



STOWARZYSZENIE ABSOLWENTÓW I APLIKANTÓW KSSIP
VOTUM

Jarosław, 15th March 2023

Association of Graduates
and Trainees of National
School of Judiciary and
Public Prosecution VOTUM
Represented by
Konrad Wasik

Address:
Mickiewicza 13,
Mailbox no. 23,
37-720 Przemyśl
POLAND
e-mail:stowarzyszeniekssip@gmail.com

**Judge Marko Bošnjak
President, First Chamber
European Court of Human Rights
67075 Strasbourg Cedex
FRANCE**

MOTION

for leave to submit written comments
related to cases nos 8520/22 and 10335/22
Marek Tadeusz EPLER and
Marcin Wojciech SKUBISZEWSKI against Poland

1. Pursuant to Rule 44(3)(a) Rules of the European Court of Human Rights (**ECtHR**) Association of Graduates And Trainees of National School of Judiciary and Public Prosecution VOTUM (**Association**) kindly request the President First Chamber of the ECtHR to grant leave to submit Association's written comments related to cases nos 8520/22 and 10335/22 (Marek Tadeusz EPLER and Marcin Wojciech SKUBISZEWSKI against Poland).
2. The aim of the Association's activity is public and social activity for the development of the judiciary and law enforcement agencies through

integration, representation and support in professional development of graduates and trainees of initial trainings conducted by National School of Judiciary and Public Prosecution (**School**). Association pursues this aim i.a. by submitting legal opinions to competent authorities, including *amicus curiae* opinions, in cases particularly important from the point of view of the development of the justice system.

3. From the Association's standpoint such importance should be attributed to cases pending before the ECtHR in joined cases nos 8520/22 and 10335/22. Judgments of the ECtHR in cases against Poland regarding the violation of a party's right to an independent and impartial court established by law under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (**ECHR**) due to participation of the National Council of the Judiciary established after 2017 (**NCJ**) in the judges' appointment procedure so far concerned only judges of the Supreme Court (**SC**). Cases nos 8520/22 and 10335/22 concern judges of common courts appointed in a procedure involving the participation of NCJ after 2017, the category which many members of the Association belong to.
4. In the case no. 1469/20 (Advance Pharma Sp. z o.o. against Poland), the ECtHR stated that „the continued operation of the NCJ as constituted by the 2017 Amending Act and its involvement in the judicial appointments procedure perpetuates the systemic dysfunction as established above by the Court and may in the future result in potentially multiple violations of the right to an «independent and impartial tribunal established by law», thus leading to further aggravation of the rule of law crisis in Poland. As regards the legal and practical consequences for final judgments already delivered by formations of judges appointed upon the NCJ's recommendation and the effects of such judgments in the Polish legal order, the Court at this stage would note that one of the possibilities to be contemplated by the respondent State is to incorporate into the necessary general measures the Supreme Court's conclusions regarding the application of its interpretative resolution of 23 January 2020 in respect of the Supreme Court and other courts and the judgments given by the respective court formations" (para. 365).
5. According to circumstances mentioned above, the motion addressed to the President First Chamber of the ECtHR to grant leave to submit Association's written comments related to cases no 8520/22 and 10335/22 is justified by the fact that the provisions of Article 42a §§ 3-14 of the Law of 27th July 2001 on the system of common courts (**LSCC**) which came into force on 15th July 2022 concern so-called „judge's independence test". Pursuant to Article 42a § 3 of the LSCC, it is admissible to examine whether a judge meets the requirements of independence and impartiality, taking into account the circumstances surrounding his appointment and his

conduct after the appointment, at the request of the authorized person referred to in § 6, if in the circumstances of a given case it may lead to a violation of the standard of independence or impartiality, affecting the outcome of the case, taking into account the circumstances concerning the entitled person and the nature of the case. The practice of application of the aforementioned regulations is currently developing.

6. Furthermore it should be noted that on 9th February 2023, the Act of 13th January 2023 amending the Act on the Supreme Court and certain other acts was presented to the President of the Republic of Poland for signature (Sejm Paper No. 2870). This Act significantly amended i.a. Article 42a § 6 of the LSCC, introducing the possibility of examining the judge's compliance with the requirements of independence and impartiality at the request of the competent court, if there is a serious doubt in this respect. The legislative process has not been completed since the President of the Republic of Poland has submitted a request to the Constitutional Tribunal (**CT**) to examine the compliance of the act with the Constitution of the Republic of Poland.
7. The legislative changes presented above are relevant from the point of view of the guidelines provided by the ECtHR judgment in the Advance Pharma case (para. 365), as the implementation of the postulate to introduce the possibility of examining the composition of court according to the criteria set out in the resolution of the SC of 23rd January 2020. Therefore, it is particularly important to assess to what extent both the content and the practice of applying these regulations correspond to the standards formulated by the ECtHR. The normative shape of the discussed regulations also depends on the outcome of the proceedings regarding the Act of 13th January 2023, which are currently pending before the CT.
8. For the reasons stated above the Association wishes to submit written comments to joined cases nos 8520/22 and 10335/22, which will contain an assessment of the regulations and practice regarding the application of the so-called "judge's independence test", as well as comments and observations regarding the implementation of the guidelines contained in the judgments of the ECtHR regarding SC judges appointed with the participation of the NCJ after 2017 to judges of common courts.

*Representative of the Association
of Graduates and Trainees
of National School of Judiciary
and Public Prosecution
judge Konrad Wasik*