



## Newly created chamber of the Polish Supreme Court was in breach of the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of **Reczkowicz v. Poland** (application no. 43447/19) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned complaints brought by a barrister that the Disciplinary Chamber of the Polish Supreme Court, which had decided on a case concerning her, had not been a “tribunal established by law” and had lacked impartiality and independence.

She complained in particular that the Disciplinary Chamber, one of two newly created chambers of the Supreme Court, had been composed of judges appointed by the President of Poland on the recommendation of the National Council of the Judiciary (“the NCJ”), the constitutional organ in Poland which safeguards the independence of courts and judges and which has been the subject of controversy since the entry into force of new legislation providing, among other things, that its judicial members are no longer elected by judges but by the *Sejm* (the lower house of Parliament).

The case is one of 38 applications against Poland, lodged in 2018-2021, concerning various aspects of the reorganisation of the Polish judicial system initiated in 2017\*. The Court emphasised that its task was not to assess the legitimacy of the reorganisation of the Polish judiciary as a whole, but to determine whether, and if so how, the changes had affected Ms Reczkowicz's rights under Article 6 § 1 of the Convention.

The Court found that the procedure for appointing judges had been unduly influenced by the legislative and executive powers. That amounted to a fundamental irregularity that adversely affected the whole process and compromised the legitimacy of the Disciplinary Chamber of the Supreme Court, which had examined the applicant's case. The Disciplinary Chamber was not therefore a “tribunal established by law” within the meaning of the European Convention.

### Principal facts

The applicant, Joanna Reczkowicz, is a Polish national, who was born in 1980 and lives in Gdynia.

Ms Reczkowicz is a barrister. She was suspended for three years following several incidents when she was representing a client. She appealed the decision before the courts. Her case was ultimately dismissed in 2019 by the Disciplinary Chamber of the Supreme Court, one of the two new chambers created following the changes to the judiciary.

### Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial) of the European Convention of Human Rights, the applicant complained that her case had not been heard by an “independent and impartial tribunal established by law”. In particular, she alleged that the judges of the Disciplinary Chamber which had examined

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).

her case had been appointed by the President of Poland upon the NCJ's recommendation in breach of the domestic law and the principles of the rule of law, separation of powers and independence of the judiciary. She asserted that the new Disciplinary Chamber was political and that its real objective was to suppress any judicial opposition to the changes in the Polish legal system by the current government.

The application was lodged with the European Court of Human Rights on 6 August 2019.

Third party submissions were received from the Polish Commissioner for Human Rights and the International Commission of Jurists.

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

Ksenija **Turković** (Croatia), *President*,  
Krzysztof **Wojtyczek** (Poland),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),

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

## Decision of the Court

The Court examined the case in the light of the criteria laid down by the Grand Chamber of the Court in the case of *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020.

First, the Court established that there had been a manifest breach of domestic law which adversely affected the fundamental rules of procedure for the appointment of judges to the Disciplinary Chamber of the Supreme Court. That was because the NCJ, as established under the Amending Act on the NCJ of 8 December 2017, did not provide sufficient guarantees of independence from the legislative or executive powers. The Court then went on to find that a procedure for appointing judges which was unduly influenced by the legislative and executive powers was in itself incompatible with Article 6 § 1 of the Convention. In particular the 2017 Amending Act deprived the judiciary of the right to elect judicial members of the NCJ, a right it had had under the previous legislation, meaning in effect that the legislative and executive powers were able to interfere directly or indirectly in the appointment of judges.

The irregularities in the appointment process compromised the legitimacy to the Disciplinary Chamber of the Supreme Court to the extent that, following an inherently deficient procedure for judicial appointments, it lacked and continues to lack the attributes of a "tribunal" which is "lawful" within the meaning of the Convention.

In coming to this conclusion, the Court referred in particular to rulings by the Polish Supreme Court of December 2019 and January 2020 finding that the procedure for judicial appointments to the Disciplinary Chamber breached the domestic law. The Court considered that those rulings were based on convincing arguments, including a thorough and careful evaluation of the relevant Polish law from the perspective of the Convention's fundamental standards and of EU law. It also took into account rulings of the Court of Justice of the European Union, as well as multiple reports and assessments by European and international institutions.

The Court concluded that the Disciplinary Chamber of the Supreme Court, which examined the applicant's case, was not a "tribunal established by law". There had therefore been a violation of Article 6 § 1 of the Convention.

As regards the question whether the same irregularities also compromised the independence and impartiality of the Disciplinary Chamber, the Court held that it was linked with the same underlying problem of inherently deficient procedure for judicial appointments and that it had already been answered in its examination of the complaint alleging that that chamber lacked attributes of a “tribunal established by law”. It did not therefore require further examination.

### Just satisfaction (Article 41)

The Court held that Poland was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 420 in respect of costs and expenses.

### Separate opinion

Judge Wojtyczek expressed a concurring opinion. This opinion is annexed to the judgment.

*The judgment is available only in English.*

\*See also previous press releases concerning pending cases of [Grzęda v. Poland](#) (no. 43572/18), [Dolińska-Ficek v. Poland](#) (no. 43447/19), [Ozimek v. Poland](#) (no. 57511/19), [Advance Pharma Sp. z o.o v. Poland](#) (no. 1469/20), [Brodowiak and Dżus v. Poland](#) (nos. 28122/20 and 48599/20), [Biliński v. Poland](#) (no. 13278/20), [Pionka v. Poland](#) (no. 26004/20), [Juszczyszyn v. Poland](#) (no. 35599/20), [Żurek v. Poland](#) (no. 39650/18), and [Tuleya v. Poland](#) (no. 21181/19), and the press releases in the judgments [Xero Flor w Polsce sp. z o.o. v. Poland](#) (no. 4907/18) and [Broda and Bojara v. Poland](#) (nos. 26691/18 and 27367/18).

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