

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

FIRST SECTION

DECISION

Application no. 6904/22
Włodzimierz WRÓBEL
against Poland

The European Court of Human Rights (First Section), sitting on 25 March 2025 as a Chamber composed of:

Erik Wennerström*, President*,
Alena Poláčková,
Georgios A. Serghides,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to the above-stated application lodged on 4 February 2022,

Having regard to the interim measure indicated to the respondent Government on 8 February 2022 under Rule 39 of the Rules of Court, which was subsequently amended on 9 August 2022 and discontinued on 4 December 2024,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the joint comments submitted by the Governments of Belgium, Denmark, the Netherlands, Luxembourg, and Norway, and by the third-party interveners, the Commissioner for Human Rights of the Republic of Poland, and the Polish Judges' Association Iustitia,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Polish national who was born in 1963 and lives in Cracow. He was represented by Ms S. Gregorczyk-Abram and Ms A. Helsztyńska, lawyers practising in Warsaw.

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

3. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S BACKGROUND

4. The applicant is a judge at the Criminal Chamber of the Supreme Court of Poland and chair of the Criminal Law Department at Jagiellonian University in Cracow. He was appointed to the Supreme Court in 2011.

5. The applicant was a co-rapporteur for a Supreme Court resolution of 23 January 2020 (no. BSA I-4110-1/20) that was adopted by a formation of the joined Civil, Criminal and Labour and Social Security Chambers of that court, which found, *inter alia*, that the National Council of the Judiciary (NCJ) lacked independence and that the Disciplinary Chamber of the Supreme Court did not meet the requirements of an "independent and impartial tribunal established by law" (see *Reczkowicz v. Poland*, no. 43447/19, §§ 89-105, 22 July 2021). The resolution constituted one of the measures aimed at the implementation of the judgment of the Court of Justice of the European Union (CJEU) in the case of *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court),* C-585/18, C-624/18 and C-625/18, EU:C:2019:982 – see *Reczkowicz*, cited above, §§ 162-64).

6. In May 2020 the Assembly (*Zgromadzenie Ogólne*) of the Supreme Court nominated the applicant as one of five candidates for the position of First President of the Supreme Court. He received fifty out of ninety-five votes – the most of any candidate. However, the President of the Republic appointed another judge to that position, who had received twenty-five votes cast by members of the Assembly.

7. The applicant – a well-known judge and academic – has been involved in promoting the rule of law in Poland and active in in the field of civic education. In 2019 he published an article entitled "The Disciplinary Chamber as a special tribunal within the meaning of Article 175 § 2 of the Constitution of the Republic of Poland", in which he argued that the regulation concerning the Disciplinary Chamber was unconstitutional.

II. DOMESTIC PROCEEDINGS CONCERNING THE APPLICANT'S ACTIONS

8. On 9 December 2020 the Internal Affairs Department (*Wydział Spraw Wewnętrznych*) of the State Prosecutor's Office instituted a criminal investigation into the alleged negligence of three Supreme Court judges (including the applicant) in giving a judgment of 16 October 2019 (in case no. III KK 399/18).

9. On 16 March 2021 the prosecutor lodged an application with the Disciplinary Chamber of the Supreme Court, asking that the applicant's immunity be lifted with a view to charging him with a criminal offence – namely unintentional criminal negligence (Article 231 § 3 of the Criminal Code).

10. The prosecutor submitted that the applicant had been a member of (and the rapporteur for) a three-judge panel of the Supreme Court that, in a judgment of 16 October 2019, had quashed a judgment given by a second-instance court convicting a certain P.F. and had remitted the case to that court. According to the prosecutor, the applicant had failed to fulfil the obligation stemming from rule 96 § 1 of the Rules of the Supreme Court (*Regulamin Sądu Najwyższego*) to verify whether P.F. had been serving a prison sentence at the time of the Supreme Court's judgment. As a result of the applicant's alleged negligence P.F. had been – according to the prosecutor – unlawfully detained in prison between 16 October and 18 November 2019. (P.F.'s cassation appeal, along with the case file, had been lodged with the Supreme Court on 11 July 2018.)

11. The hearing took place on 16 October 2019. With the consent of the parties present (a prosecutor and the lawyer of the auxiliary prosecutor lawyer), the applicant refrained from giving an oral summary of the case. On the same day, the Supreme Court quashed the second-instance court's judgment and remitted the case.

12. On 18 November 2019 (i) a prison guard at the prison in which P.F. had been serving his sentence informed the Registry of the Supreme Court that P.F. remained in prison, despite his conviction having been quashed, (ii) a copy of the judgment of 16 October 2019 was sent to that prison, and (iii) P.F. was released. He was later (by a final decision) sentenced to one year and six months' imprisonment; the entire time that he had already spent in detention (including the period between 16 October 2019 and 18 November 2019) was counted as part of that sentence.

13. On 31 May 2021 the Disciplinary Chamber, sitting in a formation of three judges (A. Tomczyński, A. Roch and J. Duś), refused to lift the applicant's immunity. It held that the applicant had indeed shown negligence, but that that any alleged negligence could have been investigated in regular disciplinary proceedings.

14. The State Prosecutor's Office lodged an appeal against that resolution on 6 July 2021. The applicant's lawyers appealed against the reasoning of that resolution (but not against the resolution itself) on 21 July 2021.

15. On 22 July 2021 the Court delivered a judgment in the case of *Reczkowicz* (cited above). It held, *inter alia*, that irregularities in the appointment process compromised the legitimacy of the Disciplinary Chamber to the extent that, following an inherently deficient procedure for judicial appointments, it lacked and continued to lack the attributes of

a "tribunal" that was "lawful" for the purposes of Article 6 § 1 (ibid., § 280). That judgment became final on 22 November 2021.

16. The Disciplinary Chamber scheduled an appellate hearing in respect of the applicant's case for 9 February 2022.

III. INTERIM MEASURE INDICATED BY THE COURT AND FURTHER DEVELOPMENTS

17. On 4 February 2022 the applicant applied for an interim measure (pursuant to Rule 39 of the Rules of Court) requesting the Court to either (i) suspend all actions (both procedural and administrative) of the Disciplinary Chamber of the Supreme Court against him until the Government fully implemented the order of the Vice-President of CJEU of 14 July 2021 (*Commission v. Poland*, C-204/21 R, EU:C:2021:593) and the judgment of that court of 15 July 2021 (in *Commission v. Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596), or (ii) appoint a panel of Supreme Court judges as recommended by the NCJ operating before 6 March 2018[1] to hear the applicant's case.

18. On 8 February 2022 the Court (that is, the Chamber of the First Section) decided to apply Rule 39 of the Rules of Court, indicating to the Government that, in the interests of the parties and the proper conduct of the proceedings before the Court, (i) the respondent State should ensure that the proceedings concerning the lifting of the applicant's judicial immunity (which were then pending before the Disciplinary Chamber of the Supreme Court) complied with the requirements of a "fair trial", as guaranteed by Article 6 § 1 of the Convention – in particular, the requirement of an "independent and impartial tribunal established by law" (see *Reczkowicz*, cited above, §§ 225-84), and (ii) no decision in respect of the applicant's immunity should be taken by the Disciplinary Chamber until the final determination of the applicant's complaints by the Court.

19. On the same day the Disciplinary Chamber cancelled the appellate hearing in the applicant's case planned for 9 February 2022, citing "formal grounds" for the cancellation of the appellate hearing.

20. On 15 July 2022 the Disciplinary Chamber was abolished, and the new Chamber of Professional Liability ("the CPL") of the Supreme Court was established in its place (for details, see *Tuleya v. Poland*, nos. 21181/19 and 51751/20, §§ 181-87, 6 July 2023). The applicant's case was later forwarded to the CPL, as the body with jurisdiction to continue its examination.

21. On 3 August 2022 the applicant's lawyers lodged an application seeking that the above-mentioned interim measure be amended in order to

[1] On that date new members of the NCJ were elected on the basis of the Amending Act on the NCJ of 8 December 2017. For details, see *Reczkowicz* (cited above), § 14 and §§ 271-78.

take into account the legislative change (that is, the replacement of the Disciplinary Chamber by the CPL – see paragraph 20 above).

22. On 9 August 2022 the Court (that is, the President of the Chamber to which the case was allocated) decided to restate, as follows, the interim measure indicated by the Chamber on 8 February 2022:

> "1. in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Poland, under Rule 39 of the Rules of Court, that the Respondent State ensure that the proceedings concerning the lifting of the applicant's judicial immunity comply with the requirements of "fair trial" as guaranteed by Article 6 § 1 of the Convention, in particular the requirements of an "independent and impartial tribunal established by law" (see *Reczkowicz* [cited above], §§ 225-284) and that [the Government] should inform the Court and the applicant of the date of any hearing (*rozprawa*) or *in camera* session (*posiedzenie*) scheduled in the applicant's case before any body competent under the domestic law to deal with the applicant's case at least [seventy two] hours before the date set for such [a] hearing or session;
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> 2. the Government are also requested to inform the Court and the applicant of (i) the composition of the panel that is to examine the applicant's case and (ii) the manner in which members of that panel have been appointed to the judicial office."

23. On 4 June 2024 the State Prosecutor's Office withdrew its appeal against the first-instance resolution refusing to lift the applicant's judicial immunity (see paragraphs 13-14 above).

24. On 30 October 2024 the criminal investigation into the applicant's actions (see paragraph 8 above) was discontinued by the prosecutor owing to the finding that his actions had lacked the statutory elements of the crime in question.

25. In view of the above, on 28 February 2025, the State Prosecutor withdrew the application of 16 March 2021 by which he had asked that the applicant's immunity be lifted with a view to charging him with a criminal offence (see paragraph 9 above).

26. In the meantime, on 4 December 2024, the Court (that is, the President of the Section) decided to lift the interim measure that had been indicated on 8 February 2022 and restated on 9 August 2022.

27. The proceedings before the CPL are still pending, with the latest hearing having taken place on 3 October 2024. Most recently, the panel assigned to the case comprised Supreme Court judges Zbigniew Korzeniowski, Barbara Skoczkowska and Krzysztof Staryk (who were appointed to the Supreme Court between 2007 and 2012).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Domestic law

1. Domestic law already summarised

28. The relevant provisions of the domestic law concerning the functioning of the judiciary and the NCJ were summarised in the Court's previous judgments in *Reczkowicz* (cited above, §§ 59-70), *Advance Pharma sp. z o.o v. Poland* (no. 1469/20, §§ 95-104, 3 February 2022), and *Grzęda v. Poland* ([GC], no. 43572/18, §§ 64-76, 15 March 2022). The relevant provisions concerning (i) the abolition of the Disciplinary Chamber and the establishment of the CPL, (ii) the criminal liability of judges and (iii) the protection of personal rights were summarised in *Tuleya* (cited above, §§ 181-94).

2. The immunity of Supreme Court judges

29. The Act on the Supreme Court of 8 December 2017 (*ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym* – "the 2017 Act on the Supreme Court"), which entered into force on 3 April 2018, provides in its relevant part as follows:

Section 55

"1. A judge of the Supreme Court may not be deprived of liberty or held criminally liable without the authorisation of a disciplinary court. This shall not apply to [a judge who is] apprehended in the act of committing an offence if the arrest of [that] judge is necessary to ensure the proper course of proceedings. Only urgent actions may be taken until [such time as] a resolution authorising a judge to be held criminally liable is issued.

2. If an application for permission to hold a person criminally liable or [to impose] pre-trial detention [upon a person] concerns a judge apprehended in the act of committing [i] a crime or [ii] an offence punishable by imprisonment of at least eight years, [iii] an offence referred to in section 177(1) of the Act of 6 June 1997 (the Criminal Code – Journal of Laws of 2024, item 17) in connection with section 178 (1) of that Act, as well as [[iv] an offence referred to] in Article 178a (1) or (4) of [that Act], and who still remains in detention, the disciplinary court shall adopt a resolution on the application immediately, [but in any event] no later than twenty-four hours after its receipt by the disciplinary court. Any resolution authorising a judge to be held criminally liable or to be remanded in custody shall be immediately enforceable.

3. The First President of the Supreme Court shall be immediately notified of the arrest of a judge. The First President of the Supreme Court may order the immediate release of the arrested judge.

4. Within seven days of the date of the serving of a resolution refusing to grant authorisation for a judge to be held criminally liable, the authority or person who requested such permission and the disciplinary officer of the Supreme Court shall be

entitled to lodge an interlocutory appeal with the second-instance disciplinary court of the second instance. Within the same time-limit, the judge concerned shall have the right to lodge an interlocutory appeal against the resolution authorising him or her to be held criminally liable."

Section 10

"1. To the extent not regulated by this Act, the provisions of the Act of 27 July 2001 (the Act on the Organisation of the Ordinary Courts) shall apply accordingly."

30. The Act of 27 July 2001 on the Organisation of the Ordinary Courts in its relevant part provides:

Section 80

"2c. A disciplinary court shall issue a resolution permitting a judge to be held criminally liable if there is a sufficiently justified suspicion that the judge has committed an offence. The resolution shall [set out the] decision on the authorisation to hold a judge criminally liable, together with the reasons for that decision.

2d. The disciplinary court shall examine an application for permission to hold a judge criminally liable within fourteen days of the date on which it was lodged with the disciplinary court.

2e. Before issuing the resolution, the disciplinary court shall hear the disciplinary officer, the judge concerned, the representative of the authority and the person who requested permission – if they appear. Their non-appearance, as well as the non-appearance of defence counsel, shall not [prompt the suspension of] the examination of the application.

2f. The judge whom the proceedings concern shall have the right to access the documents enclosed with the application. However, when lodging the application with the disciplinary court, the prosecutor may stipulate that such documents (or a part thereof) may not be disclosed to the judge, having regard to the interest of the pre-trial proceedings.

2g. If the prosecutor has made the stipulation referred to in § 2f, the president of the disciplinary court shall immediately order that the case [be heard in an in camera] session. The disciplinary court may refuse a judge access to the documents enclosed with the application."

Section 129

"1. A disciplinary court may suspend a judge against whom disciplinary or incapacitation proceedings have been initiated, and if it delivers a resolution permitting a judge to be held criminally liable.

2. If the disciplinary court passes a resolution permitting a judge to be held criminally liable for an intentional offence prosecuted by public prosecution, it shall suspend the judge from his duties."

3. Other relevant provisions

31. Article 231 of the Criminal Code, in so far as relevant, provides as follows:

"§ 1. A public official who, exceeding his authority or not fulfilling his duty, acts to the detriment of a public or individual interest shall be subjected to the penalty of deprivation of liberty for up to three years.

...

§ 3. If the perpetrator of the act specified in paragraph 1 hereof acts unintentionally and causes significant damage, he or she shall be subjected to a fine, the limitation of [his or her] liberty, or the deprivation of [his or her] liberty for up to two years."

B. Domestic practice

32. The relevant domestic practice was summarised in the Court's previous judgments in *Reczkowicz* (cited above, §§ 71-125), *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, §§ 97-155, 8 November 2021), *Advance Pharma sp. z o.o.* (cited above, §§ 110-69), *Grzęda* (cited above, §§ 77-119) and *Tuleya* (cited above, §§ 196-208).

II. INTERNATIONAL MATERIAL AND EUROPEAN UNION LAW

33. The relevant international material and law of the European Union are summarised in *Tuleya* (cited above, §§ 209-42) and the Court's case-law cited therein.

COMPLAINTS

34. The applicant complained under Article 6 § 1 of the Convention that the proceedings concerning the lifting of his immunity had been conducted before the Disciplinary Chamber of the Supreme Court – a body that did not satisfy the requirements of "an independent and impartial tribunal established by law", whose shortcomings could not be remedied by the same Disciplinary Chamber (sitting as a second-instance court). He relied, *inter alia*, on the Court's judgment in *Reczkowicz* (cited above).

35. Under Article 8 of the Convention the applicant complained that the application for his immunity to be lifted (on the basis of his alleged failure to fulfil his judicial duties) and the subsequent proceedings before the Disciplinary Chamber had adversely affected his professional reputation and, in consequence, had amounted to a breach of his right to respect for his private life.

36. He further alleged a breach of Article 10 of the Convention, arguing that the application to lift his immunity had been closely related to the public statements that he had made in his capacity both as a judge and as a university professor, in which he had criticised the overhaul of the judiciary pursued by the authorities.

37. Lastly, relying on Article 18 in conjunction with Articles 8 and 10 of the Convention, the applicant submitted that the initiation of proceedings for lifting his immunity had not furthered any legitimate interests, but had rather

constituted a covert form of harassment and had been aimed at limiting judicial independence in Poland.

THE LAW

I. PRELIMINARY REMARKS

38. The application under review was lodged with the Court following a request for interim measures made while the domestic proceedings aimed at lifting the applicant's judicial immunity were pending at second instance.

39. The Government raised several objections as to the admissibility of the application – both as a whole and in respect of individual complaints raised by the applicant. Regarding the entire application, they submitted that it was inadmissible owing to: the fact that the application had been lodged prematurely; the alleged non-exhaustion of domestic remedies; and the applicant's lack of victim status. Referring to individual complaints raised by the applicant under Articles 6, 8, 10 and 18 of the Convention, the Government submitted that they were all incompatible *ratione materiae* with the Convention.

40. In view of the fact that the applicant's complaints all relate the pending domestic proceedings (see paragraphs 27 and 34-37 above), the Court will first examine the Government's objection that the application was lodged prematurely.

II. THE GOVERNMENT'S OBJECTION REGARDING THE PREMATURE NATURE OF THE APPLICATION

A. The parties' submissions

41. The Government submitted that the application had been lodged prematurely in view of the fact that the proceedings concerning the lifting of the applicant's judicial immunity were still pending.

42. The applicant disagreed and contended that the fact that the proceedings were still pending did not mean that his application was premature. In general terms, he argued that the application concerned breaches stemming both from the initiation of the impugned proceedings and the fact that they were being conducted by the Disciplinary Chamber. The third-party interveners made no comments concerning this objection.

B. The Court's assessment

43. Article 35 § 1 of the Convention provides that the Court may only deal with a matter after all domestic remedies have been exhausted, pursuant to the generally recognised rules of international law. The Court is intended to

be subsidiary to the national systems safeguarding human rights and it is appropriate that national courts should initially have the opportunity to determine questions regarding the compatibility of domestic law with the Convention (see *Perelman v. Germany* (dec.), no. 32745/17, § 20, 13 June 2017). In a legal system providing constitutional protection for fundamental rights it is incumbent on the aggrieved individual to test the extent of that protection (see *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010). The principle that an applicant must first make use of the remedies provided by the national legal system before applying to an international court is an important aspect of the machinery of protection established by the Convention. The Court should have the benefit of the views of the national courts, as they are in direct and continuous contact with the forces of their countries (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

44. As regards complaints specifically under Article 6 § 1 of the Convention, the Court reiterates that according to its consistent case-law the question of whether or not court proceedings satisfy the requirements of the above-noted Convention Article can only be determined by examining the proceedings as a whole save where an event or particular aspect may have been so significant or important that it amounts to a decisive factor for the overall assessment of the proceedings. It has pointed out, however, that even in those cases it is on the basis of the proceedings as a whole that a ruling should be made as to whether there has been a fair hearing of the case (see *Dimech v. Malta*, no. 34373/13, § 43, 2 April 2015, with further references).

45. Turning to the circumstances of the case under review, the Court reiterates that: (i) at the source of the application (and all of the complaints raised therein) lie the proceedings aimed at lifting the applicant's judicial immunity and (ii) these proceedings are currently still pending.

46. The Court notes that the proceedings were initially conducted by the Disciplinary Chamber, and that it has already had an opportunity to assess complaints concerning the composition of that body from the perspective of the requirements of Article 6 of the Convention (see *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021). That said, the Court also notes that the proceedings in question have subsequently been taken over and are currently being conducted by the CPL (the body that replaced the Disciplinary Chamber).

47. The applicant seems to argue that the mere fact that the proceedings at issue were initiated and that those proceedings are being conducted by the Disciplinary Chamber is already sufficient for his complaints to be deemed admissible at this stage; however, the Court notes that the recent developments (notably, the decision to discontinue the underlying criminal proceedings – see paragraph 24 above and the withdrawal of the request to prosecute the applicant – see paragraph 25 above) seem to indicate a shift in

the approach of the domestic authorities, which may have an impact on the Court's assessment of the relevant complaints.

48. The fact that the proceedings are still pending is all the more important in view of the fact that the Court has already expressed itself regarding a situation where (after the above-mentioned first-instance resolution of the Disciplinary Chamber) the CPL gave a decision favourable to the applicant-judge (see *Tuleya v. Poland*, nos. 21181/19 and 51751/20, § 261, 6 July 2023). In that case, the Court found that a decision given by a CPL panel composed of judges whose appointment to the Supreme Court did not raise issues could be regarded as affording the applicant appropriate and sufficient redress (ibid., § 262). While the Court did not find it necessary to deal with the arguments as to whether the CPL taken as a whole complied with the requirements of "an independent and impartial tribunal established by law", it welcomed the CPL's resolution and considered that it constituted a positive development within the context of the rule-of-law crisis in Poland (ibid., § 263).

49. Since then, the Court has also taken note of the Polish Government's commitment to regularly report to the Court on progress in the enforcement of the pilot judgment in the case of *Wałęsa v. Poland* (no. 50849/21, 23 November 2023), and of the Government's repeated reassurances of its commitment to promptly resolve the systemic problems at the root of the violations found by the Court (see *Dudek and Lazur v. Poland* (dec.), nos. 41097/20 and 39577/22, § 23, 8 October 2024).

50. The Court reiterates that the instant application specifically targets the pending proceedings for the lifting of the applicant's judicial immunity; it does not concern the underlying criminal investigation, which has already been terminated (see paragraph 24 above). As such, the situation under review differs from that in the above-cited case of *Tuleya*, where the Court rejected the Government's objection that the application had been lodged prematurely (ibid., §§ 305 and 403). In that case, the Government referred to the fact that the criminal proceedings against the applicant were still pending, whereas the grievances of the applicant in that case were in fact rooted in the already terminated proceedings conducted by the Disciplinary Chamber. In the instant case, all the complaints stem from the proceedings for the lifting of the applicant's judicial immunity, and those proceedings are still pending.

51. The developments noted above – along with the fact that the applicant's case has yet to be finally determined at the domestic level – are sufficient to conclude that, as matters currently stand, the instant application is premature. Until those proceedings are concluded, the Court will be unable to fully assess their impact on the Convention rights cited by the applicant in his complaints.

52. Without prejudging the outcome of the domestic proceedings, the Court stresses that the instant decision is made without prejudice to the possibility for the applicant to bring new proceedings before this Court once

the domestic proceedings are terminated (see, *mutatis mutandis*, *Dimech*, cited above, § 48).

53. Under these circumstances, and without it being necessary to address the other objections raised by the Government, the Court is satisfied that the application is premature and must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 29 April 2025.

Ilse Freiwirth Registrar	Erik Wennerström President