



Multiple violations in case concerning disciplinary regime for judges in Poland

In today's **Chamber judgment**¹ in the case of [Tuleya v. Poland](#) (applications nos. 21181/19 and 51751/20) the European Court of Human Rights held, by 6 votes to 1, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights; and
a violation of Article 8 (right to respect for private life) of the European Convention.

It also held, unanimously, that there had been:

a violation of Article 10 (freedom of expression).

The case originated in the new disciplinary regime for judges in Poland. The applicant, Igor Tuleya, a well-known judge, complained about five sets of preliminary inquiries initiated against him in 2018 on suspicion of disciplinary misconduct.

He notably complained that one of those inquiries, concerning his alleged disclosure of sensitive information from an investigation file, had led to the lifting of his immunity from prosecution, and suspension from his official duties for over two years by the Disciplinary Chamber of the Supreme Court.

The criminal proceedings against Mr Tuleya are apparently still ongoing, while none of the preliminary inquiries have led to disciplinary proceedings being brought against him.

The Court held, as in one of its previous rulings ([Reczkowicz v. Poland](#)), that the Disciplinary Chamber – which had taken the decision to lift Mr Tuleya's immunity – was not an "independent and impartial tribunal established by law" for the purposes of the Convention.

It also concluded that there had been no lawful basis for the measures against Mr Tuleya which had to have had a significant impact on his right to private life and could be characterised as a strategy aimed at intimidating (or even silencing) him for the views that he had expressed.

The Court emphasised that Mr Tuleya's case had to be seen in context, notably that he was one of the most outspoken critics of judicial reform in Poland.

There are currently 397 applications pending before the Court which raise issues relating to the reorganisation of the judicial system in Poland under laws that mainly came into force in 2017 and 2018.

Apart from *Tuleya*, the Court has handed down eight judgments on these issues: [Xero Flor w Polsce sp. z o.o. v. Poland](#), [Broda and Bojara v. Poland](#), [Reczkowicz v. Poland](#), [Dolińska-Ficek and Ozimek v. Poland](#), [Advance Pharma Sp. z o.o v. Poland](#), [Grzęda v. Poland](#), [Żurek v. Poland](#) and [Juszczyszyn v. Poland](#).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant is a Polish national, Igor Tuleya, who was born in 1970 and lives in Warsaw. He is a well-known judge and has held judicial office since 1996. He is also active in the defence of the rule of law in Poland.

Since the entry into force of legislation amending judicial discipline in 2018, many disciplinary proceedings have been initiated against judges in connection with their rulings or public activities. Most of the judges concerned have openly criticised legislative changes to the judiciary introduced from 2016-2018.

Five sets of preliminary inquiries regarding possible disciplinary misconduct were initiated in respect of Mr Tuleya in 2018. These inquiries principally concerned comments he had made on television or questions over his participation in public meetings, while others related to his judicial activity.

Mr Tuleya alleged that as a result of the preliminary inquiries he had been the subject of a smear campaign in the media, with insulting or discrediting information about him being published or broadcast.

One of the preliminary inquiries was initiated against Mr Tuleya following his decision to submit a request to the Court of Justice of the European Union for a preliminary ruling on the new disciplinary regime for judges.

In another inquiry, the disciplinary officer summoned Mr Tuleya to make a statement about his possible disclosure of sensitive information from an investigation file. The investigation concerned alleged parliamentary irregularities which had prevented opposition parliamentarians from taking part in a budget debate on 16 December 2016 (known as “the Column Hall vote”). On 18 December 2017, at a court session held in public which Mr Tuleya had given permission to the media to record, he had decided – giving reasons orally – to allow an interlocutory appeal and ordered the prosecutors to continue the previously closed investigation.

Mr Tuleya’s allowing the media to record this court session was also the subject of criminal proceedings. In that context, a prosecutor applied to the Disciplinary Chamber of the Supreme Court on 17 February 2020 to have his judicial immunity lifted with a view to charging him with offences related to disclosure of information to unauthorised individuals and acting to the detriment of public interest.

After several stages of proceedings, on 18 November 2020 the applicant’s immunity was lifted and he was suspended from his official duties by the Disciplinary Chamber of the Supreme Court. His salary was also reduced by a quarter for the duration of the suspension.

The part of this decision regarding the applicant’s suspension from his duties and reduction of his salary was set aside on 29 November 2022 by the newly created Chamber of Professional Liability (“the CPL”), which had replaced the Disciplinary Chamber of the Supreme Court. This new chamber held in particular that there was no reasonable suspicion that Mr Tuleya had committed the offence as alleged. The part concerning the lifting of his immunity, allowing him to be held criminally liable, remains however in force.

After this decision, Mr Tuleya was reinstated, his salary was adjusted to the full amount and he received back pay.

The criminal proceedings against Mr Tuleya are apparently still ongoing, while none of the preliminary inquiries have led to disciplinary proceedings being brought against him. He states that he has at no point been informed that the inquiries have been terminated.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) of the Convention, the applicant complained that the Disciplinary Chamber of the Supreme Court, which had ruled to lift his immunity and suspend him from his judicial duties, had not met the requirements of an “independent and impartial tribunal established by law”.

He also alleged that the measures taken against him had amounted to legal harassment and cast doubt on his reputation as a judge, in breach of Article 8 (right to respect for private and family life), and had been in retaliation for his public criticism of the authorities’ undermining of judicial independence, in breach of Article 10 (freedom of expression). In his view, such measures had not only intended to discourage and intimidate, but also to produce a “chilling effect” on all judges.

Lastly, he alleged under Article 13 (right to an effective remedy) that there was no legal avenue for him to contest the breach of his privacy rights.

The applications were lodged with the European Court of Human Rights on 10 April 2019 and 24 November 2020, respectively.

The parties were given notice of the applications on [1 September 2020](#) and [16 July 2021](#), respectively.

The following were granted leave to intervene as third parties: the Commissioner for Human Rights of the Republic of Poland; the “Judges for Judges” Foundation (the Netherlands) jointly with Professor L. Pech; the European Network of Councils for the Judiciary; Amnesty International jointly with the International Commission of Jurists; the Polish Judges’ Association Iustitia; and the Government of the Kingdom of the Netherlands.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

The Court found it appropriate to examine the two applications jointly in a single judgment.

[Article 6 § 1](#)

The Court found that the newly created CPL’s decision of 29 November 2022, which had led to his reinstatement and back pay, had acknowledged – in substance – a violation of his right under Article 6 § 1 and provided sufficient redress as far as his suspension was concerned. He had therefore lost his victim status in respect of that aspect of his complaint under Article 6 § 1.

The Court welcomed that decision, considering it a positive development in the rule-of-law crisis in Poland.

It noted, however, that – while the CPL had unequivocally established that Mr Tuleya had committed no criminal offence – the decision of 18 November 2020 lifting his immunity and thus allowing him to be held criminally liable, remained in force. Nothing had been done at national level to terminate

the criminal proceedings. The adverse consequences of that decision therefore persisted, and Mr Tuleya retained his victim status as regards the lifting of his immunity.

The Court then went on to examine whether the criminal limb of Article 6 § 1 could be applied to the proceedings concerning the lifting of Mr Tuleya's immunity.

It noted that the prosecutor had sought to have Mr Tuleya's immunity lifted in order to be able to charge him with unauthorised disclosure of information from pre-trial proceedings, as defined in Article 241 § 1 of the Criminal Code. That offence was clearly a criminal offence under domestic law. It was moreover punishable by a fine or up to two years' imprisonment.

Consequently, even though the applicant had not yet been formally charged in criminal proceedings, the suspicion against him had substantially affected his situation.

The Court therefore found that the criminal limb of Article 6 § 1 was applicable to the immunity proceedings in Mr Tuleya's case. In coming to that conclusion, it highlighted the specific features and nature of immunity proceedings in Poland, as referred to in a number of rulings by the highest Polish courts in recent years. Those rulings had held that the decision to lift the immunity of a judge could only be made by a court and in a procedure ensuring the essential guarantees of a fair trial. Indeed, judicial immunity had a long-standing tradition under Polish law and was regarded as one of the guarantees of judicial independence.

Lastly, as concerned the merits of Mr Tuleya's complaints under Article 6 § 1, the Court found, in line with its judgments [Reczkowicz v. Poland](#) and [Juszczyszyn v. Poland](#), that the Disciplinary Chamber of the Supreme Court, which had examined Mr Tuleya's case, had not been an "independent and impartial tribunal established by law". The grounds on which the Court had reached its conclusions in those two previous judgments still stood. In particular, the procedure for appointing judges to the Disciplinary Chamber had been unduly influenced by the legislative and executive powers. That had amounted to a fundamental irregularity that adversely affected the whole process and compromised the legitimacy of the Disciplinary Chamber.

Accordingly, there had been a violation of Article 6 § 1 of the Convention as regards the right to an independent and impartial tribunal established by law.

Article 8

First, the Court focussed on one of the preliminary inquiries, concerning Mr Tuleya's making a request for a preliminary ruling to the CJEU, and the decision to lift his immunity and suspend him from his official duties.

It found that those measures, calling into question his judicial integrity and professional reputation and preventing him from exercising his official duties for over two years, had had a significant impact on his private life. Article 8 was therefore applicable and the measures had constituted an interference with Mr Tuleya's right to respect for his private life.

The Court went on to attach significant weight to the CJEU's findings in a judgment of 15 July 2021² that the new disciplinary regime for Polish judges was incompatible with European Union law. In that judgment, the CJEU found that the mere fact of conducting a preliminary inquiry into requests for a preliminary ruling put pressure on the judges in question and undermined their independence. In the Court's view, disciplinary liability for giving a judicial decision could only be taken as an exceptional measure. The interference with Mr Tuleya's right to respect for his private life had not therefore been "in accordance with the law" under Article 8.

Nor was the decision to lift Mr Tuleya's immunity and suspend him lawful, essentially on two grounds.

² *Commission v. Poland* (Disciplinary regime for judges), C-791/19.

As to the first ground, the Court found that those measures had been ordered by the Disciplinary Chamber of the Supreme Court, a body which – according to the European Court’s judgment [Reczkowicz v. Poland](#) – had not satisfied the requirements of an “independent and impartial tribunal established by law”, despite the Polish Constitution explicitly requiring that such decisions be taken by a court.

As to the second ground, the Disciplinary Chamber’s interpretation of the law in its decision to lift Mr Tuleya’s immunity and suspend him had quite clearly been unforeseeable. The Court could not discern any malice in his having given his decision concerning the “Column Hall vote” investigation in open court. Indeed, the Disciplinary Chamber itself had not considered that he had intentionally disclosed protected information. Nor had the Disciplinary Chamber found that the oral delivery of his reasons had given rise to any real threat to the public interest or had had an adverse impact on the investigation. In sum, Mr Tuleya could not have foreseen that his actions could lead to the lifting of his immunity from prosecution and his suspension.

The Court emphasised that Mr Tuleya’s case had to be seen in context, notably that he was one of the most outspoken critics of the reorganisation of the judiciary in Poland, and that it had already found – in its judgment [Grzęda v. Poland](#) – that the Government’s successive reforms had weakened judicial independence.

Overall, the interference with Mr Tuleya’s right to respect for his private life had not been “in accordance with the law”, in violation of Article 8 of the Convention.

Article 10

The Court found that there had been an interference with Mr Tuleya’s right to freedom of expression.

As concerned three of the preliminary inquiries – concerning an interview he had given on the TVN24 television news channel and his participation in public meetings in Gdańsk and Lublin – it was evident that they had been the result of his exercising his freedom of expression.

Furthermore, there were grounds to believe, given the general context, that the lifting of Mr Tuleya’s immunity had been a disguised sanction for his expressing criticism of successive judicial reform. That conclusion was corroborated not only in the Polish and international press but also by the Council of Europe, the International Association of Judges and the American Bar Association Center for Human Rights.

That interference had not been “prescribed by law”. In particular, Mr Tuleya had not been informed when the preliminary inquiries into the television interview and his participation in the two public meetings had been terminated. Without such minimum safeguards, preliminary inquiries were open to abuse and could dissuade judges from expressing their opinions on matters of public interest.

Nor could the decision to lift his immunity and suspend him from his official duties be considered lawful, given the finding above that the Disciplinary Chamber of the Supreme Court which had taken the decision was not a “court” for the purposes of the Convention.

Lastly, the Court could not accept that there had been any legitimate aim for the interference with Mr Tuleya’s right to freedom of expression. He had steadily defended the rule of law and independence of the judiciary, without going beyond criticism from a strictly professional perspective. Indeed, the measures taken by the authorities could be characterised as a strategy aimed at intimidating (or even silencing) him for his views. Such measures had to have discouraged not only Mr Tuleya but also other judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary.

There had accordingly been a violation of Article 10.

Article 13

Given the findings under Article 8, the Court found that it was not necessary to examine separately the admissibility and merits of Mr Tuleya's complaint under Article 13.

Article 41 (just satisfaction)

The Court held that Poland was to pay Mr Tuleya 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 in respect of costs and expenses.

Separate opinion

Judge Wojtyczek expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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.