



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

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## FIRST SECTION

Application no. 27444/22  
Piotr GAĆIAREK  
against Poland  
lodged on 24 May 2022  
communicated on 10 June 2022

## SUBJECT MATTER OF THE CASE

The applicant is a judge of the Warsaw Regional Court and an active member of the IUSTITIA Judges' Association. He often speaks to the media on topics related to the rule of law in Poland, judicial independence and reforms of the judiciary introduced by the government in recent several years.

On 21 May 2021 the applicant submitted a dissenting opinion to a ruling of the Warsaw Regional Court, pointing out that that court was unlawfully formed as it included a judge (S.Z.) appointed to that court following a recommendation of the National Council of the Judiciary ("the NCJ") composed pursuant to the provisions of the Act of 8 December 2017 Amending the Act on the National Council of the Judiciary (*ustawa z dnia 8 grudnia 2017 o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*).

On 28 May 2021 the President of the Warsaw Regional Court (who is also the chief disciplinary representative for ordinary court judges) transferred the applicant from the Criminal Division of that court to its Execution Division.

In September 2021 the applicant was again assigned to hear a case in a judicial formation including Judge S.Z. On 6 September 2021 the applicant made a declaration refusing to adjudicate with judge S.Z., referring to the Court's and the CJEU's case-law. On 13 September 2021 the applicant refused to participate in a hearing together with judge S.Z.

On 13 September 2021 the President of the Warsaw Regional Court ordered a one-month immediate break in the applicant’s judicial functions, pursuant to section 130(1) and (3) of the Act of 27 July 2001 on the Organisation of Ordinary Courts (*Ustawa z dnia 27 lipca 2001 – Prawo o ustroju sądów powszechnych*; “the 2001 Act”). The order referred to disciplinary proceedings conducted against the applicant and the fact that he had refused to adjudicate and fulfil his professional duties.

On 15 November 2021 the deputy disciplinary representative for the judges of the ordinary courts charged the applicant with two counts of disciplinary offences defined in section 107(1)(3) of the 2001 Act (contesting validity of judicial appointment) and a criminal offence of abuse of power (Article 231 § 1 of the Criminal Code). The disciplinary representative’s ruling referred to the applicant’s declaration of 6 September 2021 and refusal to sit on a bench with a judge S.Z. The ruling was served on him on 25 November 2021.

On 24 November 2021 the Disciplinary Chamber of the Supreme Court (“DCSC”), sitting an *in camera* session (*posiedzenie*) handed down a resolution no. I DO 14/21, suspending the applicant in his judicial functions for the duration of the disciplinary proceedings and reduced his salary by 40%. The DCSC’s resolution was immediately enforceable and enforced. The applicant submits that he had not been notified of the date of the session.

On 25 November 2021 the applicant requested the President of the Warsaw Regional Court to allow him to resume his judicial functions.

On 29 November 2021 the Vice-President of the Warsaw Regional Court informed him that, following the resolution of the DCSC of 25 November 2021, he could not be allowed to resume his functions.

On 1 December 2021 the applicant’s lawyers appealed against the above resolution and requested, relying on the Court’s and the CJEU’s case-law, that his case be heard by the Criminal Chamber of the Supreme Court. The appeals were transmitted to the DCSC.

On 17 May 2022 one of the applicant’s lawyers (a judge of the Supreme Court) became aware that the DCSC had scheduled an *in camera* session in the applicant’s case for 6 July 2022 at 3.00 p.m. (case no. II DO 2/22). According to the order of the President of the DCSC panel “nobody was to be notified of the date of that session” (*o terminie nikogo nie zawiadamiać*), pursuant to Article 464 § 1 of the Code of Criminal Procedure.

On 12 May 2022 the *Sejm* elected judge S.Z. as a judicial member of the NCJ for its new term of 4 years.

The applicant complains that the proceedings before the DCSC, a body that does not satisfy the requirements of an “independent and impartial tribunal established by law” under Article 6 § 1 of the Convention, were in breach of that provision. He maintains that he was suspended in his judicial functions by the DCSC which, in *Reczkowicz v. Poland*, has already been found by the Court as lacking the attributes of a “lawful court”.

He also complains under Article 8 of the Convention that his arbitrary suspension adversely affected his professional reputation and, in consequence, amounted to a breach of the right to respect for his private life.

The applicant also complains under Article 10 of the Convention that he has been punished for expressing views relating to his judicial independence and impartiality (i.e. for declaring that he would not adjudicate with judges appointed pursuant to a recommendation of the new NCJ). He further refers to his public statements in support of the rule of law in Poland.

Referring to the Disciplinary Chamber's continued operation despite rulings of the European courts, the disciplinary proceedings conducted against him and the reasons behind his suspension, the applicant also alleges a breach of Articles 13 and 18 of the Convention, taken in conjunction with Article 8.

Lastly, he complains under Article 1 of Protocol No.1 to the Convention that he has been deprived of 40% of his salary.

## QUESTIONS TO THE PARTIES

### Article 6 § 1

1. Was Article 6 § 1 of the Convention under its civil or criminal head applicable to the proceedings in the present case in so far as the applicant's suspension in 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; and *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020)?

2. Did the proceedings before the Disciplinary Chamber of the Supreme Court violate the applicant's right to be heard by a "tribunal established by law", as guaranteed by Article 6 § 1 of the Convention (see *Reczkowicz v. Poland*, no. 43447/19, §§ 225- 282, 22 July 2021)?

3. Was the Disciplinary Chamber of the Supreme Court which dealt with the applicant's case an "independent and impartial tribunal", as required by Article 6 § 1 of the Convention (see *Reczkowicz*, cited above, §§ 283-284)?

4. Was the applicant's right to a "fair trial" respected in the proceedings before the Disciplinary Chamber of the Supreme Court? Reference is made to the fact that the applicant was not informed of the date of the in camera session set for 24 November 2021 and learnt of it *post factum*.

### Article 8

1. Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, resulting from the resolution of the Disciplinary Chamber of the Supreme Court of 24 November 2021, determining that the applicant committed a disciplinary offence for the reasons invoked in that resolution and reducing his salary (see *Denisov v. Ukraine* [GC], no. 76639/11, 25 September 2018)?

2. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? In particular, was the impugned interference "in accordance with the law", having regard to the fact that the Disciplinary Chamber of the Supreme Court lacks the attributes of a "tribunal" which is "lawful" for the purposes of Article 6 § 1 (see *Reczkowicz*, cited above, §§ 225-282)?

### Article 10

1. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? Reference is made to applicant's transfer to the Execution Division of the Warsaw Regional Court, the initiation of disciplinary proceedings against him and his suspension from judicial functions on account of his statements questioning the legitimacy of appointment of another judge.

2. If so, was that interference prescribed by law and necessary in terms of Article 10 § 2? In particular, was the impugned interference "in accordance with the law", having regard to the fact that the Disciplinary Chamber lacks the attributes of a "tribunal" which is "lawful" for the purposes of Article 6 § 1 (see *Reczkowicz*, cited above, §§ 225-282)? Which legitimate aims did that interference pursue?

### Article 18

Were the measures imposed by the State in the present case, purportedly pursuant to Articles 8 and 10 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)?

Article 1 of Protocol No. 1

1. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Savickas and Others v. Lithuania* (dec.), no. 66365/09, §§ 91-92, 15 October 2013)?

2. Has the applicant been deprived of his possessions in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1? Reference is made to the fact that the reduction of his salary was ordered by the Disciplinary Chamber of the Supreme Court (see *Reczkowicz*, cited above, §§ 225-282).