



## Polish Disciplinary Chamber not a lawful tribunal, suspension of civil-court judge for issuing judicial decision violated his rights

In today's Chamber judgment<sup>1</sup> in the case of [Juszczyszyn v. Poland](#) (application no. 35599/20) the European Court of Human Rights held that there had been:

**unanimously, a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights,**

**by 5 votes to 2, a violation of Article 8 (right to respect for private and family life), and**

**by 5 votes to 2, a violation of Article 18 (limitation on use of restrictions of rights) taken in conjunction with Article 8.**

The case concerned the Disciplinary Chamber of the Supreme Court's disciplinary measures against a judge who had issued a court order for information on appointments of judges via the controversial "new" National Council of the Judiciary.

The Court found, in line with its reasoning in *Reczkowicz v. Poland*, in particular, that the Disciplinary Chamber of the Supreme Court was not an "independent and impartial tribunal established by law".

Concerning Mr Juszczyszyn's right to respect for private and family life, given that the Disciplinary Chamber could not be considered a "court" owing to how it had been set up, the decision to suspend him had been unlawful. Furthermore, it had not been possible for Mr Juszczyszyn to foresee that his actions would lead to his suspension under the law.

Lastly, the Court held that Mr Juszczyszyn's suspension had been for reasons other than those set out in Article 8. Specifically it had been for the purposes of discouraging him from examining the appointment procedure for judges, in violation of his rights.

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

### Principal facts

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

For the background to the rule-of-law crisis in Poland, please see [Reczkowicz v. Poland](#) (no. 43447/19) and the Grand Chamber judgment [Grzęda v. Poland](#) (no. 43572/18).

In 2019 Mr Juszczyszyn was seconded to the Olsztyn Regional Court. While there he made an order when hearing an appeal in a civil case, directing the head of the Chancellery of the *Sejm* to produce copies of the endorsement lists for the judicial candidates to the "new" National Council of the Judiciary (NCJ) who had been subsequently elected by the *Sejm* on 6 March 2018. He also ordered that statements of citizens or judges who had withdrawn their support for the candidates be submitted (for further details concerning the election procedure to the "new" NCJ see the *Reczkowicz* judgment). There was a one-week deadline. Questions had been raised regarding the

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](http://www.coe.int/t/dghl/monitoring/execution).

appointment of the first-instance judge, as he had been appointed by the new NCJ, which, in the light of the recent Court of Justice of the European Union's judgment (*A.K. and Others*, joined cases C-585/18, C-624/18 and C-625/18) in the matter, raised questions about whether that judge had been authorised to rule on the case.

On 25 November 2019 the Minister of Justice terminated the applicant's secondment to the Regional Court. According to a Ministry press release, this decision had been taken because Mr Juszczyzyn's actions had "constitute[d] an inadmissible interference with the activities of the [State] constitutional organs ...", stating that "No judge has the right to assess the status of another judge".

Disciplinary proceedings were initiated against Mr Juszczyzyn. He was temporarily suspended from working as a judge pending a decision on the charges by Judge M.N., the president of the court, who had also been appointed by the new NCJ.

On 23 December 2019 the Disciplinary Chamber found at first instance, among other things, that Mr Juszczyzyn's actions had not justified his suspension. However, in its second-instance decision, it held that the significance of the violation – compromising the dignity of judicial office and as constituting an obvious and gross violation of the law, disciplinary offences under the Organisation of the Ordinary Courts Act 2001 – , the exceptionally bad example for other judges, the undermining of the competences of the President of the Republic, and the unlawfulness of the order and the threat of chaos if the practice of every judge encroaching on the President's prerogatives were to be accepted, had fully justified the need to suspend Mr Juszczyzyn from his judicial duties and that the 40% salary reduction imposed on him had been acceptable. The Olsztyn Regional Court redistributed his docket of cases and allocated no more cases to him. There are still disciplinary pending against Mr Juszczyzyn.

The Disciplinary Chamber lifted his suspension on 23 May 2022. It held that as he was not at risk of removal from office, such a prolonged suspension could not be justified. However, the President of the Olsztyn District Court decided to transfer him, against his will, to the Family and Juvenile Division of that court following his reinstatement.

## Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair trial), 8 (right to respect for private and family life), and 18 (limitation on use of restrictions on rights), and Article 1 of Protocol No. 1 to the Convention (protection of property), the applicant complained, in particular, that the Disciplinary Chamber of the Supreme Court was not a "tribunal established by law"; that the members of the Disciplinary Chamber had been acting partially in refusing to admit argument concerning judicial appointments, which had been in their own interest; that his suspension had been a breach of his right to respect for private life; and that that suspension had not been for any legitimate interest, but instead had the purpose of sanctioning him and dissuading him from verifying the lawfulness of the appointment of judges; and that the long period in which his salary had been reduced by 40% had been disproportionate.

The application was lodged with the European Court of Human Rights on 4 August 2020.

The "Judges for Judges" Foundation (the Netherlands) jointly with Professor L. Pech, the International Commission of Jurists, and the Commissioner for Human Rights of the Republic of Poland made submissions as third parties.

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

Marko **Bošnjak** (Slovenia), *President*,  
Péter **Paczolay** (Hungary),  
Krzysztof **Wojtyczek** (Poland),  
Erik **Wennerström** (Sweden),

Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),

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

## Decision of the Court

### Article 6 § 1

The Court reiterated that all Contracting Parties should abide by the rule of law and respect their obligations under international law, including those under the Convention.

It had already examined in *Reczkowicz* whether the Disciplinary Chamber of the Supreme Court had been correctly established. It did not depart from that reasoning, reiterating that:

The process for appointing judges to the Disciplinary Chamber was defective, as the recommending body – the National Council of the Judiciary (NCJ) – lacked independence.

The Amending Act 2017 had compromised judicial independence by, among other things, removing judges’ right to elect members of the NCJ.

There was no procedure under Polish law to challenge the alleged defects in the process of appointing judges to the Disciplinary Chamber.

The Court held that the Disciplinary Chamber of the Supreme Court was not a “tribunal established by law”. There was also no Convention-complaint legal avenue by which Mr Juszczyzyn could bring a complaint about that body’s decision.

There had therefore been a **violation of Article 6 § 1 regarding the right to a tribunal established by law**.

Mr Juszczyzyn also argued that the judges of the Disciplinary Chamber had been acting in their own interests when they had suspended him, as they had wanted to dissuade others from questioning the process by which they had been appointed.

The Court considered that the irregularities in this case had been so serious that they had undermined the right to have a case examined by a tribunal established by law and therefore concluded that that had also compromised his **right to an independent and impartial tribunal, in violation of Article 6 § 1**.

### Article 8

The Court found Article 8 to be applicable to Mr Juszczyzyn’s case, as the nature – questioning of his competence and integrity – and the duration – two years, three months and 18 days of suspension from duties – of the various negative effects stemming from his suspension must have affected his private life to a very significant degree.

The basis for his suspension had been the Organisation of the Ordinary Courts Act 2001. However, pursuant to the Constitution, suspension of a judge required a court judgment. As the Disciplinary Chamber was not an “independent and impartial tribunal established by law”, it could not be considered a “court”.

He had been suspended essentially for delivering a judicial decision, which the Court stated should be an absolutely exceptional measure. It noted that there was a need for judges to maintain confidence in the judiciary, which had been Mr Juszczyzyn’s reason for issuing the decision in question, and he had done so without malice or negligence.

The Court concluded that the safeguards against arbitrary use of disciplinary measures against judges for their decisions were inadequate, especially given what it had already found concerning the Disciplinary Chamber.

In addition, when issuing the order, it had not been possible for Mr Juszczyzyn to foresee that it would lead to his suspension. The regulations did not meet the “quality-of-law requirements” under the Convention, and the suspension was thus not “in accordance with the law”.

There had been a **violation of Article 8 of the Convention**.

#### Article 18 in conjunction with Article 8

Mr Juszczyzyn asserted that his sanctioning had not been for reasons prescribed by Article 8, and had therefore been a violation of Article 18.

The Court had previously found in *Grzęda*, among other judgments, that the changes made to the judicial system in Poland had had the aim of weakening judicial independence, expressly stating that the domestic courts had been “exposed to interference by the executive and legislative powers”. He had been suspended by a body which had not been an “independent and impartial tribunal established by law”, and which had faced questions about its formation at the time.

The Court found that holding Mr Juszczyzyn’s judicial decision to be a disciplinary offence which justified suspension from judicial duties had been contrary to the fundamental principles of judicial independence and the rule of law. It was satisfied that the predominant purpose of the disciplinary measures taken against him had been to sanction him and to dissuade him from assessing the status of judges appointed in a procedure involving the new NCJ.

That purpose, being incompatible with the Convention, entailed a violation of Article 18.

#### Other articles

The Court rejected the applicant’s complaints under Article 1 of Protocol No. 1, noting that the reduction of Mr Juszczyzyn’s salary had been temporary, and he had not earned that part of the salary, and thus it had not amounted to a “possession” under the Convention.

#### Just satisfaction (Article 41)

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

### Separate opinions

Judges Wojtyczek and Paczolay expressed a joint partly concurring, partly dissenting opinion. Judges Bošnjak, Schembri Orland and Ktistakis also expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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