



## ECHR gives notification to Poland of another case raising an issue related to changes in the judiciary

The European Court of Human Rights decided on 2 September 2019 to communicate<sup>1</sup> to the Government of Poland the application **Xero Flor w Polsce sp. z o.o. v. Poland** (application no.4907/18), and requested that it submit observations.

The case concerns proceedings brought by the applicant company claiming compensation for damage to its property, and its complaint about the appointment of one judge in particular to the Constitutional Court which examined its case.

This is the second application to be communicated to the Government of Poland raising an issue related to changes in the judiciary.

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 applicant company, Xero Flor w Polsce sp. z o.o., is based in Leszno Dolne and is a leading producer of turf (*trawnik rolowany*).

It has been involved in litigation for a number of years over damage to its turf by boar and deer. In 2012 it sued the State Treasury for game damaging its turf in the autumn of 2010 and spring of 2011.

In its claim it submitted that the reduced percentage rates for calculating compensation for crops, provided for under the Hunting Act and the 2010 Regulation of the Minister of the Environment, were only relevant for annual crops. It argued that such a limitation on the level of compensation should not be applied to its case which concerned turf, a multiannual crop.

However, relying on a court-ordered expert report, the Regional Court found that turf was not a multiannual crop and, applying the 2010 Regulation to calculate the damage, only partly granted the applicant company's claim, awarding it about 40% of the amount sought.

The Court of Appeal confirmed the lower court's findings and dismissed the applicant company's appeal in 2014, and the Supreme Court then refused to examine its cassation appeal in 2015.

Throughout those proceedings the applicant company consistently, but unsuccessfully, requested that the courts refer legal questions on the constitutionality of the Hunting Act and the 2010 Regulation to the Constitutional Court.

It finally lodged a constitutional complaint reiterating its objections to the constitutionality of the Act and the Regulation, but the Constitutional Court, by a majority of three to two, decided in 2017 that the complaint was inadmissible.

The applicant company subsequently lodged its application with the European Court of Human Rights on 3 January 2018.

Relying on Article 6 § 1 (right to fair trial) of the European Convention on Human Rights, the applicant company complains about the courts' refusal to refer legal questions to the Constitutional Court on the constitutionality of the Hunting Act and the 2010 Regulation.

<sup>1</sup> 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").

Further relying on Article 6 § 1, the applicant company also alleges that the bench of five judges of the Constitutional Court which examined its case was composed in violation of the Constitution. In particular, Judge M.M. had been elected by the Sejm (the lower house of the Parliament), despite that post having already been filled by another judge elected by the preceding Sejm.

Lastly, the applicant company alleges a breach of Article 1 of Protocol No. 1 (protection of property) because it could not obtain full compensation for the damage to its property.

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

**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.