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

FIRST SECTION

DECISION

Applications nos. 41097/20 and 39577/22
Wiesław DUDEK against Poland
and Dariusz LAZUR against Poland

The European Court of Human Rights (First Section), sitting on 8 October 2024 as a Chamber composed of:

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above applications lodged on 1 September 2020 and 28 July 2022 respectively,

Having regard to the declarations submitted by the respondent Government on 19 and 20 June 2024 requesting the Court to strike the applications out of the list of cases and the applicants' reply to those declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The details concerning the applicants and their cases are set out in the appended table.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Sobczak, and subsequently by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

3. The first applicant was involved in a civil dispute which was examined by courts at two instances. On 5 November 2019 the Supreme Court refused to entertain the applicant's cassation appeal. It sat in camera in a single judge formation composed of Judge M. Manowska, appointed to that court by the

President of Poland on 10 October 2018, on the recommendation of the National Council of the Judiciary (*Krajowa Rada Sądownictwa*, "the NCJ") (resolution no. 330/2018 of 28 August 2018).

4. The second applicant was convicted in criminal proceedings by the courts at two instances and sentenced to imprisonment. On 21 January 2022 the Supreme Court dismissed his cassation appeal. It sat in camera in a single judge formation composed of Judge M. Siwek, appointed to that court by the President of Poland on 10 October 2018, on the recommendation of the NCJ (resolution no. 331/2018 of 28 August 2018).

5. The applicants complained under Article 6 § 1 of the Convention of the violation of their right to a hearing by an "independent and impartial tribunal established by law" since their civil or criminal cases had been decided by formations of Civil or Criminal Chambers of the Supreme Court, composed of judges appointed to that court by the President of Poland, pursuant to the recommendation of the NCJ as established under the Amending Act on the NCJ and certain other statutes of 8 December 2017 ("the recomposed NCJ").

6. The applications had been communicated to the Government.

THE LAW

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision (Rule 42 § 1 of the Rules of Court).

8. The applicants complained that the judicial formations of the Supreme Court which had examined their cases gave rise to a violation of their right to an "independent and impartial tribunal established by law."

9. After the failure of attempts to reach a friendly settlement, by letters of 19 and 20 June 2024 respectively, the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issue raised by the applications. They further requested that the Court strike out the applications in accordance with Article 37 of the Convention.

10. The declarations provided as follows:

> "The Government note that the communication concerns the allegations of violation of the right to an "independent and impartial tribunal established by law" under Article 6 § 1 of the Convention. The Government note and acknowledge the Court's jurisprudence concerning the procedure of appointment of judges to the Supreme Court and the organisation of the National Council of the Judiciary in Poland (see, in particular *Wałęsa v. Poland*, no. 50849/21, 23 November 2023).
>
> ...
>
> The Government hereby wish to express – by way of a unilateral declaration – their acknowledgement of the violation of Articles 6 § 1 of the Convention regarding the right to an "independent and impartial tribunal established by law".
>
> Simultaneously, the Government declare that they are ready to pay the applicant the sum of 10,000 EUR (ten thousand euros), which they consider to be reasonable in the

light of the Court's case law (see, *Advance Pharma Sp. z o.o v. Poland*, no. 1469/20, 3 February 2022).

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be converted into the currency of the respondent State (PLN) at the rate applicable on the date of settlement and payable within three months from the date of notification of the final ruling taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points."

11. By letters of 18 and 24 July 2024 respectively, the applicants indicated that they were not satisfied with the terms of the unilateral declarations. They complained that the amount proposed was too low and did not include compensation for pecuniary damage. In addition, they expressed a wish for the Court to give a judgment finding a violation of the right to an independent and impartial "tribunal established by law", which would open up the possibility of reopening the domestic proceedings.

12. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article.

Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 *in fine* includes the proviso that:

"However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

13. It also reiterates that, in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the cases to be continued.

14. To this end, the Court has examined the declarations in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue (see *Tahsin Acar*, cited above, § 76). Other

relevant factors may include the question of whether the Government have made any admissions in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant (ibid.).

15. The Court notes that the applicants alleged that their cases had not been heard by an impartial and independent "tribunal established by law" in breach of Article 6 § 1 of the Convention. The Court reiterates that the purpose of the requirement that the "tribunal" be "established by law" is to ensure "that the judicial organisation in a democratic society [did] not depend on the discretion of the executive, but that it [was] regulated by law emanating from Parliament" (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 214, 1 December 2020).

16. The reorganisation of the judiciary in Poland initiated by the Government in 2017 and implemented by the successive amending laws has been the subject not only of intense public debate in Poland and at European level but also of numerous proceedings before the Court, the Polish courts and the Court of Justice of the European Union, of other actions before the European Union's institutions, of European Parliament resolutions, of the Parliamentary Assembly of the Council of Europe monitoring procedure and its resolutions, and of various reports of the Council of Europe's and the United Nations' bodies (see *Reczkowicz v. Poland*, no. 43447/19, § 178, 22 July 2021).

17. The Court further notes that the judicial reforms in Poland which aimed to weaken judicial independence have been examined in a series of judgments, starting with grave irregularities in the election of judges to the Constitutional Court in December 2015 (see *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021) then, in particular, remodelling the NCJ and setting up new chambers in the Supreme Court, while extending the Minister of Justice's control over the courts and increasing his or her role in matters of judicial discipline (see *Grzęda v. Poland* [GC], no. 43572/18, § 348, 15 March 2022).

18. In *Reczkowicz*, cited above, *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, 8 November 2021, and *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022, the Court applied the three-step test formulated in *Guðmundur Andri Ástráðsson* (cited above) and found that there was a manifest breach of the domestic law which adversely affected the fundamental rules of procedure for the appointment of judges to various Chambers of the Supreme Court. The breach of the domestic law was due, in particular, to the deficient judicial appointment procedure involving the NCJ, as established under the 2017 Amending Act, a body which no longer offered sufficient guarantees of independence from the legislative or executive powers.

19. The violations of the applicants' right to a hearing by an "independent and impartial tribunal established by law" protected by Article 6 § 1 of the

Convention, have been established in respect of the Disciplinary Chamber of the Supreme Court (see *Reczkowicz,* cited above), the Chamber of Extraordinary Review and Public Affairs (see *Dolińska-Ficek and Ozimek,* cited above) and formations of the Civil Chamber of the Supreme Court (see *Advance Pharma sp. z o.o*, cited above).

20. Finally, in its pilot judgment the Court made a list of interrelated systemic problems which entail repeated breaches of the fundamental principles of the rule of law, separation of powers and the independence of the judiciary (see *Wałęsa*, cited above, § 324).

21. The Court thus concludes that the complaints made by the applicants are of very serious nature affecting the very essence of their right protected by Article 6 of the Convention. It also notes that the issues raised by the cases at hand have already been thoroughly examined by the Court.

22. The Court has repeatedly called on the Government to draw the necessary conclusions from its judgments and to take any individual or general measures as appropriate, under the supervision of the Committee of Ministers, in order to resolve the problems at the root of the violations found by the Court and to prevent similar violations from taking place in the future (see *Dolińska-Ficek and Ozimek,* cited above, § 369 and *Advance Pharma sp. z o.o*., cited above, § 366). More detailed indications as to general measures to be taken in respect of the systemic problem identified above were given in the pilot judgment (see *Wałęsa*, cited above, §§ 328-32).

23. 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" on account of the fact that the judicial formations of various courts that have dealt with the applicants' cases included judges appointed by the President of Poland on recommendations of the recomposed NCJ. The defective procedure for judicial appointments involving the NCJ as established under the 2017 Amending Act inherently and continually affects the independence of judges so appointed. The large scale of the problem had been highlighted in the pilot judgment which adjourned the examination of the majority of the cases, namely those of which notice had not yet been given to the Government, pending the adoption of general measures by the Polish State (see *Wałęsa*, cited above, § 335). The Court notes that Polish Government which took office in December 2023 have "acknowledged the Court's jurisprudence" concerning appointment of judges to the Supreme Court (see paragraph 10 above) and have expressed their intention to resolve the systemic problems at the root of the violations found by the Court. The Court will examine in detail the developments at the national level once it decides on the further procedure in the adjourned cases.

24. In the pilot judgment the Court decided not to adjourn the communicated cases at hand and to continue their examination (see *Wałęsa*, cited above, § 335). The Court notes that the Government's declarations in the present cases contain, firstly, an unconditional acknowledgement of the

violation of Articles 6 § 1 of the Convention regarding the right to an independent and impartial "tribunal established by law." Secondly, the Government undertake to pay the applicants the sum of 10,000 euros (EUR) which is consistent with amounts awarded in similar cases.

25. The Court also notes that both applicants raised the argument that to strike out the case following the Government's unilateral declarations would prevent them from reopening their cases at the domestic level.

26. In respect of the second applicant, who had his criminal conviction upheld by the Supreme Court on 21 January 2022, the Court notes that Article 540 § 3 of the Polish Code of Criminal Procedure allows for the reopening of domestic proceedings if "such a need results from a ruling *(rozstrzygnięcie)* of an international body acting on the basis of an international agreement ratified by the Republic of Poland". This provision does not expressly limit the possibility of reopening domestic proceedings to "judgments". Moreover, the Supreme Court, in its ruling of 16 April 2021 in the case (V KA 1/20), expressly confirmed that the Court's decision to strike a case out of its list may be considered a ruling of an international body if it results from a unilateral declaration containing the State's acknowledgment that the applicant's Convention rights were breached. The Court concludes that the applicant, if he so requests, may seek the reopening of domestic proceedings also on the basis of the Court's decision to strike out the case following the Government's unilateral declaration (see *Sroka v. Poland* (dec.), no. 42801/07, 6 March, 2012).

27. The first applicant had his civil case examined by the Civil Chamber of the Supreme Court on 5 November 2019. The Court notes that the Code of Civil Procedure does not contain a provision analogous to that contained in Article 540 § 3 of the Code of Criminal Procedure indicated above, which would expressly govern the possibility to seek reopening of a civil case after the ruling of an international body. The Court reiterates that it is for the Contracting States to decide how best to implement the Court's judgments without unduly upsetting the principles of *res judicata* or legal certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 57, ECHR 2015). Furthermore, the Court considers that the applicant has failed to substantiate his allegation that if the Court were to give a decision rather than a judgment, he would be placed in a disadvantageous position as regards the possibility of seeking the reopening of his civil case.

28. Regard being had to all the considerations above, the nature of the admissions contained in the Government's declarations, as well as the amount of compensation proposed the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c), see also *Haukur Sigurbjörn Magnússon v. Iceland* (dec.), no. 6696/19, § 13, 2 June 2022).

29. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

30. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declarations, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the cases out of the list.

For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declarations and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 7 November 2024.

Ilse Freiwirth Section Registrar	Ivana Jelić President

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Nationality	Represented by
1.	41097/20	Dudek v. Poland	01/09/2020	**Wiesław DUDEK** 1971 Polish	Dorota KALINOWSKA
2.	39577/22	Lazur v. Poland	28/07/2022	**Dariusz Ryszard LAZUR** 1978 Polish	Mateusz CZEPUKOJĆ