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FIRST SECTION

Application no. 46453/21
Adam SYNAKIEWICZ against Poland
and 4 other applications
(see list appended)
communicated on 23 May 2022

SUBJECT MATTER OF THE CASE

The applicants are judges of ordinary courts. On various dates between July 2021 and February 2022 they sat on panels of their respective courts which delivered judgments or decisions contesting the legitimacy of courts composed of judges appointed by the President of Poland pursuant to recommendations of the National Council of the Judiciary (“the NCJ”) as established under the Act of 8 December 2017 Amending the Act on the NCJ and certain other acts.

All of these rulings referred to, *inter alia*, the case-law of the Court (see *Xero Flor w Polsce Sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021; *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, 29 June 2021; *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021, *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, 8 November 2021; and *Advance Pharma Sp. Z o.o. v. Poland*, no. 1469/20, 3 February 2022 (not final)) and/or of the Court of Justice of the European Union concerning various aspects of the general reorganisation of the Polish judicial system (for a summary of the relevant facts see *Advance Pharma sp. z o.o.* (cited above), §§ 4-78 and 98-169 and *Grzęda v. Poland* [GC], no. 43572/18, §§ 14-28, 15 March 2022).

Shortly after those rulings had been delivered, the Minister of Justice, who is also the Prosecutor General (in cases nos. 46453/21, 8076/22 and 9988/22) or the President of the respective court (in cases nos. 8687/22 and 15928/22) ordered on various dates a one-month immediate break in the applicants’ judicial functions, pursuant to section 130(1) of the Act on the Organisation of Ordinary Courts. In accordance with section 130(3) of the same Act the Disciplinary Chamber of the Supreme Court should, not later than before the expiry of the order on the immediate break, either issue a resolution suspending a judge or quash the order.

The Disciplinary Chamber has not ruled on the issue of the applicants’ suspension within the period of one month from the dates on which the respective orders had been given. All applicants resumed their judicial functions after the expiry of the respective orders. Their cases are pending before the Disciplinary Chamber of the Supreme Court. That Chamber may at any time issue a resolution suspending the applicants in their judicial functions or quash the impugned orders. In the former case, a judge’s salary would be reduced by 25 to 50% for the duration of suspension.

The applicants will receive no notification of the hearing or *in camera* session before the Disciplinary Chamber concerning their suspension. That Chamber may do so if it considers it appropriate. It will decide on the applicants' suspension after hearing the Disciplinary Officer for Ordinary Court Judges.

In the meantime, the applicants have been charged by the Deputy Disciplinary Officer for Ordinary Court Judges with, *inter alia*, the same disciplinary offence of having carried out "*actions that question the existence of the official relationship of a judge, the effectiveness of his or her appointment or the legitimacy of the constitutional authority of the Republic of Poland*" specified in section 107(1) (3) of the Act on the Organisation of Ordinary Courts. The Deputy Disciplinary Officer for Ordinary Court Judges also found that the disciplinary offence with which the applicants had been charged amounted to a criminal offence of abuse of power under Article 231 § 1 of the Criminal Code.

On 22 March 2022, the Court decided to indicate to the Government of Poland, under Rule 39 of the Rules of Court, that they should give it and the applicants (cases nos. 46453/21, 8076/22, 8687/22 and 9988/22) 72 hours' notice of the date of any hearing (*rozprawa*) or *in camera* session (*posiedzenie*) scheduled in the applicants' cases before the Disciplinary Chamber of the Supreme Court. The same measure was indicated on 30 March 2022 in case no. 15928/22.

All applicants complain about the immediate break in their judicial functions being ordered by the Minister of Justice (cases nos. 46453/21, 8076/22, 9988/22) or the President of a Regional Court (cases nos. 8687/22 and 15928/22) and its review to be carried out by the Disciplinary Chamber of the Supreme Court.

The applicants in cases *Synakiewicz* (no. 46453/21), *Niklas-Bibik* (no. 8687/22), *Hetnarowicz-Sikora* (no. 9988/22) and *Głowacka* (no. 15928/22) additionally complain that the impugned orders negatively affected their reputation and professional career.

In case *Synakiewicz* (no. 46453/21) the applicant complains under Article 18 in conjunction with Articles 6 and 8 of the Convention, that the ordering of an immediate break in his judicial functions did not further any legitimate interests, but constituted a covert form of harassment and was aimed at limiting judicial independence in Poland.

COMMON QUESTIONS FOR ALL APPLICATIONS

Article 6 § 1

1. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present cases in so far as the ordering of an immediate break in the applicants' judicial functions is concerned (see *Baka v. Hungary* [GC], no. 20261/12, §§ 104-105, 23 June 2016; *Paluda v. Slovakia*, no. 33392/12, §§ 33-34, 23 May 2017; *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020; and *Grzęda v. Poland* [GC], no. 43572/18, §§ 265-327, 15 March 2022)?

2. If so, did the applicants have access to a court for the determination of their civil rights or obligations, in accordance with Article 6 § 1 of the Convention?

3. Have the proceedings before the Disciplinary Chamber of the Supreme Court violated the applicants' right to be heard by an independent and impartial tribunal established by law as guaranteed by Article 6 § 1 of the Convention (see *Reczkowicz v. Poland*, no. 43447/19, §§ 225-284, 22 July 2021)?

4. Have the applicants had a fair hearing before the Disciplinary Chamber of the Supreme Court in accordance with Article 6 § 1 of the Convention? Reference is made to the fact that the applicants would be notified of a session in their cases only if the Disciplinary Chamber considered it appropriate, while the same Chamber regularly hears the Disciplinary Officer for Ordinary Court Judges on the issue of suspension.

5. Can Article 6 § 1 of the Convention be interpreted in such a way as to recognise a subjective right for judges to have their individual independence safeguarded and respected by the State? Reference is made to the fact that an immediate break in the applicants' judicial functions was ordered by the Minister of Justice or the President of a Regional Court in response to the contents of judicial decisions delivered by courts composed of the applicants, which is alleged to be in contradiction to the letter of section 130(1) of the Act on the Organisation of Ordinary Courts. Further reference is made to the judgment of the Constitutional Court of 15 January 2009, case no. K 45/07 (point H.3) and the view of the Polish Commissioner for Human Rights expressed in his letter to the Minister of Justice of 3 October 2021.

6. If so, was the applicants' judicial independence respected by the State in the present cases?

CASE-SPECIFIC QUESTIONS

Article 8

Cases nos. 46453/21, 8687/22, 9988/22 and 15928/22

1. Has there been an interference with the applicants' right to respect for their private life, within the meaning of Article 8 § 1 of the Convention on account of the ordering an immediate break in the exercise of their judicial functions?

2. If so, was that interference justified in terms of Article 8 § 2?

(a) In particular, was the impugned interference "in accordance with the law", having regard to the applicants' argument that section 130(1) of the Act on the Organisation of Ordinary Courts refers to an "act committed by a judge", whereas an immediate break in judicial functions was ordered on account of the contents of judicial decisions delivered by courts composed of the applicants and is thus alleged to be in contradiction to the letter of this provision?

(b) Did that interference pursue one of the legitimate aims referred to in Article 8 § 2?

(c) Was that interference "necessary in a democratic society" in terms of Article 8 § 2?

CASE-SPECIFIC QUESTION

Article 18

Case no. 46453/21

Were the measures imposed by the State in the present case, purportedly pursuant to Articles 6 and 8 of the Convention, applied for a purpose other than those envisaged by these provisions, contrary to Article 18 of the Convention (see, *mutatis mutandis*, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 163 - 174, 15 November 2018)?

APPENDIX

| No. | Application no. | Case name | Lodged on | Applicant Year of birth Place of residence Nationality | Represented by | Date of order for an immediate break in judicial functions and issuing authority | Disciplinary Chamber case number | Summary of facts |
|-----|-----------------|-----------------------|------------|---|---------------------------------|--|----------------------------------|---|
| 1. | <u>46453/21</u> | Synakiewicz v. Poland | 20/09/2021 | Adam SYNAKIEWICZ 1975 Mikołów Polish | Marcin SZWED Piotr KŁADOCZNY | 8/09/2021 Minister of Justice | I DO <u>11/21</u> | <p>The applicant is a judge of the Częstochowa Regional Court. He is assigned to the Appellate Criminal Division of that court. On 30 July 2021 he annexed six dissenting opinions to judgments of that court in which he argued that one of the members of its three-judge panel was appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention. On 24 August 2021 the Częstochowa Regional Court, sitting in a single-judge formation composed of the applicant, quashed a first-instance judgment delivered by the Zawiercie District Court and held that the latter court had been composed of a judge appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention. On 27 August 2021 the Deputy</p> |

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| | | | | | | | Disciplinary Officer for Ordinary Court Judges requested the President of the Częstochowa Regional Court to order an immediate break in the applicant's judicial functions. The President refused to do so. On 8 September 2021 the Minister of Justice ordered an immediate break in the applicant's judicial functions for one month. On 13 September 2021 the applicant was charged with several counts of disciplinary offences, also amounting to a crime of abuse of power by a public official. On 9 October 2021 the Minister's order expired and the applicant resumed his judicial functions. On 15 October 2021 a hearing in the applicant's case scheduled before the Disciplinary Chamber of the Supreme Court was adjourned. Those proceedings are pending. |
| 2. | <u>8076/22</u> | Piekarska-Drażek v. Poland | 11/02/2022 | Marzanna Anna PIEKARSKA-DRAŻEK 1965 Szelków Polish | Piotr ZEMŁA | 24/01/2022 Minister of Justice | I DO <u>3/22</u> The applicant is a judge of the Warsaw Court of Appeal, assigned to the Criminal Division. On 9 December 2021 that court, sitting in a single-judge formation composed of the applicant |

applicant, quashed a ruling delivered by the Warsaw Regional Court and held that the latter court had been composed of a judge appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention. On 23 December 2021 the applicant was charged with several counts of disciplinary offences, also amounting to a crime of abuse of power by a public official. On 12 February 2022 these charges were further supplemented. On 24 January 2022 the Minister of Justice ordered an immediate break in the applicant's judicial functions for one month. On 23 February 2022 the Court (the President of the Chamber to which the case has been allocated) indicated under Rule 39 of the Rules of Court, in particular, that should a hearing or an in camera session concerning the applicant's further suspension was to take place before the Disciplinary Chamber, the respondent State should ensure that no decision in

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| | | | | | | | respect of the applicant's suspension is taken by that Chamber. The applicant resumed her judicial functions after the expiration of the order of 24 January 2022. The proceedings before the Disciplinary Chamber are pending. |
| 3. | <u>8687/22</u> | Niklas-Bibik v. Poland | 14/02/2022 | Agnieszka NIKLAS-BIBIK 1972 Słupsk Polish | | 29/10/2021 President of the Słupsk Regional Court | I DO <u>15/21</u> The applicant is a judge of the Słupsk Regional Court. She was assigned to the Appellate Criminal Division of that court. She is also a vice-president of the Judges' Cooperation Forum. On 4 October 2021 the Słupsk Regional Court, sitting in a single-judge formation composed of the applicant, quashed a judgment delivered by the Słupsk District Court and held that the latter court had been composed of a judge appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention. On 18 October 2021 the President of the Słupsk Regional Court transferred the applicant from the Appellate Criminal Division to the Criminal Division of that court to hear only first-instance criminal |

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| | | | | | | | | <p>cases.</p> <p>On 20 October 2021 the Słupsk Regional Court composed of the applicant submitted two requests for preliminary rulings to the CJEU, seeking to clarify whether such transfer of a judge – without his or her consent – complied with the EU law.</p> <p>On 29 October 2021 the President of the Słupsk Regional Court, acting pursuant to a request of the Deputy Disciplinary Officer for Ordinary Court Judges, ordered an immediate break in the applicant's judicial functions for one month.</p> <p>On 29 November 2021 a hearing in the applicant's case scheduled before the Disciplinary Chamber of the Supreme Court was adjourned. Those proceedings are pending. The applicant resumed her judicial functions after the President's order had expired.</p> <p>On 13 December 2021 the applicant was charged with several counts of disciplinary offences, also amounting to a crime of abuse of power by a public official.</p> |
| 4 | 0000/00 | Habermas | 02/02/2022 | Jeanne Marie | Michał | 01/02/2022 | 1000/1000 | The applicant is |

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| 4. | <u>9988/22</u> | Hetnarowicz-Sikora v. Poland | 22/02/2022 | Joanna Maria HETNAROWICZ-SIKORA 1978 Słupsk Polish | Michał GAJDUS | 07/02/2022 Minister of Justice | IDO <u>4/22</u> | <p>The applicant is a judge of the Słupsk District Court assigned to the Criminal Division. She is also a member of the IUSTITIA Polish Judges' Association.</p> <p>On 29 November 2021 the Słupsk District Court, sitting in a single-judge formation composed of the applicant, decided to exclude another judge from hearing a criminal case owing to the fact that that judge had been appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention.</p> <p>On 30 January 2022 the applicant was charged with several counts of disciplinary offences, also amounting to a crime of abuse of power by a public official.</p> <p>On 8 February 2022 the Minister of Justice ordered an immediate break in the applicant's judicial functions for one month. She resumed her judicial function on 9 March 2022. The proceedings before the Disciplinary Chamber are pending.</p> |
| 5. | <u>15928/22</u> | Głowacka v. Poland | 29/03/2022 | Anna GŁOWACKA 1962 Cracow Polish | Michał GAJDUS | 25/02/2022 President of the Cracow Regional | unknown | <p>The applicant is a judge of the Cracow Regional Court assigned to the</p> |

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| | | | | | | Court | <p>Labour and Social Security Division. In a judicial decision of 22 February 2022 that court, sitting in a single-judge formation composed of the applicant, refused to grant an enforcement clause to a final judgment of the Cracow Court of Appeal. It held that the latter court had been composed of a judge appointed pursuant to a recommendation of the new NCJ and thus contrary to Article 6 § 1 of the Convention. On 25 February 2022 the President of the Cracow Regional Court (who is also a member of the NCJ) ordered an immediate break in the applicant's judicial functions for one month. On 2 March 2022 the applicant was charged with a disciplinary offence, also amounting to a crime of abuse of power by a public official. The applicant resumed her judicial functions on 28 March 2022. The proceedings before the Disciplinary Chamber are pending.</p> |
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