



Notification of rule-of-law case concerning the Polish Constitutional Court

The European Court of Human Rights has given notice¹ to the Government of Poland of the application [Botor v. Poland](#) (no. 50991/21) and requested that they submit their observations.

This case concerns proceedings brought by Mr Botor before the Constitutional Court and his complaint about the appointment of two judges to that court. He in particular alleges that the bench of the Constitutional Court which examined his case was composed in violation of the Constitution and was not an “independent and impartial tribunal established by law”.

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.

A similar situation was examined in more detail in [Xero Flor w Polsce sp. z o.o. v. Poland](#) (no. 4907/18), related to the rule-of-law crisis in Poland.

The applicant, Bolesław Botor, is a Polish national, who was born in 1949 and lives in Orzesze (Poland).

Mr Botor was an employee and shareholder of PKE S.A., which was involved in power generation. In 2007 it was proposed to merge it with TPE S.A., with the shareholders being given the right to shares in the newly merged company. Mr Botor duly signed over his shares to the State in exchange for shares in the newly merged company. Owing to limits placed on employee shareholdings, Mr Botor asserted that he had been damaged by how the exchange of shares had been carried out. He went to court. His claim was dismissed at first instance and on appeal.

Mr Botor lodged a constitutional complaint, which was judged in 2021 by a five-judge bench of the Constitutional Court. The relevant law was held to be constitutional, and the applicant’s complaint was overall unsuccessful.

On the bench were Judge J.Pi., who had been elected to the Constitutional Court in 2017 to a seat that had already been filled, and Judge J.W., who had been elevated in 2018 to a seat that had also already been filled.

The application was lodged with the European Court of Human Rights on 11 October 2021.

Relying on Article 6 § 1 of the European Convention of Human Rights and Article 1 of Protocol No. 1 to the Convention, Mr Botor complains he was denied the right to a “tribunal established by law” on account of the participation in the proceedings before the Constitutional Court of Judges J.Pi. and J.W., who had not been duly elected to that court, and of having been deprived of part of his shareholdings by the State by the companies’ merger in 2007. He specifically cited *Xero Flor w Polsce sp. z o.o.*

On 12 July 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.

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.”

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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.