

Judge Mazur: the Strasbourg Court hit the sensitive point and crushed the spine of the entire pseudo-reform

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Link to the original publication in Polish:

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Attorney-at-Law Joanna Reczkowicz, whose case was heard by the Disciplinary Chamber which is not recognized by the Supreme Court, was not guaranteed the right to a fair trial before an impartial tribunal, the European Court of Human Rights (ECtHR) ruled on Wednesday. ‘The impact of this judgment will be striking. It calls into question the legality of the appointments and promotions of all the judges who went through the new NCJ,’ Judge Dariusz Mazur, press officer for the Themis Association, told Onet.

- **The Court ruled on a breach of Article 6 (1) of the European Convention on Human Rights, regarding the right to a fair trial before an independent and impartial court. It also ordered the payment of compensation of €15,000 to the lawyer.**
- **These are not the only consequences of the judgment. The ECtHR stated explicitly that the Disciplinary Chamber is not a court established in accordance with the European Convention on Human Rights. The reason for this is that the National Council of the Judiciary, elected in a politicized manner, defectively selected all the members of the Disciplinary Chamber.**
- **‘Such a ruling undermines the foundations of the entire pseudo-reform. As the appointments of the neo-NCJ since 2018 do not guarantee independence and an apolitical nature of the candidates, they should be considered fundamentally defective,’ Judge Dariusz Mazur tells Onet.**
- **The judge emphasizes that ‘in a normal democratic country, the questioning by the highest international judicial authority of the foundations of the actions described as a “reform” would inevitably lead to the resignation of the justice minister.’**

In response to an appeal by the Polish lawyer, Joanna Reczkowicz, the European Court of Human Rights ruled today that her case violated Article 6 (1) of the European Convention on Human Rights, regarding the right to a fair trial. It also ordered the payment of damages of €15,000 to the lawyer. Attorney-at-Law Joanna Reczkowicz was suspended for three years after several incidents took place when she was representing a client. She appealed against the decision to the court. Her case was ultimately dismissed in 2019 by the Disciplinary Chamber of the Supreme Court, one of two new chambers created as a result of the changes in the judiciary.

Reczkowicz took her complaint to the European Court of Human Rights, arguing that the chamber did not constitute 'an independent and impartial tribunal established by law'. She referred to proceedings before the Court of Justice of the European Union, which culminated in a ruling on 19 November 2019, and subsequent rulings by the Polish Supreme Court stating that the Supreme Court judges appointed in proceedings involving the current NCJ did not constitute a court established in accordance with national law.

The ECtHR agreed with most of the lawyer's objections.

Mazur: this ruling is devastating

'This ruling dismantles the whole of the pseudo-reform of the justice system that has been ongoing since 2016,' Judge Dariusz Mazur, a criminal lawyer specializing in European law and press officer for the Themis Association, tells Onet. 'Therefore, the disclaimer made by the ECtHR at the end of the introductory part of the official communiqué, where it notes that the judgment does not refer to the whole of the judicial reform in Poland, but only to the breach of Ms Reczkowicz's right to a fair trial, may be misleading. This ruling is devastating to the changes implemented by the authorities in power at a completely fundamental level. The ECtHR struck a sensitive point and broke the spine of the pseudo-reform of the judiciary,' he emphasizes.

'This verdict states that changing the method of selecting members of the National Council of the Judiciary such that they are appointed by politicians in the Sejm gives the government, the ruling class, and the parliament too much influence over the process of judicial nominations, appointments and promotions,' explains Judge Mazur.

'This is such a fundamental flaw that the ECtHR refrained from examining other aspects that it could have taken into account, such as the way in which the recruitment to the Supreme Court's Disciplinary Chamber was conducted, the lack of the prime minister's countersignature on the notice of vacancies in that court, or the inability to appeal against resolutions of the NCJ,' the Themis press officer said.

'The Strasbourg Court mentions that there were objections to the correctness of announcing the recruitment to new Supreme Court chambers, but simultaneously emphasizes that it did not even examine this issue, as the infringement of the right to a fair trial by the political selection of members of the NCJ is so serious that an analysis of these additional aspects regarding the circumstances of selecting members of the new Supreme Court chambers would be, metaphorically speaking, kicking a person who is already on the ground,' Mazur points out.

'The consequences for Ziobro's "reform" will be overwhelming'

According to the Themis press officer, the consequences of the ECtHR judgment will affect both the Supreme Court and all the ordinary courts. 'Based on this ruling, it should be stated that, since the Court found the selection of the members of the Disciplinary Chamber by the politically elected NCJ to be fundamentally flawed, this flaw extends equally to the members of the Chamber of Extraordinary Control and Public Affairs, namely the other new chamber in

the Supreme Court, which was created at the same time and in the same procedure,' the judge points out.

'It follows from the ECHR ruling that this body is also not a court established in accordance with the provisions of national law and simultaneously the European Convention on Human Rights,' says Judge Mazur. 'However, this is not the end of the matter, because if, according to the Court, this body, namely the NCJ, acts in such an unlawful manner, the effectiveness and legality of all judicial appointments and promotions since 2018, namely since the new NCJ was established, is undermined,' he explains.

'Therefore, every ruling issued by a Polish ordinary court involving a judge appointed or promoted with the involvement of the new NCJ may be challenged before the ECtHR on the grounds of a possible violation of the right to have a case heard by an independent, impartial court established by law, or, in other words, a violation of Article 6 of the European Convention on Human Rights,' says Judge Mazur.

'Additionally, if a defect in the judiciary of a given state is of a systemic nature, as is the case with the new NCJ, and if there are numerous complaints about the same legal problem, the Strasbourg Court may launch a procedure of a pilot judgment. A pilot judgment is a judgment which applies to one case and determines the outcome of hundreds of other cases regarding similar issues.'

'Therefore, it is not the case, as the authorities in power will probably try to say, that "there is nothing to worry about" or that the case will "blow over".'

'Pseudo-reform exposes Poland to multi-million zloty compensation'

Judge Mazur also points out that the ECtHR ruling regarding the means that the Disciplinary Chamber does not have the right to deal with the affairs of any professional legal group.

'Earlier, representatives of the Disciplinary Chamber of the Supreme Court and the authorities in power tried to tell us that the rulings of another court, the Court of Justice in Luxembourg, regarding the Disciplinary Chamber, only apply to cases of judges, so the Chamber can deal with cases of attorneys-at-law and prosecutors. In fact, the ECtHR pointed out that the Disciplinary Chamber is not a court within the meaning of the European Convention on Human Rights, and therefore cannot deal with any type of case,' says Themis's press officer.

He adds that such a judgment of the Strasbourg Court should have another effect. 'At this moment it is perfectly clear that, instead of bringing about the announced acceleration of the justice system, the pseudo-reform has resulted in its deceleration, and has additionally exposed Poland to multi-million zloty damages because of proceedings lost before the ECtHR,' says Judge Mazur.

'From the point of view of the citizens, the "reform" has introduced legal chaos, which means that judgments issued by over a thousand judges appointed and promoted with the involvement of the neo-NCJ may be challenged on the grounds that they are defective,' argues the Themis press officer.

'In any normal, democratic country, the questioning by the highest international judicial authority of the foundations of measures described as "judicial reform" would inevitably lead to the resignation of the minister of justice who conceived, piloted and supported the whole programme,' he emphasizes.

'In Iceland, in the Astradsson case, which was somewhat similar in nature although it applied to the correctness of the appointment of a small group of a dozen or so judges, the Minister of Justice resigned even before the ECtHR's Grand Chamber passed judgment, and a remedial programme was implemented immediately after the judgment was announced,' Mazur recalls.

'This is how it should be, but how will it be? Well, it is easy to guess. It is likely that, after the ruling, which calls into question the validity of the appointment of over a thousand judges, the minister of justice will announce that this ECtHR judgment is a result of an international conspiracy and does not apply in Poland,' the judge does not hide his irony. 'In order to be consistent and not be subject to the ECtHR ruling, Poland should withdraw from the Council of Europe, thereby joining Belarus. But the truth is that the systemic guarantees of independence of the Polish judiciary already do not differ significantly from those in Belarus,' he concludes.