



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

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FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39279/05  
by Krzysztof IWAŃCZUK  
against Poland

The European Court of Human Rights (Fourth Section), sitting on 17 November 2009 as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 21 October 2005,

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

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Krzysztof Iwańczuk, is a Polish national who was born in 1962 and lives in Konstancin-Jeziorna. He was represented before the Court by Mr J. Brydak, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołaszewicz of the Ministry of Foreign Affairs.

### A. The circumstances of the case

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

On 8 April 1993 the prosecution filed a bill of indictment against the applicant with the Wrocław Regional Court. He was charged with several financial offences.

The case was heard by the panel composed of Judge A.W. and two lay judges. A hearing scheduled for 22 December 1998 was cancelled due to the illness of one of the lay judges. On 11 August 1999 the lay judge died. In addition, Judge A.W. was due to leave the Wrocław Regional Court to take up a post at the Supreme Administrative Court on 17 January 2000.

As a result the applicant's case had to be heard *de novo* by a newly composed panel.

On 13 September 1999 the Minister of Justice seconded Judge J.M. from the Oleśnica District Court to serve as a judge of the Wrocław Regional Court from 1 October 1999 to 31 March 2000.

On 13 September 1999 Judge J.M. was put on a list of judges of the 3<sup>rd</sup> Criminal Division of the Wrocław Regional Court. On the same day the President of the 3<sup>rd</sup> Criminal Division assigned Judge J.M. to the applicant's case under Article 351 § 1 of the Code of Criminal Procedure. He noted that the judge who had been previously assigned to the case was due to take up a different judicial post. Furthermore, it was necessary to divide work evenly between judges in the division.

On 18 October 1999 Judge J.M. scheduled the first hearing in the applicant's case for 17 November 1999. It appears that subsequently Judge J.M. was appointed a regional court judge.

On 5 May 2003 the Wrocław Regional Court, composed of Judge J.M. and two lay judges, convicted the applicant of fraud. It sentenced him to five years' imprisonment and a fine. The applicant appealed.

On 1 April 2004 the Wrocław Court of Appeal upheld the first-instance judgment.

The applicant lodged a cassation appeal, arguing that the panel of the Wrocław Regional Court had been composed in breach of Article 351 § 1 of the Code of Criminal Procedure. He submitted that the President of the 3<sup>rd</sup> Criminal Division should have assigned his case to the next judge on the list of judges and not to Judge J.M. Since that was not the case, the composition of the court was decided in an administrative manner. The applicant further relied on Article 6 § 1 of the Convention, arguing the lack of objective impartiality of the Regional Court.

On 10 December 2004 the Supreme Court requested the President of the 3<sup>rd</sup> Criminal Section of the Wrocław Regional Court to provide a list of judges, referred to in Article 351 § 1 of the Code of Criminal Procedure, which had been valid on 13 September 1999.

On 17 December 2004 the requested list of judges together with an explanation as to the composition of the panel was received by the Supreme Court. The list of judges adjudicating in the 3rd Criminal Division of the Wrocław Regional Court valid on 13 September 1999 included Judge J.M. The list contained eleven judges listed in numerical order. Judge A.W. was fifth on the list and Judge J.M. was eleventh on the list. He was indicated as having been seconded to the Regional Court by a decision of the Minister of Justice of 13 September 1999. It was further stated that on 13 September 1999 the applicant's case was assigned to Judge J.M. The reasons for this decision were even distribution of work between judges in the division and the necessity to provide Judge J.M., a newly-seconded judge, with cases to examine. The Supreme Court was further informed that A.W., the judge previously assigned to the case, had been due to be transferred to the Supreme Administrative Court on 17 January 2000.

On 29 April 2005 the Supreme Court held a hearing. It dismissed the applicant's cassation appeal as manifestly ill-founded and pronounced the most relevant reasons for its decision. The Supreme Court further informed the parties that due to the manifestly ill-founded character of the cassation appeal, it was not required to provide written grounds for its decision (Article 535 § 2 of the Code of Criminal Procedure).

## **B. Relevant domestic law and practice**

Article 351 § 1 of the Code of Criminal Procedure („CCP”) stated at the material time as follows:

“A judge (...) is assigned [to a case] in the order in which the case was filed and by reference to a list of judges of a given court or division which is accessible to the parties. A departure from this rule is permissible only by way of omitting a judge on the ground of his/her illness or on other important grounds and [that circumstance] should be specified in a decision on holding a hearing”

Article 351 § 2 of the CCP provides that in cases concerning the most serious charges the composition of a panel is decided – on request of a prosecutor or a defence counsel – by drawing lots.

In a decision of 23 November 2004 (case no. V KK 195/04) the Supreme Court held that the notion of “other important grounds” within the meaning of this provision comprised “a heavy workload of a judge which made it impossible for him/her to decide on a case before the expiry of a limitation period”. The Supreme Court noted that the rule established in Article 351 § 1 of the CCP was not absolute and could be subject to limitations which took account of practical necessities.

In a resolution of 17 November 2005 (case no. I KZP 43/05) the Supreme Court found that Article 351 § 1 of the CCP would be breached if a different judge than the judge next on the list of judges was assigned to

hear a case and if no important ground had been invoked to justify the departure from the rule.

The Ordinance of the Minister of Justice of 12 August 1998 on particular rules concerning assignment and drawing of judicial panels came into force on 1 September 1998. Paragraph 2 (1) of the Ordinance required that in each division there had to be a list of judges in alphabetical order. In addition, the list should include annotations about any circumstances constituting grounds for departure from the rules of assignment of judges specified in Article 351 § 1 of the CCP.

## COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that the Regional Court had not been a “tribunal established by law” since Judge J.M. had been assigned to the case contrary to Article 351 §1 of the Code of Criminal Procedure. In addition, the applicant claimed that as Judge J.M. had been seconded to the Wrocław Regional Court by the Minister of Justice’s decision of 13 September 1999, it had been impossible in practice that he could be put on a list of judges adjudicating in the 3<sup>rd</sup> Criminal Division of the Wrocław Regional Court and assigned to the case on the same day. According to the applicant, this strange coincidence of dates suggested the influence of the administrative authorities on the composition of the panel.

## THE LAW

The applicant complained that the Wrocław Regional Court had not been a “tribunal established by law” as required under Article 6 § 1 of the Convention, having regard to the manner in which Judge J.M. had been assigned to his case.

### **A. The Government’s submissions**

The Government first noted that Article 351 § 1 of the CCP allowed for a departure from the standard rule of assigning judges to a case on two grounds: an illness of a judge and “other important grounds”. They referred to the Supreme Court’s decision of 23 November 2004 which interpreted the notion of “other important grounds” (see relevant domestic law) and stressed that the rules provided in Article 351 § 1 of the CCP did not have an absolute character and needed to be flexibly applied. In certain cases it was reasonable and permissible to depart from the strict chronological order

and the rule of “the next judge on the list”. It was in the interest of the fair administration of justice to ensure that a judge who was indeed overburdened with cases could be omitted in the procedure of appointing a court panel.

The Government observed that according to the list of judges adjudicating in the 3<sup>rd</sup> Criminal Division of the Wrocław Regional Court as of 13 September 1999, Judge J.M. had not been “the next one” to Judge A.W., who had previously been assigned to hear his case. There had been five judges preceding Judge J.M. on the list. The Government further stated that the decision of the President of the 3<sup>rd</sup> Criminal Division to assign Judge J.M. to the applicant’s case included valid reasons. In their opinion, those reasons could be considered “other important grounds” within the meaning of Article 351 § 1 of the CCP. The heavy workload of other judges in the division compared with a situation when a newly-seconded judge had virtually no cases to examine constituted sufficient reasons to depart from the standard rule of assigning judges. That interpretation was supported by the above decision of the Supreme Court and the majority of legal writers.

The Government also noted that the issue of the improper composition of the Wrocław Regional Court had been examined and declared manifestly ill-founded by the Supreme Court. Furthermore, the applicant’s objections in respect of Judge J.M. had not been raised at any time in the proceedings prior to his cassation appeal. In conclusion, the Government submitted that the court adjudicating the applicant’s case could be considered “a tribunal established by law”.

### **B. The applicant’s submissions**

The applicant argued that since 11 August 1999, the date on which one of the lay judges on the panel had died it had been evident that a new panel had to be assigned to recommence hearing his case. The case should have been treated as if a new case had been filed in the court. The applicant underlined that a new panel should have been assigned immediately after 11 August 1999 on the basis of the list of judges of the 3<sup>rd</sup> Criminal Division that had been valid at that time.

Furthermore, the applicant emphasised that Judge J.M. could not be put on the list of judges valid on 13 September 1999 as he had been seconded to the Wrocław Regional Court for the period from 1 October 1999 to 31 March 2000. Furthermore, Judge J.M. was seconded to the Regional Court on 13 September 1999 and on the very same day he was assigned to hear the applicant’s case.

The applicant also maintained that the list of judges submitted to the Supreme Court did not comply with the requirements set out in the Ordinance of the Minister of Justice of 12 August 1998. The list was not in alphabetical order (§ 2(1) of the Ordinance) and did not include annotations

about any circumstances constituting grounds for departure from the rules of assignment of judges specified in Article 351 § 1 of the CCP (§ 2(2) of the Ordinance). Those circumstances allowed for manipulation as regards assignment of a new panel in the applicant's case.

The applicant disagreed with the Government that the strict compliance with Article 351 § 1 of the CCP created excessive formalism. It was not permissible to depart from the rule of the automatic assignment of judges on account of the staffing difficulties. The Code of Criminal Procedure introduced the system linking the order in which cases were filed with a list of judges of a given court (division).

The applicant argued that Judge J.M. had been assigned to the applicant's case in an administrative manner and in breach of Article 351 § 1 of the CCP. He further maintained that Judge J.M. could not be considered impartial on account of the manner in which he had been assigned.

### C. The Court's assessment

According to the Court's case-law, the object of the term "established by law" in Article 6 of the Convention is to ensure that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament. In countries where the law is codified, organisation of the judicial system cannot be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 98, ECHR 2000-VII; *Gurov v. Moldova*, no. 36455/02, § 34, 11 July 2006).

The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000; *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003-IV). A tribunal established by law must satisfy a series of conditions such as the independence of its members and the length of their terms of office, impartiality and the existence of procedural safeguards (see *Coëme and Others v. Belgium*, cited above, § 99).

The applicant alleged that Judge J.M. had been assigned to his case in breach of Article 351 § 1 of the CCP. He claimed, in particular, that a new panel should have been composed immediately after 11 August 1999 and that Judge J.M. could not have been assigned to his case on 13 September 1999 since his secondment to the Wrocław Regional Court was only to start on 1 October 1999.

The Court notes that Article 351 § 1 of the CCP establishes a rule that a judge is assigned to a case in the order in which the case was filed and having regard to a list of judges of a given court (division). Exceptions to

the rule are allowed under this provision in the case of a judge's illness or on account of "other important grounds". At the same time reasons justifying departure from the standard rule should be expressly specified.

The applicant's case was first heard by a panel of the Wrocław Regional Court (3<sup>rd</sup> Criminal Section) composed of Judge A.W. and two lay judges. Subsequently Judge A.W. was due to move to the Supreme Administrative Court. In those circumstances the President of the 3<sup>rd</sup> Criminal Section of the Wrocław Regional Court was required to appoint a new judge to examine the applicant's case.

The Court notes that the departure of Judge A.W. from the 3<sup>rd</sup> Criminal Section created a situation where his cases had to be distributed among other judges in the section. On the other hand Judge J.M. was a new judge in the same section and it was necessary to provide him with cases to examine. The President of the 3<sup>rd</sup> Criminal Section, relying on Article 351 § 1 of the CPP, assigned the applicant's case to Judge J.M. and invoked as reasons justifying his decision the departure of Judge A.W. and the need to evenly distribute the work between the judges of the section. The Court finds that those reasons could be considered as "other important grounds" under Article 351 § 1 of the CPP which justified the departure from the standard rule of assigning judges. The Supreme Court in its practice found that the heavy workload of a judge was a valid reason to depart from the standard rule.

It is of importance that the Supreme Court carefully examined the applicant's allegations as to the improper assignment of Judge J.M. to his case and found them entirely ill-founded. It would appear that the Supreme Court did not subscribe to the applicant's view that a new panel should have been appointed immediately after 11 August 1999 and the assignment of Judge J.M. on 13 September 1999, i.e. before his secondment officially took effect, had entailed breach of Article 351 § 1 of the CCP. Having regard to the general principle according to which it is in the first place for the national courts themselves to interpret the provisions of domestic law, the Court considers that it may not question their interpretation unless there has been a flagrant violation of domestic law (see, *Lavents v. Latvia*, no. 58442/00, § 114 *in fine*, 28 November 2002; *Jorgic v. Germany*, no. 74613/01, § 65, ECHR 2007-IX (extracts)). On the evidence before it, the Court finds that the essential requirements for the assignment of Judge J.M. laid down in Article 351 § 1 of the CCP were respected. Accordingly, the decision to assign Judge J.M. to hear the applicant's case was in conformity with the law.

The applicant also claimed that Judge J.M. lacked impartiality as a result of the manner in which he had been assigned to his case. The Court observes that at the relevant time Judge J.M. was a district court judge – seconded to the Wrocław Regional Court – who was appointed for an indefinite period by the President of the Republic of Poland. Furthermore, the secondment of a judge by the Minister of Justice was a standard practice provided by the Law on the Structure of Courts of Law (cf. section 63 § 1 of the Law as applicable at the material time). The applicant did not adduce any evidence to show that Judge J.M. had been subject to any form of influence or pressure from the executive. In the light of the above, the Court is unable to conclude that Judge J.M. lacked independence and impartiality, viewed both subjectively and objectively, within the meaning of Article 6 § 1 of the Convention when dealing with the criminal case against the applicant.

Accordingly, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Lawrence Early  
Registrar

Nicolas Bratza  
President