



ECHR gives notification to Poland of five cases concerning alleged lack of judicial independence

The European Court of Human Rights decided on 30 April 2021 to give notice¹ to the Government of Poland of five applications [Brodowiak and Dżus v. Poland](#) (applications nos. 28122/20 and 48599/20), [Biliński v. Poland](#) (no. 13278/20), [Pionka v. Poland](#) (no. 26004/20) and [Juszczyszyn v. Poland](#) (no. 35599/20) and requested that they submit their observations. The Court has decided that all current and future applications concerning complaints about various aspects of the reform of the judicial system in Poland should be given priority (Category I). In accordance with the Court's [prioritisation policy](#), this level of priority is assigned to urgent cases.

The cases concern recent judicial reforms in Poland.

Statements of facts submitted to the parties, with questions from the Court, are available in English on the Court's website. The Court's ruling in the cases will be made at a later stage.

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

Brodowiak and Dżus v. Poland (applications nos. 28122/20 and 48599/20)

The applicants, Wirginia Brodowiak and Krzysztof Dżus, are two Polish nationals who were born in 1992 and 1962 respectively. They live in Świętochłowice and Szczecin (Poland) respectively.

The cases concern court proceedings around social-security payments in Ms Brodowiak's case, and criminal proceedings on charges of fraud in Mr Dżus's case. In each of the cases a judge (B.T. and J.W. respectively) was on the bench of the second-instance courts who had been appointed following a recommendation by the National Council of the Judiciary (NCJ).

The applications were lodged with the European Court of Human Rights on 24 June and 28 October 2020 respectively.

Relying on Article 6 (right to a fair trial) of the European Convention of Human Rights, the applicants complain that their cases were not heard by an "independent and impartial tribunal established by law".

Biliński v. Poland (no. 13278/20)

The applicant, Łukasz Biliński, is Polish national who was born in 1977.

On 3 February 2016 the applicant was appointed judge at the Warsaw-Śródmieście District Court. While there he ruled on many freedom-of-expression cases. Some of those rulings were perceived as unfavourable to the Government, and the applicant was criticised by politicians of the ruling party.

¹ Under Rule 54 § 2 (b) of the Rules of Court: "the Chamber or the President of the Section may decide to give notice of the application or part of the application to the respondent Contracting Party and invite that Party to submit written observations thereon and, upon receipt thereof, invite the applicant to submit observations in reply."

On two occasions the applicant requested that he be transferred to another division of the same court. Following the closing of his division, he was assigned to the Family and Juvenile Division III of the court by its president without an opinion of the board of the Regional Court having been obtained. He appealed to the NCJ. During the proceedings, he asked that judges M.N. and R.P. be withdrawn on account of statements they had made online regarding the statutory conditions justifying the transfer of a judge from one division to another. His appeal was dismissed.

His transfer was quashed by the President of the Warsaw Regional Court, but nevertheless he remained *de facto* transferred to the new division.

The application was lodged with the European Court of Human Rights on 23 November 2019.

Relying on Article 6 § 1 (right to a fair trial) of the Convention, the applicant complains, in particular, that the proceedings concerning his transfer were unfair in many respects, including the decision having been taken in breach of the Organisation of the Ordinary Courts Act; that there was a lack of equality of arms and adversarial proceedings; that two judges (R.P. and M.N.), members of the NCJ, lacked impartiality; that the NCJ's decision was unreasoned; and that the NCJ was not an impartial body. He also complains that his transfer had been in reprisal for his rulings. He furthermore complains that he did not have the possibility to contest the NCJ decision before an independent and impartial tribunal. He lastly referred to judicial independence and the possible chilling effect that this decision could have on judges in politically sensitive cases.

Pionka v. Poland (no. 26004/20)

The applicant, Waldemar Pionka, is a Polish national who was born in 1958 and lives in Ćmielów (Poland).

The applicant is a public prosecutor and until April 2016 was head of the Ostrowiec Świętokrzyski District Prosecutor's Office. There, he supervised an investigation into allegations of medical malpractice resulting in the death of the father of Z.Z. (Minister of Justice since 2015).

The case concerns proceedings before the domestic courts following the applicant's declaration of means lodged in accordance with his role as a prosecutor. He was prosecuted for alleged incorrect declaration of means, which eventually came before the Disciplinary Chamber of the Supreme Court. That body overturned the previous decision of the Disciplinary Court at the General Prosecutor and allowed the prosecution to go forward and suspended the applicant from his official duties.

In July 2020 the applicant was charged with abuse of power. The proceedings are pending.

The application was lodged with the Court on 15 June 2020.

Relying on Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the Convention, the applicant complains that the Disciplinary Chamber of the Supreme Court was not an "independent and impartial tribunal established by law", in particular as the judges had been appointed following a recommendation by the NCJ and that some of them were not impartial. He complains that the disciplinary proceedings and criminal charges were part of a harassment campaign against him. He lastly complains of the excessive length of the proceedings and of the lack of an effective domestic remedy.

Juszczyszyn v. Poland (no. 35599/20)

The applicant, Paweł Juszczyszyn, is a Polish national who was born in 1972 and lives in Olsztyn (Poland).

The case concerns the proceedings for and following the suspension of the applicant, a judge, from his official duties.

On 20 November 2019, while seconded to the Olsztyn Regional Court, the applicant heard an appeal against a civil judgment given by Judge D.I. of the Lidzbark Warmiński District Court. The previous January the NCJ had put forward D.I.'s name for the post of district court judge. The applicant took measures (some involving the *Sejm*) to verify if the lower court had been independent under EU law, as D.I. had been appointed on the basis of a resolution adopted by the new NCJ.

On 25 November 2019 the Minister of Justice recalled the applicant from his secondment, publicly admitting that the decision was based on the latter's judicial activity. Disciplinary procedures were initiated, and the applicant was charged with undermining the dignity of the office of judge. He was suspended from judicial activities by Judge M.N., the President of Olsztyn District Court, who was also a member of the NCJ. The case went before the Disciplinary Chamber (DC) of the Supreme Court, despite argument about that body's lack of independence and impartiality. Judge M.N.'s decision was quashed. In a second decision, on 4 February 2020 the DC, with Judge A.T., who allegedly had links to the ruling party, on the bench, suspended the applicant from his official duties. It also decided to reduce the applicant's salary by 40% for the duration of the suspension.

The application was lodged with the Court on 4 August 2020.

Relying on Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life), Article 18 (limitation on use of restrictions on rights) and Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant complains, in particular, that he had not been given access to an independent and impartial tribunal established by law, as he argues that the DC is not such a tribunal as its judges were appointed following a recommendation by the NCJ, which itself had been established in breach of the Constitution. He complains of the DC's lack of independence and impartiality, with some judges having connections to the ruling party. He complains that his professional reputation as a judge was damaged by language in the DC's decision. He alleges that the measures imposed on him were intended to have a chilling effect to deter judges from verifying the validity of the appointment of judges who had been appointed in dubious circumstances. He complains that the disciplinary sanctions did not serve a legitimate interest. Lastly, he complains that the reduction of his salary by 40% for the duration of the proceedings, which are not time-limited, amounted to a disproportionate interference with his property rights.

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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.