



Lech Wałęsa's right to a fair hearing breached:

Under this pilot judgment, Poland must take appropriate legislative measures to comply with Article 6 § 1 requirements, including the principle of independence of the judiciary

In today's Chamber judgment¹ in the case of [Wałęsa v. Poland](#) (application no. 50849/21) the European Court of Human Rights held, unanimously, that there had been:

- a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights as regards Mr Wałęsa's right to an independent and impartial tribunal established by law;
- a violation of Article 6 § 1 for breaching the principle of legal certainty; and
- a violation of Article 8 (right to respect for private and family life).

The case concerned a civil suit that Mr Wałęsa had taken against a former friend and associate, Krzysztof Wyszowski, who had accused him publicly of collaboration with the secret services under the communist regime. Although he had won the case, the final judgment in his favour had been overturned, nine years later, by the Chamber of Extraordinary Review and Public Affairs following an extraordinary appeal by the Prosecutor General.

The Court found in particular, as it has done in previous cases, that the Chamber of Extraordinary Review and Public Affairs, which had examined the extraordinary appeal, was not an "independent and impartial tribunal established by law". Therefore, Mr Wałęsa's right to a fair hearing had been breached.

As to whether the extraordinary appeal had violated the principle of legal certainty, as alleged by Mr Wałęsa, the Court noted that entrusting the Prosecutor General – a member of the executive who wielded considerable authority over the courts and exerted a strong influence on the National Council of the Judiciary – with the unlimited power to contest virtually any final judicial decision ran counter to the principles of judicial independence and separation of powers, with a risk that extraordinary appeals could turn into a political tool used by the executive. It held that the extraordinary appeal procedure was incompatible with the principles of legal certainty and *res judicata* (a case that has been resolved by a final judgment cannot be brought back to court for a second trial or a new appeal), finding that the extended time-limits for lodging an extraordinary appeal allowed to the Prosecutor General and operating retrospectively, were not only in breach of those principles but also failed to satisfy the requirement of foreseeability of the law for Convention purposes. It further found indications that the State authority had abused the extraordinary appeal procedure to further its own political opinions and motives. Indeed, the Court observed that Mr Wałęsa's case could not be separated from its political background and the political context in Poland at the time and the long-lasting and public conflict between Mr Wałęsa and the leadership of the Law and Justice (PiS) party and the United Right alliance Government.

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.

The reversal of the final judgment had adversely affected Mr Wałęsa's private life to a significant degree, and therefore constituted an interference with his right to respect for his private life. The Court concluded that that interference had not been "in accordance with the law", as it had emanated from a body which was not a "lawful" court under the Convention, it had not been based on a "law" that provided proper safeguards against arbitrariness, and it disclosed abuse of process on the part of the Prosecutor General.

Applying the [pilot-judgment procedure](#) under Rule 61 of the [Rules of Court](#), the Court held that, in order to put an end to the systemic violations of Article 6 § 1 of the Convention identified in this and previous cases, Poland must take appropriate legislative and other measures to comply with the requirements of an "independent and impartial tribunal established by law" and with the principle of legal certainty.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Lech Wałęsa, is a Polish national, who was born in 1943 and lives in Gdańsk (Poland). He is the former leader of the Solidarność ("Solidarity") trade union and a former President of Poland (1990-95) who was awarded the Nobel Peace Prize in 1983.

When a candidate in the presidential elections in 2000, Mr Wałęsa made a "lustration declaration" – in the case of Poland this amounted to declarations by persons performing public duties around cooperation with the State security services from 1944 until 1990 – in which he stated that he had not collaborated with those agencies. The statement was confirmed by the courts.

On 16 November 2005 the Institute of National Remembrance (*Instytut Pamięci Narodowej*) confirmed he had not been a collaborator by giving him the status of "injured party". This was widely reported in the media. However, on the evening news a former friend and associate of Mr Wałęsa, Krzysztof Wyszowski, stated, among other things, that "Lech Wałęsa [had been] a secret collaborator with the alias 'Bolek', [who] reported on his colleagues, [and] received money for it ...". Mr Wałęsa sued Mr Wyszowski, arguing that the statements were untrue, and demanding an apology and a payment to charity in compensation.

That claim was dismissed, but in 2011 the Gdańsk Court of Appeal partially overturned the first-instance judgment on appeal and ordered that Mr Wyszowski publish an apology on television. The Supreme Court refused to entertain a cassation appeal. Mr Wyszowski's subsequent attempt to have the case reopened was unsuccessful, due to the expiry of the relevant time-limit. He refused to publish the apology as ordered. Eventually, an apology was published on behalf of Mr Wyszowski by Mr Wałęsa himself.

However, in 2017 the new Supreme Court Act came into force. This introduced an "extraordinary appeal" into Polish law, to be examined by the Chamber of Extraordinary Review and Public Affairs of the Supreme Court (for further information see [Dolińska-Ficek and Ozimek v. Poland](#), nos. 49868/19 and 57511/19). Thus, in January 2020 the Prosecutor General, Zbigniew Ziobro, lodged an extraordinary appeal against the final judgment in Mr Wałęsa's suit in order to "to ensure compliance with the principle of a democratic State governed by the rule of law and implementing the principles of social justice".

According to Mr Wałęsa, he had only two weeks to make his submissions in response to the extraordinary appeal. He argued, among other things, that the extraordinary appeal was unconstitutional and in his case a breach of legal certainty. He later unsuccessfully asked that the 17 judges of the Chamber of Extraordinary Review and Public Affairs (including Judge Aleksander Stępkowski, whose independence and impartiality he contested) be excluded from the case as they had been appointed in breach of the law. That Chamber quashed the Court of Appeal judgment of

2011, which had been in his Mr Wałęsa's favour. It referred to, among other things, Articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the Convention.

Mr Wyszowski made an application (no. 34282/12) to the European Court, complaining of a breach of Article 10 of the Convention on account of having been ordered to publish an apology for his statements concerning Mr Wałęsa. The application was [struck out of the Court's list of cases](#) following a unilateral declaration by the Government of Poland in 2021 that it would resolve the issues raised in the complaint.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention of Human Rights, Mr Wałęsa complained that the Chamber of Extraordinary Review and Public Affairs was not an "independent and impartial tribunal established by law", that one of the judges, Judge Stępkowski, had been partial, and that the extraordinary appeal had violated the principle of legal certainty. Relying on Article 8 (right to respect for private and family life), Mr Wałęsa also argued, in particular, that the quashing of the judgment in his favour had damaged his reputation. Lastly, relying on Article 18 (limitation on the use of restriction of rights), he complained that the extraordinary appeal had been used as a form of retaliation against him personally as a known critic of the current rule-of-law crisis in Poland.

The application was lodged with the European Court of Human Rights on 5 October 2021.

On 30 September 2022 the Government of Poland were given notice of the application, with questions from the Court. A [statement of facts](#) of the case submitted to the Government is available only in English on the Court's website. At the same time, the Court decided to grant the case priority under Rule 41 of the Rules of the Court.

Third-party interventions were received from The Helsinki Foundation for Human Rights, the Commissioner for Human Rights of the Republic of Poland, and the Polish Judges' Association Iustitia.

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

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Ioannis **Ktistakis** (Greece), *ad hoc judge*,

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

Decision of the Court

Article 6 § 1

The Court examined the case in the light of the criteria laid down by the Grand Chamber of the Court in the case of *Guðmundur Andri Ástráðsson v. Iceland* (no. 26374/18) of December 2020 and also applied in a number of cases concerning the independence of the judiciary in Poland (see, in particular, [Xero Flor w Polsce sp. z o.o. v. Poland](#), [Reczkowicz v. Poland](#), [Dolińska-Ficek and Ozimek v. Poland](#), [Advance Pharma Sp. z o.o v. Poland](#), and [Juszczyszyn v. Poland](#)).

In applying the same principles to this case, the Court concluded, for the same reasons as in *Dolińska-Ficek and Ozimek*, that the Chamber of Extraordinary Review and Public Affairs, which had examined the extraordinary appeal lodged by the Prosecutor General, was not an “independent and impartial tribunal established by law. The Court therefore concluded that there had been a **breach of Article 6 § 1 as regards Mr Wałęsa’s right to a fair hearing**. In reaching that conclusion, it did not need to consider further the issue of whether Judge Stępkowski had displayed any bias towards him.

As to whether the extraordinary appeal had violated the principle of legal certainty, the Court noted that entrusting the Prosecutor General – a member of the executive who wielded considerable authority over the courts and exerted a strong influence on the National Council of the Judiciary (NCJ) – with the unlimited power to contest virtually any final judicial decision ran counter to the principles of judicial independence and separation of powers. Extraordinary appeals might in practice become a political tool used by the executive.

Even before the provision had come into force in April 2018, serious concerns as to its compatibility with the rule of law had been raised by various European institutions, including the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), the Venice Commission, and the European Commission. Since then, criticism had also been voiced by the Council of Europe’s Group of States against Corruption (GRECO) and its Parliamentary Assembly (PACE), with the latter warning that the number of applications against Poland before the Court might considerably increase as a result.

Endorsing those opinions, the Court was particularly concerned that the vague terms used in the provision to describe the conditions for lodging an extraordinary appeal, such as a need to ensure compliance with the principles of “social justice” could be interpreted in a multitude of ways. The Court held that that paved the way for possible arbitrariness, misuse and abuse on the part of the authorities. Moreover, a final decision could be appealed against if there was “an obvious contradiction between significant findings of the court and the ... evidence collected in the case”. That only went to undermine the stability of final judicial decisions and the legitimate expectation that a finally-determined case could not be rejudged. Also, although the general time-limit for lodging an extraordinary appeal, was already very long – five years from when the decision became final –, it did not apply to the Prosecutor General and the Polish Commissioner for Human Rights who were granted additional exceptional powers, even being allowed to lodge an extraordinary appeal against final judicial decisions that pre-dated the extraordinary provision, going as far back as 17 October 1997. For the Court, that was simply inconceivable; it was incompatible with the rule of law, and notably with the principles of legal certainty, *res judicata* and foreseeability of the law.

Moreover, the Court reiterated, as in *Dolińska-Ficek and Ozimek*, that the irregularities in the process of appointment of its judges had compromised the legitimacy of the Chamber of Extraordinary Review and Public Affairs to the extent that it lacked the attributes of an “independent and impartial tribunal established by law”. As such, the examination of an extraordinary remedy which could lead to far-reaching, adverse and often irreversible legal consequences, including the wiping-out of the final judicial decision in a case, and which went against the principle of legal certainty, was being entrusted to a body which could not be considered a “tribunal” in Convention terms. Such a situation was causing a general systemic problem within the Polish judicial system.

In the Court’s view, in this case, the Prosecutor General had used his exceptional powers to lodge an appeal, simply because he disagreed with the outcome. He was using the remedy as an “ordinary appeal in disguise”. The Court reiterated that under Article 6, no party was entitled to seek a review of a final and binding judgment merely to obtain a re-examination of the case and reversal of the final judgment.

When the Prosecutor General lodged his extraordinary appeal, nine years had passed since the final judgment in the case, after it had been examined at six levels of jurisdiction (three times at first instance and three times on appeal) over some five-and-a-half years and following two first-instance

judgments in Mr Wałęsa's favour, one in Mr Wyszowski's favour, two remittals on appeal and the final judgment partly granting Mr Wałęsa's claim. The defendant had had ample opportunity to exercise his procedural rights, present evidence or otherwise make his case.

Moreover, the Chamber of Extraordinary Review and Public Affairs decided that the judgment had imposed severe and disproportionate sanctions on Mr Wyszowski, even though the only sanction had been the apology that Mr Wyszowski had been ordered to publish, but which, following his refusal to do so, had eventually been published by Mr Wałęsa on his behalf.

The Court rejected the Government's argument that the decision to allow the extraordinary appeal had been to resolve the issues raised in Mr Wyszowski's application to the European Court – in which he complained of a breach of Article 10 of the Convention on account of that sanction –, as a form of enforcement of its unilateral declaration and the Court's strike-out decision, as the extraordinary appeal had been granted well before the striking-out.

The Court observed that Mr Wałęsa's case could not be separated from its political background and the political context in Poland at the time and the long-lasting and public conflict between Mr Wałęsa and the leadership of the PiS party and the United Right alliance Government. The most severe accusations of collaboration with the communist secret service – which had been at the heart of the proceedings in his defamation case – had come from the PiS party and its supporters, and the Prosecutor General himself, with Mr Wyszowski playing a key role in making those accusations public. It was also apparent that he had close political connections with the leadership of the PiS and the United Right alliance Government.

In the Court's view, it was one thing to hold strong and hostile opinions on one's political opponents, yet another to pursue those opinions through the State judicial mechanism, using one's exceptional statutory powers to challenge the finality of a judgment that was unfavourable to a political ally. Very telling was the Prosecutor General's public expression of his deep satisfaction with the outcome, stating "we waited for years, but the truth finally triumphed", despite the fact that Mr Wałęsa's alleged collaboration with the communist secret service had not been the object of the Chamber ruling. The State authority had abused the legal procedure for its own political opinions and motives. The Court found no substantial and compelling circumstances that justified the departure from the principle of legal certainty, so there had therefore been a violation of Article 6 § 1 of the Convention.

Article 8

As Mr Wałęsa was recognised in Poland and internationally as one of the most renowned figures in Poland's contemporary history for his leadership of the Solidarity trade union, underground anti-communist activities and his contribution to the dismantling of communism in Central and Eastern Europe in 1989-1990, the Court found it evident that Mr Wyszowski's statements accusing Mr Wałęsa of paid collaboration with the communist secret service in the 1970s had struck at the heart of what was commonly considered his lifelong achievements. Consequently, the reversal of the final judgment had adversely affected Mr Wałęsa's private life to a significant degree, and therefore constituted an interference with his right to respect for his private life.

The Court considered that that interference, emanating as it did from the Chamber of Extraordinary Review and Public Affairs, a body which was not a "lawful" court under the Convention, had not been based on a law that provided proper safeguards against arbitrariness. There had therefore been a violation of Article 8 of the Convention.

Article 13 and Article 18

The Court considered that there was no need to examine Mr Wałęsa's complaints separately under these Articles.

Article 46 (binding force and execution of judgments)

When the Court finds a breach of the Convention, the State has a legal obligation to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the situation.

Rule 61 of the Rules of Court (application of pilot-judgment procedure)

Where the facts of a case reveal the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications, the Court may initiate a procedure to adopt a pilot judgment that identifies both the nature of the structural or systemic problem as well as the type of remedial measures which the State must take to eliminate the source of the violation for the future and to provide a remedy for the past prejudice suffered not only by the individual applicant(s) in the pilot case but also by all other victims of the same type of violation. The intention is that, under the umbrella of the general measures required of the respondent State, all the other current and potential victims are absorbed into the process of execution of the pilot judgment.

In view of the grave concern expressed by the Committee of Ministers in June 2023 regarding the Polish authorities' persistent reliance on the Constitutional Court's judgment of 22 March 2022 (no. K 7/21) to justify non-execution of Court judgments, and considering the rapid and continued increase in the number of applications concerning the independence of the judiciary in Poland and alleging, in particular, a breach of the right to an "independent and impartial tribunal established by law", the Court considered that the systemic problems identified called for urgent remedial measures.

The Court therefore applied the pilot-judgment procedure in this case.

In this case, and in the light of previous judgments concerning the judicial reform in Poland initiated in 2017, the Court held that the double violation of the right to a fair hearing under Article 6 § 1 had originated in the interrelated systemic problems connected with the malfunctioning of domestic legislation and practice caused by:

- a) a defective procedure for judicial appointments involving the National Council of the Judiciary as established under the 2017 Amending Act;
- b) the resulting lack of independence on the part of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court;
- c) the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court in matters involving a plea of lack of independence on the part of a judge or a court;
- d) the defects of the extraordinary appeal procedure as established in this judgment;
- e) the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court to deal with extraordinary appeals.

The Court held that, in order to put an end to the systemic violations of Article 6 § 1, Poland had to take appropriate legislative and other measures to secure, in its national legal system, compliance with the requirements of an "independent and impartial tribunal established by law" and the principle of legal certainty.

As a consequence, similar cases that had not yet been notified to the Government would be adjourned for 12 months as of the date of the delivery of this judgment pending the adoption of general measures by the Polish State. Cases that had already been notified would be examined and proceed to judgment.

The Court will continue to give notice to the Government of applications raising different issues in the context of the independence of the judiciary.

[Just satisfaction \(Article 41\)](#)

The Court held that Poland was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage.

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.