an "independent and impartial tribunal established by law".

Principal facts

The applicants are 22 Polish nationals who live in Poland and abroad.

Background

These decisions take place against the background of the reorganisation of the Polish judicial system, which has been widely described as the rule-of-law crisis in Poland. The reforms to the justice system were carried out between 2018-23.

For information on how the reforms affected the Polish Supreme Court, in particular in relation to the new National Council of the Judiciary and its recommendations for judicial appointments, see the Court's pilot judgment in the case of *Wałęsa v. Poland* (application no. 50849/21).

For more information on the rule-of-law crisis and the relevant Court judgments, see *Grzęda v. Poland*, *Xero Flor w Polsce sp. z o.o. v. Poland*, *Reczkowicz v. Poland*, *Dolińska-Ficek and Ozimek v. Poland*, *Advance Pharma Sp. z o.o v. Poland*, and *Juszczyszyn v. Poland*.

The current applications

All of the applicants took cases to the Supreme Court, which had been reorganised with new judges appointed by the President of Poland, following recommendations from the National Council of the Judiciary.

In the cases of Mr Dudek and Mr Lazur, they failed to reach a friendly settlement with the Government. In June 2024 the Government proposed unilateral declarations – acknowledging a violation of Article 6 of the Convention regarding the right to an independent and impartial tribunal established by law and offering just satisfaction for the damage caused – and asked that the Court strike these applications out. The applicants indicated that they were not satisfied with this proposal.

In the cases of the other 20 applications, the applicants and the Government agreed a friendly settlement.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on various dates between 2020-22.

Relying on Article 6 (right to a fair trial), the applicants complained that the judicial formations of the Supreme Court which had examined their cases had not been an "independent and impartial tribunal established by law".

The decisions were given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Péter **Paczolay** (Hungary),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Ilse **Freiwirth**, *Section Registrar.*

Decisions of the Court

Unilateral declaration

In *Dudek and Lazur*, the Court reiterated that under Article 37 of the Convention it could at any stage of the proceedings decide to strike an application out of its list of cases for the reasons set out in in that Article.

Specifically, Article 37 § 1 (c) enabled the Court to strike a case out of its list if "for any other reason established by the Court, it [was] no longer justified to continue the examination of the application". However, the Court "[had to] continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so require[d]". Striking out of an application could happen on the basis of a unilateral declaration by a respondent Government even if the applicant wished the examination of the cases to be continued.

The Court found that the complaints made by the applicants were of a very serious nature affecting the very essence of their right to a fair trial. It noted the context of the rule-of-law crisis in Poland, and the reorganisation of the judiciary, and referred to the thorough examination of these issues in the relevant Court judgments in that regard (see list above). It reiterated its findings from *Wałęsa* that a series of interrelated systemic problems had amounted to repeated breaches of the fundamental principles of the rule of law, separation of powers and the independence of the judiciary.

The Court took note of Mr Dudek's and Mr Lazur's argument that striking out these applications from the list would prevent them from having the cases reopened before the national courts. In respect of Mr Lazur's criminal conviction, which had been upheld by the Supreme Court, it observed that Article 540 § 3 of the Polish Code of Criminal Procedure allowed for the reopening of proceedings before the Polish courts if "such a need result[ed] from a ruling (*rozstrzygnięcie*) of an international body acting on the basis of an international agreement ratified by the Republic of Poland". As regards Mr Dudek's civil case, there was no equivalent procedure set out in law for reopening after a ruling of an international court as there was for criminal cases so it had not been

shown that the applicant would be in a better position if the Court were to give a judgment rather than the present decisions. Moreover, it reaffirmed that it was for the contracting States to decide how to implement the Court's judgments, in line with the principle of legal certainty.

Having regard to this, and to the Government's admissions and the amount of compensation proposed (EUR 10,000 per applicant), the Court considered that it was no longer justified to continue the examination of these applications. It therefore struck these applications off its list of cases. However, it emphasised that if the Government failed to comply with the terms of their unilateral declarations, the applications could be restored to the list under Article 37 § 2.

Friendly settlements

As regards the applications in *I.G. v. Poland and 19 other applications*, the Court took note of the friendly settlements reached between the parties – a waiving of any further claims against Poland in respect of the facts giving rise to these applications and an undertaking by the Government to pay to each of the applicants EUR 10,000 to cover any pecuniary and non-pecuniary damage as well as costs and expenses. The Court was satisfied that the settlement was based on respect for human rights as defined in the Convention and the Protocols thereto and found no reasons to justify a continued examination of the applications. It therefore struck the cases out of its list under Article 39 of the Convention.

The decisions are available only in English.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Neil Connolly **(tel: + 33 3 90 21 48 05)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Jane Swift (tel: + 33 3 88 41 29 04)