

ECtHR Rules on Systemic Dysfunctions in Polish Judiciary



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News

Interim measures in the case of Polish Supreme Court judge's immunity

On 8 February 2022, the ECtHR ordered an interim measure in the case *Wróbel v Poland* (Application no. 6904/22). The applicant, *Włodzimierz Wróbel*, is a well-known critic of the Polish government's judicial reforms. He has been a Criminal Chamber judge on the Polish Supreme Court since 2011. In 2020, he co-authored a resolution of the Supreme Court which held, among other things, that the Disciplinary Chamber of the Supreme Court was not an "independent tribunal established by law", given the involvement of the new National Council of the Judiciary (NCJ) in the appointment procedure of judges to that Chamber.

On 16 March 2021, the State Prosecutor's Office sought the waiver of Mr Wróbel's immunity, with a view to prosecuting him on charges of criminal negligence in connection with a judicial decision rendered in a criminal case. Said decision was given by a three-judge panel of the Criminal Chamber of the Supreme Court. According to the prosecutor, the applicant had failed to fulfill his obligation to verify whether the accused had already served his prison sentence, which resulted in him being unlawfully detained. The request for waiver of immunity was rejected by the Disciplinary Chamber of the Supreme Court on 31 May 2021, which was then challenged by the Public Prosecutor's Office, and a hearing was scheduled for 9 February 2022.

On 4 February 2022, Mr Wróbel applied to the ECtHR under Rule 39 of its Rules of Court to suspend the proceedings pending against him before the Disciplinary Chamber of the Polish Supreme Court. The suspension was to be upheld until the government either fully implements the CJEU's order of 14 July 2021 (Case C-204/21R) and the judgment of that court of 15 July 2021 (Case C-791/19) or appoints a panel of Supreme Court judges recommended by the NCJ operating before 6 March 2018 to hear his case. The applicant further argued that a ruling against him could lead to his suspension, damage his reputation, result in the imposition of restrictive preventive measures, and have a deterrent effect on other judges. He referred to the ongoing crisis of the rule of law in Poland and to Arts. 6 (right to a fair trial) and 8 (right to respect for private and family life) ECHR.

The Court asked that the Polish government ensure that the proceedings concerning the lifting of Mr Wróbel's judicial immunity comply with the requirements of a "fair trial" as guaranteed by Art. 6 (1) ECHR. This particularly concerns the requirement of an "independent and impartial tribunal established by law", and that no decision in respect of his immunity be taken by the Disciplinary Chamber of the Supreme Court until the ECtHR has finally ruled on his complaints. The interim measure also makes reference to the application in *Reczkowicz v. Poland*, (Application no. 43447/19), in which the ECHR held that the Disciplinary Chamber of the Polish Supreme Court is not a tribunal established by law within the meaning of the ECHR (→ [euclid 3/2021, 136 and 166](#)).

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On 15 March 2022, the ECtHR held – by 16 votes to 1 vote – in the case of *Grzęda v. Poland* (Application no. 43572/18) that there had been a violation of Art. 6 (1) ECHR (right to a fair trial). The case concerned the removal of Judge *Jan Grzęda* from the Polish National Council of the Judiciary (NCJ) before his term had ended as well as his inability to obtain judicial review of that decision. Mr *Grzęda* had been elected to the NCJ in 2016 for a four-year term, but his membership was cut short and ended when new judges were elected to the NCJ by the *Sejm* under an amending legislation in 2018.

The government argued that the lack of access to the courts was not a consequence of the controversial reforms, as NCJ members never had the opportunity (including before the reforms) to challenge the termination of their mandate. While noting that this argument did not even attempt to justify the lack of judicial review in such circumstances, the judges in Strasbourg emphasised that they were fully aware of the weakening of judicial independence and rule-of-law standards brought about by the government's reforms. Grave irregularities included the following:

The ECtHR also referred to its judgments related to the re-organisation of the Polish judicial system, to the relevant CJEU case law, and to rulings of the Supreme Court and Supreme Administrative Court of Poland. It held that only judicial oversight can guarantee judges fundamental protection against the arbitrary exercise of legislative and executive powers; a contrary practice would go against the principle of the rule of law enshrined in all the articles of the Convention and cannot be tolerated, even in respect of procedural rights. The judges in Strasbourg also noted that, as a result of successive reforms, the judiciary has been subjected to interference by the executive and the legislature; its independence has been considerably weakened – the applicant's case is only one example of this general trend.

The Strasbourg judges stressed the importance of the NCJ's mandate to safeguard judicial independence and the link between the integrity of judicial appointments and the requirement of judicial independence. Procedural safeguards similar to those that apply to the dismissal of judges should also be available for the removal of a judicial member of the NCJ from his/her position. The lack of such judicial review particularly impaired Mr *Grzęda*'s right of access to a court – in violation of the ECHR.

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