



ECHR gives notification to Poland of another case concerning alleged lack of independence of the Supreme Court

The European Court of Human Rights decided on 8 December 2020 to give notification¹ of the application **Advance Pharma Sp. z o.o v. Poland** (no. 1469/20) to the Government of Poland, and requested that they submit observations.

The application concerns a complaint brought by a pharmaceutical company that the Polish Supreme Court, which decided on a case concerning it, was constituted in breach of the law following changes to the judiciary introduced in 2017.

The applicant's case was examined by the Civil Chamber of the Supreme Court, which was constituted on the recommendations of the National Council of the Judiciary ("the NCJ"), the constitutional organ in Poland which safeguards the independence of courts and judges. The NCJ has been the subject of controversy since the entry into force of new legislation providing that its judicial members are no longer elected by judges but by the Sejm (the lower house of Parliament).

A [statement of facts](#) submitted to the parties, with questions from the Court, is available in English on the Court's website. The Court's ruling in the case will be made at a later stage.

The Court notified a similar application to the Polish Government in June 2020, [Reczkowicz and two Others v. Poland](#) (no. 43447/19), concerning the alleged lack of independence of two newly created chambers of the Supreme Court (the Disciplinary Chamber and the Chamber of Extraordinary Control and Public Affairs).

See also previous press releases concerning issues related to the judiciary in Poland in the cases [Grzęda v. Poland](#) (no. 43572/18), [Xero Flor w Polsce sp. z o.o. v. Poland](#) (no.4907/18), [Broda v. Poland and Bojara v. Poland](#) (nos. 26691/18 and 27367/18), [Żurek v. Poland](#) (no. 39650/18), [Sobczyńska and Others v. Poland](#) (nos. 62765/14, 62769/14, 62772/14 and 11708/18) and [Tuleya v. Poland](#) (no. 21181/19).

The applicant, Advance Pharma Sp. z o.o, is a limited liability company based in Warsaw.

The applicant company was a distributor in Poland of a dietary supplement. Following a control in September 2010, the supplement was withdrawn from the market by the Main Pharmaceutical Inspector for appearing to be a medicinal product and for containing a non-authorized active drug not listed on its label.

That decision was then quashed by the administrative courts, which considered that the Inspector should have established whether the supplement had been a dietary supplement or a medicinal product.

The applicant company, which had in the meantime had destroyed its stocks of the supplement, instituted a claim for damages in tort against the State. The claim was examined by the authorities at three instances, ultimately in March 2019 by the Civil Chamber of the Supreme Court, and dismissed. The courts notably found that the applicant company had destroyed the supplement on its own initiative; the Inspector had only ordered its withdrawal from the market. Moreover, the company

¹ In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges or the President of a Section may decide to bring to the attention of a Convention State's Government the fact that an application against that State is pending before the Court (the so-called "communications procedure").

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had not proven that it had been prevented from reintroducing the supplement once it had been made compliant with the relevant regulations. The applicant company had therefore failed to prove the causal link between the damages sought and the Inspector's action.

The application was lodged with the European Court of Human Rights on 2 December 2019.

Relying on Article 6 (right to a fair trial) of the European Convention of Human Rights, the applicant company complains that the Civil Chamber of the Supreme Court which examined its case did not constitute an "independent and impartial tribunal established by law" because it was composed of judges recommended by the NCJ. It refers in particular to proceedings before the Court of Justice of the European Union which ended in a ruling on 19 November 2019.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.