



Notification of 37 applications concerning judicial independence in Poland

The European Court of Human Rights has given notice¹ to the Government of Poland of 37 applications (nos. listed below) and requested that they submit their observations.

The majority of the cases concern judicial decisions rendered by various chambers of the Supreme Court in civil or criminal cases, following appeal with regard to application for vacant judicial post, or regarding a disciplinary case involving a lawyer, or decisions by the National Council of the Judiciary (NCJ).

It is alleged that the judicial formations dealing with the applicants' cases were not "independent and impartial tribunals established by law" since they included judges who had been appointed by the new NCJ. The NCJ is the constitutional body in Poland which safeguards the independence of courts and judges. It has been the subject of controversy since the entry into force of new legislation in 2017 providing, among other things, that its judicial members are no longer elected by judges but by the *Sejm* (the lower house of Parliament).

Links to the statements of facts in the individual cases can be found below.

[Prolex sp. z o.o. v Poland](#) (application no. 4763/22), [Rucińska v. Poland](#) (no. 7186/22), [Nowakowski v. Poland](#) (no. 54808/21), [Ludwisiak v. Poland](#) (no. 54461/21), [Szewczuk v. Poland](#) (no. 45530/21), [Kowarowski v. Poland](#) (no. 6514/22), [Czajkowski v. Poland](#) (no. 17162/21), [Sajon v. Poland](#) (no. 18696/21), [Salwin v. Poland](#) (no. 39887/21), [Chrzanowski v. Poland](#) (no. 47767/21), [Bujak v. Poland](#) (no. 6026/22), [Palak v. Poland](#) (no. 46220/21), and [Łabudek v. Poland](#) (no. 43727/21), [Szulc v. Poland](#) (no. 2809/22)

These cases concern civil or criminal cases which were examined by formations of the Civil Chamber or Criminal Chamber of the Supreme Court including judges appointed following the NCJ's recommendation, allegedly in breach of the right to an "independent and impartial tribunal established by law" (see findings regarding formations of the Civil Chamber of the Supreme Court in the [Advance Pharma SP. z o.o v. Poland](#) (no. 1469/20) judgment).

[Morawiec v. Poland](#) (no. 46238/20)

The applicant is a judge at the Cracow Regional Court and served as President of that court until her dismissal by the Minister of Justice in November 2017. She is also President of the Judges' Association Themis. In September 2020 a prosecutor applied to the Disciplinary Chamber of the Supreme Court, asking that the applicant's immunity be lifted with a view to charging her with several criminal offences, including abuse of power. In October 2020 the Disciplinary Chamber lifted the applicant's immunity and suspended her from her judicial duties. In June 2021 the Disciplinary Chamber quashed the first-instance decision. She alleges that the Disciplinary Chamber of the Supreme Court did not satisfy the requirements of an "independent and impartial tribunal established by law" (see findings pertaining to that chamber in the [Reczkowicz v. Poland](#) (no. 43447/19) judgment).

[Gacek v. Poland](#) (no. 8050/21), [Kiełtyka v. Poland](#) (no. 37483/20), [Kapliński v. Poland](#) (no. 42632/20), and [Poręba v. Poland](#) (no. 35463/21)

¹ Under Rule 54 § 2 (b) of the Rules of Court: "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."

The applicants are public prosecutors who were subject to disciplinary investigations in connection with various charges. The Disciplinary Court at the Prosecutor General gave rulings in their cases. The applicants lodged appeals with the Supreme Court. The Disciplinary Chamber of the Supreme Court agreed on prosecution of the applicants on criminal charges or upheld a disciplinary sanction imposed at the earlier stage of the proceedings. They allege the Disciplinary Chamber of the Supreme Court was not an “independent and impartial tribunal established by law”, as the judges had been appointed following a recommendation by the NCJ (see findings regarding this chamber set out in the *Reczkowicz* judgment).

[Kaszyński v. Poland \(no. 48530/21\)](#) and [Sarata v. Poland \(no. 2415/21\)](#),

The first case concerns a judge who unsuccessfully applied to be reinstated to a judicial post. The appeal against this decision by the NCJ was examined by the Chamber of Extraordinary Review and Public Affairs of the Supreme Court. In the second case, the Chamber of Extraordinary Review and Public Affairs examined the applicant’s complaint under the Law of 17 June 2004 on complaint about breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay. The applicants allege that this chamber of the Supreme Court did not comply with the requirements of an “independent and impartial tribunal established by law” (see findings regarding this chamber in the *Dolinska Ficek and Ozimek v. Poland* (nos. 49868/19 and 57511/19) judgment).

[Nawrot v. Poland \(no. 51529/21\)](#), [Śliwa v. Poland \(no. 5685/22\)](#), [Nałęcz v. Poland \(no. 40001/21\)](#), [Lubomirska and Puzyna v. Poland \(no. 18422/21\)](#), [Wojtkielewicz v. Poland \(no. 42443/21\)](#), [Antoszewski v. Poland \(no. 53725/21\)](#), [Bętkowski v. Poland \(no. 54815/21\)](#), [Kamiński v. Poland \(no. 1181/22\)](#), [Szulc v. Poland \(nos. 28314/21\)](#), [Janik v. Poland \(no. 35535/21\)](#), [Dzięgała v. Poland \(no. 32097/21\)](#), [Zielińska v. Poland \(no. 48534/20\)](#), and [D.C. v. Poland \(no. 41335/21\)](#)

These cases concern civil or criminal cases which were examined by the ordinary courts (and in one case the administrative court) which included judges appointed following the NCJ’s recommendation, allegedly in breach of the right to an “independent and impartial tribunal established by law”.

[Kocot v. Poland \(no. 55273/21\)](#) and [Kappes v. Poland \(no. 55562/21\)](#)

The applicants in these cases are university professors, who in February 2018 were recommended by the previous NCJ to the Civil Chamber of the Supreme Court. They complain that since then, the President of Poland has not taken any steps to appoint them or refuse their appointment. Further, they complain that the President’s de facto refusal to appoint them is arbitrary and that they have been placed in a limbo for almost 4 years, which adversely affects their professional careers.

[Hejosz v. Poland \(no. 46854/20\)](#),

The applicant is a regional court judge, who in 2013 was seconded by the Minister of Justice to hear cases in the appellate court. In March 2017 his secondment was withdrawn by the Minister without any reason being provided.

The applicants in these cases rely in particular on Article 6 (right to a fair trial) of the European Convention of Human Rights.

The events in question took place in the context of the recent reorganisation of the judiciary in Poland which is held by many to have resulted in a rule-of-law crisis in that State. They are set out in more detail in the Court’s Grand Chamber judgment *Grzęda v. Poland* (no. 43572/18) and related Chamber judgments of *Reczkowicz v. Poland* (no. 43447/19), *Dolinska Ficek and Ozimek v. Poland* (nos. 49868/19 and 57511/19) and *Advance Pharma SP. z o.o v. Poland* (no. 1469/20).

The applications were lodged with the European Court of Human Rights on various dates in 2020-22.

The Government of Poland were given notice of the applications on various dates between May and July 2022, with questions from the Court. Statements of facts of the cases submitted to the Government are available in English or French on the Court's website (links above).

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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.