



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

FIRST SECTION

CASE OF MORAWIEC v. POLAND

(Application no. 46238/20)

JUDGMENT

Art 6 § 1 (civil and criminal) • Tribunal established by law • Lifting of judge's immunity from prosecution and suspension from judicial duties by Supreme Court's Disciplinary Chamber • Art 34 • In specific case-circumstances, favourable second-instance resolution of the Disciplinary Chamber did not deprive the applicant of her victim status • Case distinguished from *Tuleya v. Poland* in that respect • Art 6 § 1 applicable under its civil limb to the applicant's suspension and under its criminal limb to the lifting of her immunity • Findings in *Reczkowicz v. Poland*, *Juszczyszyn v. Poland* and *Tuleya v. Poland* applied • Independence and impartiality of Disciplinary Chamber compromised

Art 8 • Private life applicable • Art 34 • Victim status • Disciplinary Chamber's decision lifting applicant's immunity and suspending her from duties affected her private life to a very significant degree • Impugned decision given by a body not considered a "court" • Lack of proper safeguards against arbitrariness • Interference not "in accordance with the law"

Art 10 • Freedom of expression • Art 34 • Victim status • Actions aimed at lifting the applicant's judicial immunity prompted by her views and criticisms, publicly expressed in her professional capacity, of the legislative reforms affecting the judiciary • Lack of proper safeguards against arbitrariness • Interference not "in accordance with the law" and not pursuing any legitimate aim

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 February 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Morawiec v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić, *President*,

Erik Wennerström,

Raffaele Sabato,

Frédéric Krenc,

Davor Derenčinović,

Alain Chablais,

Anna Adamska-Gallant, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 46238/20) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Ms Beata Morawiec (“the applicant”), on 20 October 2020;

the decision to give notice to the Polish Government (“the Government”) of the complaints under Article 6 § 1, Article 8 and Article 10 of the Convention;

the parties’ observations;

Having deliberated in private on 13 January 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a decision of the Disciplinary Chamber of the Supreme Court to lift the applicant’s immunity from prosecution and suspend her from judicial duties. The applicant submitted that the Disciplinary Chamber had not satisfied the requirements of an “independent and impartial tribunal established by law”. She further submitted that the Disciplinary Chamber’s decision had amounted to a breach of her right to respect for her private life and her right to freedom of expression. The case raises issues under Article 6 § 1, Article 8, and Article 10 of the Convention.

LEGAL CONTEXT OF THE CASE

2. The instant application belongs to a series of cases concerning the overhaul of the judiciary which was initiated in 2017 and has been implemented by successive amending laws (for an overview of the Court’s case-law on the matter see *Wałęsa v. Poland*, no. 50849/21, §§ 2-4, 23 November 2023).

3. The Court has previously given judgments dealing with measures applied to judges that were similar to the measures encountered by the applicant in the present case (see *Juszczyszyn v. Poland*, no. 35599/20,

6 October 2022, and *Tuleya v. Poland*, nos. 21181/19 and 51751/20, 6 July 2023).

THE FACTS

4. The applicant was born in 1964 and lives in Libertów. The applicant was represented by Ms S. Gregorczyk-Abram and Mr. M. Wawrykiewicz, lawyers practising in Warsaw.

5. The Government were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

6. The facts of the case may be summarised as follows.

I. BACKGROUND OF THE CASE

A. The applicant's profile and public activity

7. The applicant is a judge with over thirty years of professional experience. Since 2002 she has been adjudicating in criminal matters at the Cracow Regional Court. She is a former member of the National Council of the Judiciary (between 2002 and 2010), a former President of the Cracow Regional Court (between 2015 and 2017) and a former deputy director of the National School of Judiciary and Prosecution. She is also a member, since 2011, of the Judges' Association Themis, and has been its President since January 2018.

8. The Judges' Association Themis, under the applicant's presidency, was actively involved in public debate concerning the reorganisation of the judiciary. In a resolution of its General Assembly adopted on 14 January 2018, the association called upon all judges to refrain from participating in appointment procedures conducted by the recomposed National Council of the Judiciary ("the NCJ"), deeming it a "body established contrary to the Polish Constitution". On 26 July 2018 the association issued a joint statement with the Polish Judges' Association Iustitia in which they stated that the procedure for the competition then underway to fill vacancies at the Supreme Court's Civil Chamber had been invalid (see *Manowska and Others v. Poland* (dec.), nos. 51455/21 and five others, § 23, 1 April 2025).

9. The association was also publicly critical of the Minister of Justice, Mr Zbigniew Ziobro (who held that office between 2015 and 2023). In March 2018 the association issued a public protest "against the use by the Minister of Justice of one particular judgment to discredit the Supreme Court and to justify the destruction of judicial independence for political purposes". Referring to the Minister's statements concerning a disciplinary case before the Supreme Court and the announced changes regarding the removal of judges from office, the association stated that "these actions aim[ed], under

the pretext of safeguarding the image of the judiciary, to restrict the protection of citizens' rights and freedoms". In August 2019, following reports in Polish media about the so-called "hate campaign scandal" (*afery hejterska*), the association called upon the Minister of Justice to resign and requested that a Parliamentary Commission of Inquiry be formed to examine the allegations.

B. The applicant's dismissal from the post of President of the Cracow Regional Court and the subsequent dispute

10. On 24 November 2017 the Minister of Justice dismissed the applicant from her post as President of the Cracow Regional Court. That decision was taken on the basis of the Act of 12 July 2017 amending the Act on the Organisation of Ordinary Courts, which conferred on the Minister competence to dismiss and appoint at his discretion presidents of ordinary courts during a period of six months following the Law's entry into force (see *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, § 33, 29 June 2021). A press release published on the website of the Ministry of Justice on 27 November 2017 stated that the applicant had failed to properly supervise the administrative activities of the Regional Court. It also asserted that the court had not been working efficiently.

11. In January 2018 the applicant lodged a civil claim against the State Treasury, represented by the Minister of Justice, demanding an apology for the contents of the press release as it had, she contended, damaged her reputation. In January 2019 the Warsaw Regional Court allowed the applicant's claim. The respondent lodged an appeal against that judgment which the Warsaw Court of Appeal dismissed on 20 January 2021. The Minister was ordered to publish an apology to the applicant and pay a certain sum to a charity.

II. PROCEEDINGS TO LIFT THE APPLICANT'S JUDICIAL IMMUNITY

12. On 14 September 2020 a prosecutor of the Internal Affairs Department of the State Prosecutor's Office applied to the Disciplinary Chamber of the Supreme Court (hereinafter referred to as "the DCSC") seeking the lifting of the applicant's immunity with a view to charging her with several criminal offences: intentional abuse of power by a public official (Article 231 § 2 of the Criminal Code), misappropriation of funds (Article 284 § 2 of the Criminal Code) and bribery (Article 228 § 3 of the Criminal Code). The prosecutor alleged that the applicant had accepted a mobile phone from a defendant in a criminal case in exchange for delivering a judgment in his favour and that she had accepted public funds to write a report which she had never actually written.

13. On 12 October 2020 the DCSC, sitting in a single-judge formation, lifted the applicant's immunity and suspended her from judicial duties. It noted that there was a reasonable suspicion that the applicant had committed the offences as alleged by the prosecutor. The DCSC further decided, pursuant to the applicable law, that the applicant's salary be reduced by 50% (the maximum permitted amount). In doing so, the DCSC stated that it had been "guided by the high degree of social harm caused by the conduct [the applicant] engaged in, which was detrimental to the administration of justice and to the State Treasury in respect of public funds allocated to the judiciary. [The DCSC] also took into account the degree of social harm attributed to her actions by the requesting prosecutor." The written reasons for the resolution were published on the Supreme Court's website.

14. Both the applicant's representatives and the Deputy Disciplinary Officer at the Cracow Court of Appeal lodged appeals in the applicant's favour against the DCSC's resolution of 12 October 2020. The appeals lodged on the applicant's behalf raised complaints, *inter alia*, that the DCSC had not been a "tribunal established by law".

15. On 7 June 2021 the DCSC, sitting in a three-judge formation, quashed the first-instance resolution and refused to lift the applicant's immunity. At the outset, the DCSC dismissed the complaints that it was not a "tribunal established by law", relying, *inter alia*, on its own case-law (resolution of 25 May 2020, case no. I DO 21/20), and that of the Constitutional Court (judgment of 20 June 2017, case no. K 5/17; for details thereof, see *Grzęda v. Poland* [GC], no. 43572/18, §§ 38-44 and § 102, 15 March 2022). On the merits of the applicant's case, the DCSC then held that the evidence adduced by the prosecutor had been insufficient to substantiate the charges against the applicant. In particular, it noted that the main witness for the prosecution had often changed his testimony, which diminished his credibility. The DCSC additionally held that the prosecutor's evidentiary initiative had been insufficient and that the request to lift the applicant's immunity had therefore been premature. It further observed that some elements of the applicant's conduct could potentially raise issues within disciplinary, rather than criminal, proceedings, although the possibility to launch disciplinary proceedings had become time barred owing to the passage of time.

16. Shortly thereafter, the applicant resumed her judicial duties and the withheld part of her salary was paid out to her. Her suspension had lasted for 238 days.

III. PUBLIC REACTION AND MEDIA COVERAGE OF THE APPLICANT'S CASE

A. Reactions to the announcement of the application to lift the applicant's immunity

17. Following the announcement by the State Prosecutor's Office of the application to lift her immunity, the applicant stated in an interview with the press published on 16 September 2020:

"I have no wrongdoing to reproach myself with and consider these attacks to be part of a political game ... [A] considerable effort must have been made to fabricate an allegation so evidently baseless. ... The objective is to silence the judicial community as we approach the next phase of reforms to the justice system announced by the Ministry."

18. On 16 September 2020, an article containing an interview with M. Safjan – then a judge of the Court of Justice of the European Union ("the CJEU"), and a former President of the Polish Constitutional Court – was published. In the article, Judge Safjan made, *inter alia*, the following statements:

"Judge Beata Morawiec has my full support, and I wish to express my complete solidarity with her stance. ...

Through their active defence of judicial independence and their open protest against violations of judicial autonomy, [certain judges] expose themselves to the kind of risks we have seen materialise in the case of Judge Morawiec – the risk of severe repression. ...

Turning back to the case of Judge Morawiec, it is difficult not to perceive a connection between her first-instance victory in the dispute with the Minister of Justice and the accusations now being made against her. ...

There is no doubt that both attempts to bring criminal charges against judges and to subject them to disciplinary proceedings are intended to – and already do – have a chilling effect that is aimed at paralysing the work of independent judges. All those who are independent, observing what is currently happening, have every reason to fear reprisals. All the more admirable, therefore, is the fact that they continue to act, continue their work, and continue defending the independence of the judiciary."

19. On 10 October 2020 (that is two days before the session scheduled by the DCSC at first instance to examine the prosecutor's application – see paragraph 13 above), the State-owned television channel TVP broadcasted a news programme ("*Wiadomości*") in which a few minutes of material was devoted to the applicant's case – "*Wiadomości*' Reveals Evidence of Pathology". Relying on excerpts from the prosecutor's files, the material suggested that the applicant had used her position and connections in Polish courts to "conduct criminal activity". Quoted in the material, the Deputy Minister of Justice Sebastian Kaleta stated that the applicant's "torpedoing of the reform of the judiciary" might not necessarily be selfless because she could be defending her own interests. Meanwhile, the editor-in-chief of the

newspaper *Gazeta Polska* said that Judge Morawiec's case was akin to "an arrangement typical of Chicago in the 1930s, when the mafia was defending its judges and the judges were defending their mafia."

B. Reactions to the first-instance resolution of the DCSC lifting the applicant's immunity

20. Following the DCSC's resolution of 12 October 2020 lifting the applicant's immunity, several international associations of judges published statements in reaction to it.

On 12 October 2020 the European Association of Judges (Regional Group of the International Association of Judges) stated:

"In a decision of April 8th[.] 2020 (Case C-791/19 Commission v Poland), the [CJEU] ruled that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court.

The [CJEU], on the basis of a question referred by the Sąd Najwyższy – Izba Pracy i Ubezpieczeń Społecznych (Supreme Court – Labour and Social Insurance Chamber), found, *inter alia*, that [European Union (EU)] law precluded cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal.

According to the [CJEU], that is the case where the objective circumstances in which the court concerned was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law.

The Disciplinary Chamber of the Polish Supreme Court is not a court and cannot continue to act as one.

However, in a blatant disobedience to this decision of the European Court of Justice, this bogus body today waived the immunity of Beata Morawiec, judge of the District Court in Kraków, along with evident disciplinary sanctions that included a 50% salary cut.

Although the case against Judge Morawiec allegedly does not constitute a disciplinary proceeding, but a criminal one, it is clear that this supposed decision for such illegitimate body is not acceptable.

Therefore:

The European Association of Judges publicly expresses its unbreakable solidarity to Judge Beata Morawiec and to all independent Polish judges;

The European Association of Judges urges, once more, the European Commission to take all necessary measures to urgently reestablish the EU legal order in Poland."

On 13 October 2020 MEDEL (*Magistrats européens pour la démocratie et les libertés*) issued the following statement:

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“The CJEU-disabled Disciplinary Chamber of the Polish Supreme court decided on lifting judicial immunity of judge Beata Morawiec and imposing disciplinary charges in the form of suspension and reduction of salary by 50%.

This is a direct and blatant violation of [CJEU] order of 08.04.2020, suspending the so-called Disciplinary Chamber in the disciplinary proceedings against judges. Consequently, MEDEL does not recognize today's decision, considers Beata Morawiec an active judge and expresses [to] her its full support and solidarity.

This illegal activity must result in immediate action from the European institutions, mainly the European Commission, within its role of guardian of the Treaties, on the basis of art. 260 (2) TFEU. The time for mere expressions of concern is long gone – all red lines have been crossed. We can no longer watch passively the destruction of the European legal system.”

Also on 13 October 2020, the Association of European Administrative Judges issued the following statement:

“On 8 April 2020 the Court of Justice of the European Union has ordered to suspend the [relevant] national legal provisions on the powers of the Disciplinary Chamber of the Supreme Court of Poland. Beyond any doubt this order is clear concerning its scope and meaning, it is executable and in any case it is binding.

Court decisions must be followed. Furthermore, this order of a court concerns fundamental issues of a national justice system, i.e. the question of the independence of a judiciary and thus the rule of law in one of the member States of the EU. Even more the organs of this EU member State should be aware of the consequences when ignoring such an order.

The Disciplinary Chamber of the Supreme Court of Poland is not independent and it must not continue its activities for the time being.

Despite these facts this Disciplinary Chamber has decided to lift the immunity of Judge Beata Morawiec in ... yesterday's decision in order to enable criminal proceedings against this judge. Furthermore it has decided to suspend judge Morawiec with reduction of salary of 50%.

It is crystal clear that these activities of the Disciplinary Chamber fall under the scope of the order of the Court of Justice of the European Union. Thus[,] organs of the Polish State have ignored the binding decision of the Court of Justice of the European Union.

- AEAJ fully agrees with and supports the statements of the other European judicial associations of 12 October 2020 and of 13 October 2020

- AEAJ expresses its solidarity with colleague Beata Morawiec and all our Polish colleagues

- AEAJ refers to the open letter of AEAJ, EAJ, Judges for Judges and MEDEL sent to the President of the European Commission Ms Von der Leyen, the Commissioner Ms Jourova and the Commissioner Mr Reynders on 30 September 2020 and repeats the therein stated calls on members of the European Commission as guardians of the European Treaties

- AEAJ urges the European Commission to respond to this devastation of rule of law as well as of the European legal system.”

C. Reactions to the second-instance resolution of the DCSC refusing to lift the applicant's immunity

21. Following the second-instance resolution of the DCSC, Government officials made public comments regarding the applicant's case. On 8 June 2021, M. Wójcik, a Minister without portfolio, called the ruling a "disgrace" and deemed it to have "harmed" the applicant, stating that:

"In the case of such serious allegations, she should be interested in clearing herself of these allegations during a public hearing."

On 9 June 2021 the Minister of Justice, Z. Ziobro, held a press conference at which he made the following statements:

"The decision of the Disciplinary Chamber of the Supreme Court has clearly demonstrated that the judiciary is not capable of self-purification. ... This decision is all the more concerning because it does not determine the guilt or innocence of Judge Morawiec. The Disciplinary Chamber does not decide this; it is for the competent court to adjudicate the case. ... Monday's decision by the Disciplinary Chamber denies even the possibility of such a ruling. It turns out that there is a professional group to whom the rules of law that apply to ordinary citizens do not apply."

Those statements were cited in an official press release by the State Prosecutor's Office published on the same day, which further added that the Minister considered the DCSC's resolution "shocking".

IV. OTHER RELEVANT MATERIAL

22. In 2024 judges from the Polish Judges' Association Iustitia published an updated version of their report entitled "Justice Under Pressure"¹ (*Wymiar sprawiedliwości pod presją*). The report stated, in so far as relevant:

"Judge Beata Morawiec serves as the President of the National Board of the Association of Judges Themis.

She has repeatedly participated in public debate concerning the state of the rule of law in Poland, consistently and courageously defending the independence of the judiciary, judicial impartiality, and the principles of a democratic state governed by the rule of law. Her public statements have included open criticism of unconstitutional reforms introduced by the ruling political majority in the area of justice administration, as well as actions undertaken by the Minister of Justice, Mr Zbigniew Ziobro.

In her capacity as President of the Association of Judges Themis, Judge Morawiec has frequently presented to the public the Association's positions and resolutions, which were critical of the so-called judicial reforms implemented by the ruling authorities in Poland between 2015 and 2018.

In November 2017, prior to the expiration of her term of office, Judge Morawiec was dismissed from her position as President of the Regional Court in Cracow without being provided with reasons, without the right to appeal, and in the context of a systemic

¹ The 2019 version of the Report was referenced in *Tuleya v. Poland*, nos. 21181/19 and 51751/20, § 139, 6 July 2023.

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purge of court leadership carried out by the Minister of Justice pursuant to the legislative amendment of 12 July 2017. This amendment granted the Minister the authority to dismiss presidents and vice-presidents of ordinary courts. This power was temporally limited to a six-month period following the entry into force of the relevant provisions. Exercising this authority, Minister Ziobro dismissed approximately 160 court presidents and vice-presidents during their lawful terms of office, without providing justification, without consulting the judicial boards, and without affording the right to appeal. Judge Morawiec was among those affected.

Judge Morawiec was also the first judge against whom criminal proceedings were initiated by the political authorities with the apparent aim of removing her from judicial duties. In 2020, the public prosecutor initiated criminal proceedings against her, alleging that she had accepted a mobile phone in exchange for issuing a favourable judgment and had received public funds for a legal analysis. These allegations were widely regarded as unfounded and fictitious, and the proceedings were perceived as a textbook example of the instrumental use of criminal law to discredit a judge who had publicly and fearlessly defended core democratic values, including judicial independence and prosecutorial autonomy.

In September 2020, at 6.30 a.m., agents of the Central Anti-Corruption Bureau and a prosecutor entered Judge Morawiec's home and presented a search warrant. Judge Morawiec voluntarily handed over her laptop and USB drives, asserting she had nothing to hide.

On 12 October 2020 the Disciplinary Chamber operating within the Supreme Court building – an entity which is not and has never been a court, and whose activities had been suspended by the CJEU's interim order of 8 April 2020 (C-791/19) – decided to lift Judge Morawiec's judicial immunity, suspend her from her official duties, and reduce her salary by 50%. She remained unlawfully suspended for 238 days.

Following a decision of the Disciplinary Chamber's second-instance panel on 7 June 2021, which refused to lift her immunity, Judge Morawiec was reinstated to judicial duties. However, by decision of the President of the Regional Court in Cracow, Ms Dagmara Pawełczyk-Woicka, Judge Morawiec was transferred – without her consent – from the Fourth Criminal Appellate Division, where she had served for 20 years, to the First-Instance Third Criminal Division. This transfer was widely regarded within the judiciary as a *de facto* demotion. The decision followed Judge Morawiec's declaration that she would adjudicate in accordance with European law and would refuse to sit alongside 'neo-judges'.

The criminal proceedings against Judge Morawiec were ultimately discontinued in January 2022. However, the disciplinary proceedings initiated against her were not formally discontinued by the disciplinary officer until one year and seven months later.

Judge Morawiec was also subjected to online harassment. On Twitter, the group KASTA, *via* the account KastaWatch, disseminated false information about her. She was further targeted by state-controlled media, including defamatory content broadcast on the 'Wiadomości' programme of TVP 1."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGAL FRAMEWORK AND PRACTICE ALREADY SUMMARISED

23. The relevant legal framework and practice is set out in detail in the Court's judgments in the cases of *Reczkowicz v. Poland* (no. 43447/19, §§ 59-176, 22 July 2021); *Grzęda v. Poland* [GC] (no. 43572/18, §§ 64-169, 15 March 2022); *Żurek v. Poland* (no. 39650/18, §§ 94-112, 16 June 2022); *Juszczyszyn* (cited above, §§ 84-112); *Tuleya* (cited above, §§ 143-241), *Wałęsa* (cited above, §§ 58-64 and 79-129), and *Wróbel v. Poland* (dec.) (no. 6904/22, § 30, 25 March 2025).

II. DOMESTIC LAW

Criminal code

24. The Criminal Code, in so far as relevant, provides as follows:

Article 228

“3. Whoever, in connection with the performance of a public function, accepts a material or personal benefit, or a promise thereof, in exchange for conduct constituting a violation of the law, shall be subject to a penalty of deprivation of liberty for a term of between one and ten years.”

Article 231

“1. A public official who, exceeding his authority, or not fulfilling his duty, acts to the detriment of a public or individual interest shall be subject to a penalty of deprivation of liberty for up to three years.

2. If the perpetrator commits the act specified in paragraph 1 hereof for the purpose of obtaining a material or personal benefit, he or she shall be subject to a penalty of deprivation of liberty for a term of between one and ten years.”

Article 284

“2. Whoever appropriates a movable item entrusted to him or her shall be subject to a penalty of deprivation of liberty for a term of between three months and five years.”

THE LAW

I. PRELIMINARY OBJECTIONS REGARDING THE APPLICATION AS A WHOLE

A. Lack of significant disadvantage on the part of the applicant

1. *The parties' submissions*

25. The Government argued that the applicant had not suffered a significant disadvantage. They argued that the consequences of the DCSC's resolution of 12 October 2020, by which the applicant had been suspended from her judicial duties and her salary had been reduced by 50%, had not attained a minimum level of severity. The Government added that the second-instance resolution of 7 June 2021 had quashed the first-instance ruling, restored the applicant's immunity, reinstated her to her judicial duties and resulted in the withheld part of her salary being paid out to her. They further argued that the applicant's suspension had been of relatively short duration.

26. The applicant maintained that her application should be declared admissible.

2. *The Court's assessment*

27. The Court refers to the general principles concerning the application of the admissibility criterion under Article 35 § 3 (b) of the Convention as set out for instance in *Šeks v. Croatia* (no. 39325/20, § 47, 3 February 2022). It reiterates that in assessing the severity of a violation, both the applicant's subjective perceptions and what is objectively at stake in a particular case should be taken into account (ibid., see also *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts)). The Court takes into account the fact that the present case concerns a matter of principle that was of the utmost importance for the applicant – in particular, her right to have her case reviewed by an “independent and impartial tribunal established by law” in accordance with Article 6 § 1 of the Convention in so far as she had faced serious allegations, as well as her right to respect for her private life, under Article 8, and her right to freedom of expression, under Article 10. Given the circumstances, the applicant suffered a disadvantage that cannot be considered insignificant for the purposes of Article 35 § 3 (b) of the Convention. The same considerations amount in any event to grounds for finding that respect for human rights (as defined in the Convention) requires an examination of the complaint on the merits (see *Friedrich and Others v. Poland*, nos. 25344/20 and 17 others, § 125, 20 June 2024, and the case-law cited therein).

28. Accordingly, the Court dismisses the Government's objection.

B. Remaining objections to the application as a whole

29. The Government raised several other preliminary objections to the admissibility of the application as a whole, that is without expressly specifying the Convention provisions to which those arguments applied. Notably, they argued that the application should be rejected: (i) as being incompatible *ratione materiae* with the Convention; (ii) on account of its premature character and non-exhaustion of domestic remedies; and (iii) for a lack of victim status on part of the applicant. However, seeing as those specific objections cannot be reviewed without having regard to the specific alleged violations, the Court will examine those objections when dealing with the applicant's respective complaints, to which they essentially pertain.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained, under Article 6 § 1 of the Convention, that the proceedings concerning the lifting of her immunity and her suspension from judicial duties had been conducted by the Disciplinary Chamber of the Supreme Court ("the DCSC"), a body that did not satisfy the requirements of "an independent and impartial tribunal established by law". Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

1. *Applicability of Article 6 § 1 of the Convention in the context of the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21*

(a) The parties' submissions

31. The Government argued that the application should be considered incompatible *ratione materiae* with the Convention on account of the alleged effect of the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21 which found Article 6 § 1 of the Convention to be incompatible with various provisions of the Constitution (for details of that judgment see *Wałęsa v. Poland*, no. 50849/21, §§ 107-08, 23 November 2023).

32. Relying on arguments identical to those raised in *Wałęsa*, the Government contended that the judgment in question should be regarded as an emanation of the "constitutionally justified objection" against the Court's authority of a judicial and interpretative nature, thus making Article 6 of the Convention inapplicable to the present case (see *Wałęsa*, cited above, §§ 134-38).

33. In reply, referring to the Court’s findings in *Juszczyszyn v. Poland* (no. 35599/20, §§ 207-09, 6 October 2022) the applicant submitted that the Constitutional Court was not authorised to issue rulings regulating the jurisdiction of the Court and that the judgment relied upon by the Government should be considered legally ineffective.

(b) The Court’s assessment

34. The Court notes that in the case of *Wałęsa* (cited above, §§ 140-45) it dealt in detail with the Government’s arguments as to the alleged effects of the judgment of the Constitutional Court of 10 March 2022.

35. Seeing no reason to depart from the findings made in that case, the Court reiterates that (i) the Court alone is competent to decide on its jurisdiction to interpret and apply the Convention and the Protocols thereto (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 293, ECHR 2005-III), and (ii) the Constitutional Court’s judgment cannot be considered anything other than an attempt to restrict the Court’s jurisdiction under Articles 19 and 32 of the Convention, undermining the rule-of-law standards. The Court further observes that, although this point is not central to the Government’s objection relying on a particular judgment of the Constitutional Court, the CJEU has recently delivered a judgment that appears to support the Court’s conclusion (judgment of 18 December 2025 in *Commission v Poland (Ultra vires review of the case-law of the Court – Primacy of EU law)*, C-448/23, EU:C:2025:975). In that case, the CJEU held that Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) of the Treaty on European Union on account of the fact that the Constitutional Court “does not meet the requirements of an independent and impartial tribunal previously established by law, on account of irregularities in the procedures for the appointment of three of its members in December 2015 and of its President in December 2016”.

36. Consequently, the Government’s objection as to the applicability of Article 6 of the Convention in the present case based on the judgment of the Constitutional Court of 10 March 2022 in case no. K 7/21 must be dismissed.

2. Applicability of Article 6 § 1 of the Convention to the proceedings before the DCSC

(a) The parties’ submissions

37. The Government raised a preliminary objection as to the applicability of Article 6 § 1 of the Convention to the proceedings under review, in respect of its distinct aspects. The Government argued that Article 6 was not applicable: (i) under its civil limb, in so far as the applicant’s suspension was concerned, and (ii) under its criminal limb, as regards the lifting of the applicant’s immunity. Concerning the civil limb, the Government asserted that the applicant participated in the exercise of public power or there existed

a “special bond of trust and loyalty” between her, as a judge, and the State, as employer. Therefore, the dispute in the applicant’s case was not an example of an “ordinary labour dispute” relating to “salaries, allowances or similar entitlements” to which Article 6 should in principle apply. Polish law did not grant judges the right to exercise their authority and remain in office irrespective of their conduct; nor did it grant them the right to be released from criminal responsibility. As for the criminal limb, the Government submitted that proceedings in which a court decided whether to permit a judge to be held criminally liable were neither criminal nor even disciplinary. They were of an ancillary nature and were conducted separately from the criminal proceedings at their *in rem* stage. The subject of those proceedings was solely the question whether the immunity of a judge should be lifted, and their aim was limited to allowing a prosecutor in charge to conduct criminal proceedings in order to establish whether the offence in question had been committed. A person whose immunity had been lifted did not automatically become a suspect.

38. The applicant maintained that Article 6 § 1 was applicable to her case under both heads. Relying on the Court’s case-law, particularly as outlined in the case of *Juszczyszyn* (cited above), she argued that the civil limb of Article 6 applied to her case as regards her suspension. Regarding the criminal head of that provision, it was applicable to her case because proceedings on the lifting of immunity of a judge were by their nature related to repression. In those proceedings a competent court could decide not only to lift an obstacle to pursuing a criminal case, but also to apply directly repressive measures, such as suspension from judicial duties paired with a salary reduction (both of which had been applied in her case) and detention.

(b) The Court’s assessment

(i) Applicability of Article 6 § 1 under its civil limb in so far as the suspension of the applicant from her judicial duties is concerned

39. The general principles regarding the applicability of Article 6 § 1 in its “civil” limb were recently summarised in *Grzęda v. Poland* ([GC], no. 43572/18, §§ 257-64, 15 March 2022).

40. The Court observes that the applicant in the present case, who is a judge, faced the lifting of her judicial immunity and that in the course of the proceedings brought to that end she was suspended from the exercise of her judicial duties by the DCSC.

41. The Court reiterates that the employment relationship of judges with the State must be understood in the light of the specific guarantees essential for judicial independence. Thus, when referring to the “special trust and loyalty” that they must observe, it is loyalty to the rule of law and democracy and not to holders of State power that is at issue (see *Grzęda*, cited above, § 264 and the cases cited therein).

42. Applying the criteria established in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II) in an earlier case, which concerned a similar situation of suspension of a judge (albeit within the context of disciplinary proceedings), the Court held that the guarantees of Article 6 were applicable to the suspension in issue (see *Paluda v. Slovakia*, no. 33392/12, §§ 33-34, 23 May 2017; see also *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020; and, in the Polish context, *Juszczyszyn*, cited above, § 137). The Court sees no reason to reach a different conclusion in the present case and finds, therefore, that Article 6 § 1 in its civil limb is applicable. The Government's objection must accordingly be dismissed.

(ii) *Applicability of Article 6 § 1 under its criminal limb in so far as the lifting of the applicant's judicial immunity is concerned*

43. In *Tuleya v. Poland* (nos. 21181/19 and 51751/20, §§ 277-79, 6 July 2023) the Court summarised principles concerning the applicability of the criminal limb of Article 6 § 1 in general and applied them in the specific context of Polish proceedings for the lifting of a judge's immunity (*ibid.*, §§ 280-300). The Court reiterates in this respect that there are two separate sets of proceedings enabling the prosecution of a judge and the establishing of his or her criminal liability. The initial proceedings, which relate to the authorisation for the lifting of immunity of a judge, are a condition *sine qua non* for the subsequent prosecution of a judge; those proceedings are of a judicial nature and the lifting of immunity is decided by a court at two levels of jurisdiction. Criminal proceedings against a judge would begin only if the authorisation has been given by a court in the immunity proceedings and it would be for the competent criminal court subsequently to decide on the commission of an offence and the question of guilt.

44. In both *Tuleya* and in the case under review the above-mentioned initial proceedings were relevant for the Court's analysis. Consequently, the Court considers that, owing to the substantial similarities between the circumstances of the present case and those examined in *Tuleya*, the reasoning adopted in that judgment can be applied *mutatis mutandis* and may guide its assessment in the instant case.

45. The assessment of the applicability of Article 6 under its criminal limb is based on three criteria, commonly known as the "*Engel* criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22, and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 75, 22 December 2020).

46. In the present case, the prosecutor sought permission to have the applicant's criminal liability established for intentional abuse of power by a public official (Article 231 § 2 of the Criminal Code), misappropriation of funds (Article 284 § 2 of the Criminal Code) and bribery (Article 228 § 3 of the Criminal Code) – see paragraph 24 above.

47. As regards the first criterion – the legal classification of the offence under national law, the Court notes that the offences in respect of which the prosecutor sought to have the applicant’s liability established are clearly criminal offences under domestic law.

48. In the *Tuleya* case (cited above, §§ 286-90), the Court analysed and attached significant weight to the findings of the highest domestic courts concerning the nature of the immunity proceedings, and in particular to their view that (i) the requirements of Article 6 § 1 of the Convention applied to immunity proceedings, and that (ii) in immunity proceedings, despite their interlocutory nature, adequate procedural safeguards had to be afforded to the person concerned. The same considerations apply to the present case.

49. As to the second criterion – the very nature of the offence – the Court observes that Articles 231 § 2 and 228 § 3 of the Criminal Code deal with offences which can only be committed by public officials, although, it should be stressed, not exclusively judges. That being said, Article 284 § 2 of the Criminal Code establishes an offence that can be committed by the public in general, and not only by a specific category of persons. Thus, at least in respect of that provision (without there being need for the Court to pronounce itself on the remaining provisions), the charge against the applicant was criminal in nature (compare with *Tuleya*, cited above, §§ 283 and 294).

50. With regard to the third criterion, the Court notes *that the offence set out in Article 284 § 2 of the Criminal Code is punishable by a fine, restriction of liberty or imprisonment for up to five years, which confirms* the seriousness of the penalties at stake (compare with *Tuleya*, cited above, § 295, where the maximum penalty was imprisonment for up to two years).

51. Consequently, even though the applicant was not formally charged in the criminal proceedings opened in connection with the allegations against her, the Court finds that following the first-instance resolution the applicant’s situation was substantially affected – within the meaning of the Court’s case-law – by actions taken by the authorities as a result of a suspicion against her (see, *mutatis mutandis*, *Tuleya*, cited above § 299; see also *Deweert v. Belgium*, 27 February 1980, §§ 42-46, Series A no. 35, and *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-11, 12 May 2017). In this regard, the Court also refers to the judgment of 5 June 2023 in *Commission v. Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442) where the CJEU held that the mere prospect of judges running the risk that authorisation to prosecute them may be sought and obtained from a body whose independence was not guaranteed was likely to affect their independence (see *Tuleya*, cited above, § 241).

52. In view of the foregoing and having regard to the specific features of the immunity proceedings under review, the Court finds that Article 6 § 1 of the Convention under its criminal limb is applicable to those proceedings. It follows that the Government’s objection in this regard must be dismissed.

3. *Exhaustion of domestic remedies*

(a) **The parties' submissions**

53. The Government argued that the case was premature for three reasons. Firstly, they noted that, at the time when the application was lodged with the Court, the proceedings for the lifting of the applicant's judicial immunity had still been pending, in so far as the applicant had not lodged her appeal against the first-instance resolution of the DCSC. Secondly, the Government argued that the applicant had failed to exhaust the available domestic remedies as regards the issue of the composition of the DCSC, given that she had not lodged a constitutional complaint with the Constitutional Court; had she obtained a favourable judgment of the Constitutional Court, the applicant would have been able to lodge a compensation claim in respect of damage incurred as a result of a final decision given on the basis of provisions which were found to be incompatible with the Constitution, under Article 417¹ § 1 of the Civil Code (see *Pajak and Others v. Poland*, nos. 25226/18 and 3 others, § 38, 24 October 2023). Thirdly, the Government submitted that, following the abolition of the DCSC and the establishment of the Chamber of Professional Liability ("the CPL") of the Supreme Court in its place (for details see *Tuleya*, cited above, §§ 181-87), a new remedy was made available to judges affected by the rulings of the DCSC. In particular, the Government referred to the provision under which a judge in respect of whom the DCSC had adopted a final resolution permitting him or her to be held criminally liable was entitled to request the reopening of the proceedings within six months from the date of entry into force of the legislative amendment; such requests for reopening were to be examined by the CPL (*ibid.*, § 187). Against that background, the Government acknowledged that the applicant had been in a different situation than the one covered by the legislative amendment, in so far as the DCSC had refused, at second-instance, to lift her immunity. Nevertheless, the Government maintained that the applicant should have requested the newly created CPL to reopen the proceedings using that remedy.

54. The applicant disagreed and maintained that no effective remedy – be it civil, criminal, or constitutional – was available to her. As to the Government's first argument, the applicant argued that her rights had been breached by the initiation and the involvement of the DCSC in the immunity proceedings, which by definition could not have been remedied at second instance by the DCSC. Concerning the constitutional complaint, the applicant contended that it could not automatically annul an individual decision issued in application of a successfully challenged provision. Moreover, she asserted that, in the context of the Court's judgment in *Xero Flor w Polsce sp. z o.o. v. Poland* (no. 4907/18, 7 May 2021), the constitutional complaint could no longer be considered an effective remedy.

(b) The Court's assessment

55. Concerning the allegedly premature character of the complaint on account of the fact that the applicant had lodged her application with this Court before appealing against the first-instance resolution of the DCSC, the Court considers that, irrespective of whether this remedy could be regarded as an effective one for the purposes of Article 35 § 1 of the Convention, the objection as to non-exhaustion has lost its relevance, because in any event it accepts that the last stage of domestic remedies may be reached after the application has been lodged but before its admissibility has been determined (see *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018, *Karoussiotis v. Portugal*, no. 23205/08, § 57, 1 February 2011, and *Panayotopoulos and Others v. Greece*, no. 44758/20, § 90, 21 January 2025).

56. Concerning the constitutional complaint, the Court reiterates its position on preliminary objections as to non-exhaustion of domestic remedies involving a constitutional complaint which have been raised in similar terms in other Polish cases concerning the independence of the judiciary (see *Wałęsa*, cited above, §§ 152-53, and the case-law referenced therein), notably that the recent trend of the Constitutional Court's case-law indicated that that body was essentially determined to preserve the new judicial appointment procedure involving the recomposed NCJ. The Court further refers, in this respect, to the CJEU judgment of 18 December 2025 in *Commission v Poland* and the conclusion made therein (see paragraph 35 above).

57. In so far as the Government raised the possibility of the applicant bringing an action for damages under Article 417¹ of the Civil Code, the Court observes, considering its findings above regarding a possible constitutional complaint, that the Government's assertions concerning the civil action, the exercise of which would depend on the prior success of the constitutional complaint in question, remain speculative.

58. Concerning the third argument raised by the Government, that is the possibility for the applicant to request reopening of her case by the CPL, the Court notes that the new provisions expressly limited that possibility to cases where the DCSC had given a final decision lifting a judge's immunity. The Court further notes that the Government essentially conceded that this mechanism was not available to the applicant in the circumstances of her case (see paragraph 53 above). Based on that, the Court concludes that the Government have failed to demonstrate that the remedy had ever been available to the applicant, given that in the final decision by the DCSC it had refused to lift the applicant's immunity.

59. In the light of the foregoing, the Court dismisses the Government's objection regarding the applicant's alleged failure to make use of domestic remedies.

4. *Victim status*

(a) **The parties' submissions**

60. The Government contended that the DCSC's resolution of 7 June 2021 had been unequivocally favourable to the applicant in so far as it precluded her from being criminally prosecuted. In view of that resolution they argued that the applicant had lost her victim status and the application should be considered incompatible *ratione personae* with the provisions of the Convention.

61. The applicant disagreed with the Government and maintained that she had kept her victim status despite the favourable second-instance decision of the DCSC. She argued that the infringement of her rights by the DCSC at the first-instance could not have been remedied by another panel of the same body, tainted as it was with the same doubts as to the validity of the appointments of its members.

(b) **The Court's assessment**

(i) *General principles*

62. The Court reiterates a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006 V; *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts); and *Cristea v. the Republic of Moldova*, no. 35098/12, § 25, 12 February 2019). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020).

63. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67 *in fine*, 2 November 2010, and *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

64. With the above being said, the Court reiterates that, as per its well-established case-law, a full acquittal or the discontinuation of the proceedings against an applicant may constitute appropriate redress in respect of the criminal-limb guarantees of Article 6 of the Convention, with the appropriateness and sufficiency of redress depending on the nature of the violation complained of by the applicant (see *Sakhnovskiy*, cited above,

§§ 70-71). The case-law on this matter varies depending on the exact nature of the complaint raised by the applicant under Article 6 of the Convention, as it will be discussed below.

65. Concerning fairness of proceedings and impartiality and independence of a domestic court, an acquitted defendant or a person against whom criminal proceedings were discontinued cannot claim to be a victim of violations of the Convention which, according to him, took place in the course of the proceedings against him (see, among other authorities, *Komyakov v. Russia* (dec.), no. 7100/02, 8 January 2009; *Yaşar Kaplan v. Turkey* (dec.), no. 56566/00, 24 September 2004; *Osmanov and Husseinov v. Bulgaria* (dec.), no. 54178/00, 4 September 2003; and *Oleksy v. Poland* (dec.), no. 1379/06, 16 June 2009).

66. However, not all complaints under the criminal limb of Article 6 of the Convention can be considered automatically remedied by a favourable outcome of criminal proceedings. For example, the Court has found that, as regards complaints on the excessive length of criminal proceedings against an accused applicant, his or her acquittal or a reduction of sentence on account of such excessive length does not, in principle, deprive him or her of victim status within the meaning of Article 34 of the Convention (see *Freimanis and Līdums*, cited above, § 68). This general rule may, in particular, be subject to an exception where the national authorities have acknowledged, in a sufficiently explicit manner, the failure to comply with the reasonable-time requirement and have afforded redress by expressly and measurably reducing the sentence (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; *Wejrup v. Denmark* (dec.), no. 49126/99, ECHR 2002-IV; and *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI).

67. Similarly, the Court has found that an accused applicant complaining of a failure to have his case heard by a “tribunal established by law” may lose victim status where the domestic decision given by the impugned body is quashed and the case remitted to a differently composed bench, as long as the quashing decision carries an explicit acknowledgment and affords adequate redress for that violation (see *Freimanis and Līdums*, cited above, §§ 71-72, where the applicants raised no complaints as to the subsequent proceedings before a different bench).

(ii) *Application of the general principles to the present case*

68. The Court reiterates that the applicant’s complaint pertains to the characteristics of the judicial body which examined the case concerning the lifting of her judicial immunity and her suspension from judicial duties, namely the DCSC – a body whose compliance with the requirements of a “tribunal established by law”, was previously assessed, in the negative, in the case of *Reczkowicz* (cited above, § 281).

69. The Court notes, in this respect, that the entire proceedings concerning the applicant’s immunity and suspension were conducted before the DCSC,

and the second-instance resolution – however favourable to the applicant – was also given by the same body.

70. Against that background, the Court finds it important to compare and contrast the applicant's situation with that of Judge Tuleya (see *Tuleya*, cited above, §§ 255-64), in the light of its findings in the case *Freimanis and Līdums* (cited above). In *Tuleya*, the original resolution lifting that applicant's immunity and suspending him from his judicial duties had similarly been given by DCSC (ibid., §§ 43-44 and 256). However, the subsequent resolution lifting the applicant's suspension was given by a panel of the CPL, the composition of which was found to raise no concerns under Article 6 § 1 of the Convention in the light of the *Reczkowicz* judgment. The Court took into account, on the one hand, the composition of the body which gave the final decision (ibid., § 258), and on the other, the fact that the CPL panel in question had recognised that the suspension had been ordered by the DCSC – a body that did not meet the requirements of an independent and impartial tribunal established by law within the meaning of Article 6 § 1 of the Convention. The Court therefore found that the CPL had acknowledged – in substance – that there was a violation of Article 6 § 1 of the Convention in respect of the proceedings before the DCSC (ibid., § 260; thus, the Court followed the approach adopted in the above-cited case of *Freimanis and Līdums*, § 72). On this basis, the Court accepted that at last instance Judge Tuleya received a hearing before an “independent and impartial tribunal established by law”, as required by Article 6 § 1 of the Convention, notably due to lack of doubts as to the validity of the appointments of the members of the CPL panel concerned (ibid., § 261). Consequently, having found that the CPL resolution could be regarded as having afforded the applicant appropriate and sufficient redress in so far as his suspension was concerned, the Court concluded that the applicant had lost his victim status (ibid., § 262).

71. Turning to the case under review, the Court notes that the second-instance decision of the DCSC refused to lift the applicant's immunity, terminated her suspension and resulted in her remuneration being paid out to her. Consequently, following the criteria reiterated in *Sakhnovskiy* (cited above, § 67 *in fine*; see paragraph 63 above), the Court finds that the adverse consequences for the applicant (as resulting from the first-instance resolution) appear to no longer persist after the final domestic decision. However, with that being said, the Court observes the following circumstances relevant for the remaining criteria, that is, on the one hand, the nature of the right in issue and, on the other, the reasons advanced by the national authorities.

Firstly, the complaint raised by the applicant and examined herein does not concern material fairness of the proceedings before the DCSC but the alleged lack of compliance of that body with the requirements of a “tribunal established by law” on account of the appointment procedure to the DCSC. In this context, the Court reiterates that the process of appointing judges has fundamental implications for the proper functioning and the legitimacy of the

judiciary in a democratic State governed by the rule of law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 227, 1 December 2020). As such, the right in issue would, by design, require, that the body examining a complaint in this respect be free from similar doubts as to its very establishment (as was the case in both cases cited above, that is *Tuleya*, and *Freimanis and Līdums*, where the ensuing proceedings were conducted before different compositions).

Secondly, the second-instance DCSC panel was composed of judges appointed in the same procedure as the judge who examined the case at first instance. Thirdly, the second-instance panel expressly dismissed the complaints raised by the applicant that the DCSC was not a “tribunal established by law” (see paragraph 15 above). Therefore, the reasons on the basis of which the first-instance resolution had been amended had no connection with the applicant’s allegations concerning the composition of the DCSC. Thus, unlike in the *Tuleya* case, in the reasons of its resolution the second-instance panel did not recognise that the first-instance panel failed to meet the requirements of a “tribunal established by law”, as per the findings in *Reczkowicz*. It also did not acknowledge, neither expressly, nor in substance, a violation of the applicant’s right under Article 6 § 1 of the Convention on that account.

72. Against that background, and considering that the conditions of acknowledgment and redress for the breach of the Convention are cumulative (see *Rooman*, cited above, § 129), the Court finds that, in the specific circumstances of the present case, the resolution of 7 June 2021 could not have deprived the applicant of her status as a victim in relation to the complaint under Article 6 § 1 of the Convention that the DCSC had not been a “tribunal established by law”.

73. In view of the foregoing, the Government’s preliminary objection as to the applicant’s victim status in respect of the proceedings before the DCSC must be dismissed.

5. *Conclusions as to admissibility*

74. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The applicant’s submissions*

75. The applicant argued that the DCSC, which had dealt with her case, did not meet the requirements of an “independent and impartial tribunal established by law”. She argued that the DCSC had been established in flagrant breach of the domestic law since the judges of that Chamber had been

appointed by the President of the Republic on the recommendation of the recomposed NCJ, which, in turn, had been established contrary to the Constitution. In that latter respect, citing the Court's judgment in *Reczkowicz* (cited above), the applicant referred to the fact that judicial members of the NCJ had been elected by the *Sejm* and not by their peers, and that the term of office of the previous judicial members had been unlawfully terminated.

2. *The Government's submissions*

76. The Government argued that there had been no manifest breach of domestic law with regard to the process of appointing the judges of the DCSC who had heard the applicant's case. Referring to *Guðmundur Andri Ástráðsson* (cited above), they noted that the Convention did not establish any universally binding model with regard to the procedure for appointing candidates to judicial office, nor did it prohibit the cooperation of the authorities in that procedure. Accordingly, the applicant's assertion that the judges adjudicating in her case had been improperly appointed as a result of being subject to unspecified political influence by the NCJ seemed to be devoid of any substantive basis and could not constitute a violation of Article 6 § 1. The Polish legislature could not be accused of violating any standards applicable to the appointment of judges on account of the participation of the *Sejm* in the election of the judicial members of the NCJ. Although representatives of the legislature and members of the executive, including the Minister of Justice, were members of the NCJ, the independent constitutional authority of the State, they acted only as its members without having a decisive role in making any decisions. In addition, it had to be noted that the majority of the members of the NCJ were judges.

77. Furthermore, as regards the right to an "independent and impartial tribunal established by law", the Government restated the same arguments as those that they had already submitted in the case of *Juszczyszyn* (cited above, §§ 171-78).

3. *The Court's assessment*

(a) **General principles**

78. The general principles regarding the scope of, and meaning to be given to, the concept of a "tribunal established by law" were set out in *Guðmundur Andri Ástráðsson* (cited above, §§ 211-34). In the same judgment, the Court developed a threshold test made up of three criteria, taken cumulatively, in order to assess whether the irregularities in a given judicial appointment procedure were of such gravity as to entail a violation of the right to a tribunal established by law, and whether the balance between the competing principles had been struck by the State authorities (*ibid.*, §§ 243-52).

(b) Application of the general principles to the present case

79. In the present case, the alleged violation of the right to a “tribunal established by law” concerns the DCSC, which decided – at both instances – on the issues of the applicant’s immunity and suspension. The applicant submitted that the judges of that Chamber had been appointed by the President of the Republic upon the recommendation of the recomposed NCJ in manifest breach of the domestic law within the meaning adopted in the Court’s case-law.

80. In *Reczkowicz* (cited above) the Court previously examined whether the fact that an applicant’s case had been heard by the DCSC had given rise to a violation of her right to a “tribunal established by law”, in the light of the three-step test as set out in *Guðmundur Andri Ástráðsson* (cited above, § 243), and found a violation of Article 6 § 1 of the Convention in that regard (*ibid.*, §§ 281-82).

81. In the present case, the Government contested the findings made in the *Reczkowicz* judgment. The Court previously examined the Government’s arguments, which were phrased in similar terms, in the *Juszczyszyn* case and dismissed them (see *Juszczyszyn*, cited above, §§ 200-09). The grounds on which the Court reached its conclusions still stand. It is therefore unnecessary to reiterate them in detail in the present case.

82. In sum and for the same reasons as in the cases of *Reczkowicz*, *Juszczyszyn* and *Tuleya* (all cited above), the Court concludes that the DCSC, which examined the applicant’s case, was not a “tribunal established by law”.

83. Having made that finding, it further holds that the question whether those irregularities have also compromised the independence and impartiality of the same court has already been answered in the affirmative and does not require further examination (see *Reczkowicz*, § 284; *Juszczyszyn*, § 215, and *Tuleya*, § 344, all cited above; see also *Advance Pharma sp. z o.o. v. Poland*, § 353, no. 1469/20, § 353, 3 February 2022).

84. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the right to an independent and impartial tribunal established by law.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

85. The applicant complained that her right to respect for her private life had been violated on account of the DCSC’s resolution of 12 October 2020 lifting her immunity and suspending her from her judicial duties. She relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. Applicability of Article 8

(a) The Government’s submissions

86. Referring to *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018), the Government maintained that there was insufficient evidence to conclude that the alleged loss of the applicant’s social or professional reputation reached the degree of seriousness required by Article 8 of the Convention. Equally, there was no evidence to demonstrate that on account of the impugned measures the “inner circle” of the applicant’s private life, or her opportunity to establish and develop relationships with others, had been affected. They argued that any reputational or private life interference had arisen as a foreseeable consequence of the applicant’s own actions, which were subject to lawful criminal procedures under domestic law. The Government stressed that the impugned measures, that is the lifting of her immunity accompanied by her suspension from judicial duties and a salary reduction, had been temporary, proportionate, and aimed solely at safeguarding the authority and integrity of the judiciary. Furthermore, they maintained that the applicant’s suspension had been of relatively short duration and had not had a very serious impact on her financial situation. On these grounds, the Government contended that the complaint under Article 8 was incompatible *ratione materiae* with the Convention.

(b) The applicant’s submissions

87. The applicant responded that Article 8 was applicable in the circumstances of her case. She maintained that the lifting of her immunity, combined with her suspension from judicial duties, had resulted in serious negative consequences for her reputation and judicial career. She referred, *inter alia*, to the fact that the decisions in her case were given by the DCSC, a body whose independence and impartiality had been contested, as well as to the fact that the Supreme Court had published on its website written reasons for the first-instance resolution, which had stated that she had committed reprehensible acts.

88. In addition, the lifting of the applicant’s immunity combined with her suspension had undermined her competence to hold office in the eyes of the public. Because of the duties entrusted to her, she should be perceived by citizens as someone of good repute, trustworthy and of the highest ethical standards. The public were sensitive to the behaviour of judges, as theirs was a profession of public trust which was subject to greater scrutiny.

89. The applicant further submitted that she and her relatives had been living in constant fear of becoming targets of hatred and attacks. She had been in a state of permanent stress on account of attacks by the authorities and the media that were associated with them. The applicant stated that the impugned proceedings before the DCSC had been covered in detail by journalists working in such media, who had used emotive language, such as, for example “martyr judge”, “why is the president of the ‘Themis’ association publicly lying...”, “the hysteria about the hearing regarding Judge Morawiec’s immunity”. The applicant also referred to offensive comments about her that had been posted by readers underneath the articles in question or on social media. She submitted that the intimidation and constant stress resulting from the public attacks had contributed to her beginning to suffer from depression, for which she had had to seek professional medical help.

90. The applicant emphasised that, even after the second-instance resolution of the DCSC, which found that the prosecutor’s request had not sufficiently substantiated the suspicion of her having committed a crime, she was targeted by personal attacks in the media by high ranking politicians belonging to the then ruling party (notably the Minister of Justice), who had continued to suggest that she had committed reprehensible acts.

91. Furthermore, the applicant submitted that the 50% reduction of her salary during the suspension had forced her to rely on financial assistance from third-parties. She conceded that the outstanding amounts had been paid after she had resumed her judicial duties, but pointed out that, firstly, the reimbursement had not included interest for late payment or the so-called “13th monthly salary”, and, secondly, that the very need to ask for financial assistance had been emotionally difficult and offensive to her dignity.

(c) The Court’s assessment

(i) General principles

92. The general principles regarding the applicability of Article 8 to employment-related disputes were summarised by the Court in *Denisov* (cited above, §§ 115-17).

(ii) Application of the general principles to the present case

93. In the present case, the applicant alleged that an interference with her right to respect for her private life had resulted from the DCSC resolution of 12 October 2020 lifting her immunity and suspending her from her judicial duties. The Government claimed that those measures had been prompted by the applicant’s conduct, which had been incompatible with the authority of judicial office and was related to a breach of criminal law. The Court finds that the reasons underpinning the impugned measures were linked to the performance of the applicant’s professional duties and had no connection to her private life. It is therefore the consequence-based approach which may

bring the issue under Article 8 (see *Tuleya*, cited above, § 375, and *Denisov*, cited above, § 107), provided that the consequences for the applicant's life were very serious and affected her private life to a very significant degree (*Denisov*, cited above, §§ 114 and 116).

94. The Court notes that the applicant contested the very existence of any misconduct on her part. Having regard to its finding under Article 6 § 1 of the Convention (see paragraphs 79-84 above), the Court further observes that the applicant's alleged misconduct was never established in any proceedings. There are therefore no grounds for applying the *Gillberg* exclusionary principle as suggested by the Government (see paragraph 86 above, *Gillberg v. Sweden* [GC], no. 41723/06, § 68, 3 April 2012, and *Tuleya*, cited above, § 376).

95. It remains to be seen, however, whether there has been sufficiently serious prejudice to the applicant's enjoyment of her right to respect for any of the elements composing her private life, namely: (i) her "inner circle", (ii) her opportunities to establish and develop relationships with others, or (iii) her reputation (see *Denisov*, cited above, § 120).

96. As to the consequences of the impugned decision for the "inner circle" of the applicant's private life, the Court notes that, apart from lifting the applicant's immunity, the DCSC further ordered her suspension from her judicial duties and a 50% reduction of her salary for the duration of the suspension. In that connection, the Court notes, on the one hand, that the level of salary reduction was significant (particularly as it was the maximum reduction that could be imposed – for details, see *Tuleya*, cited above, § 144) and – on the other hand – that it was a temporary measure, after the ending of which the outstanding remuneration was paid out to her (see paragraph 16 above). That being so, even assuming that the reduction in the applicant's remuneration did not seriously affect the "inner circle" of her private life, the Court finds that during the relevant period her suspension deprived her of the opportunity to continue her judicial work and to inhabit a professional environment where she could pursue her goals of professional and personal development (see *Gumenyuk and Others v. Ukraine*, no. 11423/19, § 88, 22 July 2021; *Juszczyszyn*, cited above, § 235; and *Tuleya*, cited above, § 385).

97. As regards the applicant's ability to establish and develop relationships with others, the Court observes that the consequences of the applicant's suspension were indisputably significant, given that she was prevented from exercising her judicial duties, which constituted her fundamental professional role, from 12 October 2020 to 7 June 2021, or for 7 months and 26 days, which – while shorter than in the previous cases of suspended Polish judges (see *Juszczyszyn*, § 236 and *Tuleya*, § 385, both cited above, where the period of suspension exceeded two years in each case) must still be considered a substantial period (compare and contrast with *Gashi and Gina v. Albania*, no. 29943/18, §§ 56-58, 4 April 2023, where the first

applicant, a prosecutor, had been suspended for two and a half months with the continued payment of salary, which the Court found insufficient to attain the requisite threshold).

98. Moving on to the consequences of the impugned decision for the applicant's reputation, the Court finds that, even taking account of the interlocutory nature of the proceedings concerning the lifting of immunity, the first-instance findings of the DCSC that there was a reasonable suspicion that the applicant, an experienced criminal-law judge (see paragraph 7 above), had committed a criminal offence in connection with the exercise of her duties, clearly called into question her judicial integrity, competence and professionalism. As such those findings were evidently capable of adversely affecting the applicant's professional reputation (see *Tuleya*, cited above, § 384 and the case-law cited therein). A further consequence of the DCSC's findings was that, in the eyes of at least some members of the public, the applicant could be perceived as being unworthy of holding judicial office (compare and contrast with *Xhoxhaj v. Albania*, no. 15227/19, § 363 *in fine*, 9 February 2021).

99. Lastly, the Court considers it relevant to take account of the context of the case, namely (i) that the applicant was the president of an association that was highly critical of the judicial reforms undermining the rule of law standards and judicial independence, and (ii) that the applicant was involved in a civil dispute concerning her reputation with the Minister of Justice on account of statements published in connection with her dismissal from the post of President of the Cracow Regional Court (see paragraphs 7-11 above; compare with *Tuleya*, cited above, § 386).

100. Having regard to the nature and the duration of the various negative effects stemming from the lifting of the applicant's immunity, along with the suspension and salary reduction (see paragraphs 13, 15-16 above), and the reactions of public officials and public media to the applicant's case (see paragraphs 19 and 21 above) the Court considers that the impugned measures affected her private life to a very significant degree, falling therefore within the scope of Article 8 of the Convention (see, *mutatis mutandis*, *Gumenyuk and Others*, cited above, §§ 88-89; and *Tuleya*, cited above, § 387). The Government's objection is therefore dismissed.

2. *Exhaustion of domestic remedies*

(a) **The Government's submissions**

101. The Government raised a preliminary objection of non-exhaustion of domestic remedies in respect of the complaint under Article 8.

102. They contended that the applicant had had at her disposal an effective remedy, namely a civil action under Articles 23 and 24 of the Civil Code read in conjunction with Article 448 of that Code, but had failed to initiate civil proceedings for damages on account of the alleged breach of her personal

rights. The Government emphasised that the applicant had been well aware of that legal avenue as she had employed it, successfully, in her dispute with the Minister of Justice (see paragraph 11 above).

103. Moreover, the Government relied – in respect of the complaint under review – on the same arguments as they raised in respect of Article 6 and the lack of an appeal, at the moment when the instant application was lodged with the Court, against the first-instance resolution of the DCSC (see paragraph 53 above).

(b) The applicant's submissions

104. The applicant contested the Government's objection regarding the non-exhaustion of domestic remedies. She claimed that no effective remedy was available to her under domestic law.

105. As regards a civil action for the protection of her personal rights under the Civil Code, the applicant argued that bringing such an action would not have remedied the alleged breach of Article 8 of the Convention in her case. The applicant further argued that the Government had failed to offer any evidence of that particular remedy having been effective in similar cases. Such an action would not have addressed the essence of the case because it could only concern specific statements or articles tarnishing a complainant's reputation and not systemic breaches of rights such as those committed by the State against her in this case.

(c) The Court's assessment

106. Concerning the Government's reliance on a civil action for protection of personal rights, the Court notes that they failed to explain how that remedy could have specifically put right the applicant's grievances under Article 8 of the Convention in the sense of remedying directly the impugned state of affairs and providing her with the requisite redress for the purposes of Article 35 § 1 of the Convention (see *Tuleya*, cited above, § 402). In that regard, the Court would reiterate that, as regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 139 and 143, 27 November 2023, both with further references to the Court's case-law). In that context, the Court notes that the Government did not explain how the civil proceedings, which

the applicant presumably should have brought against the Minister of Justice, could have remedied her situation in so far as her personal rights were affected by the rulings of the DCSC.

107. As regards the Government's reliance on the lack of appeal against the first-instance resolution at the time when the application was lodged, the Court reiterates its findings made under the Article 6 complaint (see paragraph 55 above).

3. *Victim status*

(a) **The Government's submissions**

108. The Government advanced identical arguments as regards the applicant's victim status under Article 8 as those raised under Article 6 (see paragraph 60 above).

(b) **The applicant's submissions**

109. The applicant disagreed with Government's arguments, maintaining that she had kept her victim status despite the second-instance resolution of the DCSC which had allowed her to resume her work and resulted in the withheld part of her remuneration being paid to her. She argued that it was difficult to imagine a more serious act against a judge than publicly accusing him or her of a crime and suspending him or her from his or her professional activities. She further emphasised that the lifting of her immunity had been accompanied by a number of press releases suggesting that she had committed a crime, and that even the first-instance resolution of the DCSC (which was made publicly available) contained a number of statements which had tarnished the applicant's image in the eyes of the public.

(c) **The Court's assessment**

(i) *General principles*

110. The general principles regarding victim status were summarised by the Court in *Tuleya* (cited above, §§ 252-54).

(ii) *Application of the general principles to the present case*

111. The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive him or her of his or her status as "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention; only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Tuleya*, cited above, § 253 and the case-law cited therein).

112. Turning to the circumstances of the instant case, the Court acknowledges that the second-instance resolution of the DCSC remedied part of the negative consequences of the first-instance resolution (that is the lifting of the applicant's immunity, as well as her suspension and the reduction of her salary). However, the same cannot be said, for three reasons, as regards the consequences for the applicant's reputation. Firstly, the written reasons of the second-instance resolution did not completely dispel doubts as to the legality of the applicant's actions; rather, the DCSC indicated that the request for lifting her immunity had been premature on account of insufficient evidentiary initiative of the prosecutor and suggested that the applicant's alleged actions could raise issues within disciplinary, rather than criminal, proceedings (see paragraph 15 above). Secondly, and in connection with the previous point, the DCSC did not, in any way, acknowledge a breach of the applicant's rights under Article 8 of the Convention. Thirdly, the Court notes that, following the second-instance resolution, high-ranking politicians of the then Government continued to make statements suggesting that the applicant had committed reprehensible acts, and that the resolution had, in reality, "deprived" her of the possibility to clear her name in regular criminal proceedings (see paragraph 21 above).

113. Consequently, the Government's objection concerning the applicant's alleged loss of victim status must be dismissed.

4. Overall conclusions as to admissibility

114. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

115. The applicant maintained that the interference with her right to respect for her private life in the form of the DCSC's resolution lifting her immunity had not been "in accordance with the law", since domestic law did not afford her adequate safeguards in respect of what she considered to have been the illegal activities of the DCSC.

116. Next, the applicant argued that the interference in her case had not pursued any legitimate aim. She submitted that the real motivation behind the impugned measures had been to create a "chilling effect" intended to discourage and scare judges away from taking steps in defence of the independence of the judiciary. She further contended that such far-reaching action against her as the attempt to charge her with committing a crime had been intended to send a clear signal to other judges, and to every average

citizen, that it was not worth opposing the authorities because they would stop at nothing to achieve their objectives.

117. The applicant further maintained that the interference in her case had not been “necessary in a democratic society” and was contrary to its fundamental values.

118. The applicant stated that her case had not been an isolated incident where the authorities had taken disciplinary and criminal measures against judges with a view to undermining their credibility. The authorities had used the applicable regulations as instruments to persecute the applicant, who had publicly opposed the unconstitutional changes to the justice system. Similarly, the legal harassment of the applicant had given rise to an interference with her judicial independence, and therefore to an unlawful act violating not only her rights, but also the rights of all citizens to be judged by an independent and impartial tribunal.

2. *The Government’s submissions*

119. The Government maintained their earlier submissions that the complaint under Article 8 was incompatible *ratione materiae* with the Convention. They further argued that the DCSC’s resolution of 12 October 2020 had not contravened the requirements of Article 8 § 2 of the Convention.

120. As regards the lawfulness of the alleged interference, they submitted that the impugned resolution of the DCSC had been based on the relevant legal provisions applicable at the time and had been adopted owing to a reasonable suspicion that the applicant might have committed criminal offences. As a result, in the Government’s view, the alleged interferences had had a solid basis in domestic law.

121. Furthermore, the Government contended that the impugned measures had pursued the legitimate aims of the prevention of crime and the protection of the rights of others and the authority of the judiciary, in the context of the proper administration of justice. The alleged commission by the applicant of unlawful acts could have also infringed the rights of the parties to the proceedings in the course of which she had allegedly committed those acts.

122. As regards the assessment of necessity, the Government submitted that the alleged interference had not gone beyond what was strictly necessary in a democratic society and that it had been proportionate to the legitimate aims pursued. They referred to the wording of an oath that judges took upon their appointment and other constitutional and statutory provisions binding on all judges.

123. Taking account of the above regulations, the Government maintained that all Polish judges, including the applicant, were subjected to the same rules, which required them to abide by the highest ethical and professional standards of conduct. Any signs of behaviour deviating from such standards would be scrutinised and thoroughly examined by the relevant

authorities in order to safeguard the authority of the judiciary. In particular, allegations of criminal conduct of a judge required an immediate and firm response. It would be unfounded to expect that the appropriate provisions of generally applicable laws would not be applied to the applicant's conduct. Such an expectation would inevitably contravene the principle of equality before the law.

124. The Government submitted that the applicant's judicial immunity had been lifted on the basis of a reasonable suspicion that she might have committed an offence in the exercise of her judicial duties. They noted that such an allegation had cast a shadow on the applicant's professional conduct and led to doubts as to her ability to properly deliver justice. The adoption of the resolution of 12 October 2020 lifting the applicant's immunity had simply enabled the authorities to fulfil their duties related to the prosecution of crimes. In this regard, it could not be overlooked that the powers and privileges which judges enjoyed were not tantamount to releasing them entirely from any liability in the event of a criminal offence being committed.

125. In addition, the Government emphasised that the applicant's suspension and the reduction of her salary (see paragraphs 13, 15-16 above) had been mandatory consequences of her judicial immunity being lifted, rather than a discretionary decision of the DCSC. They further added that the second-instance resolution of the DCSC had lifted the applicant's suspension and resulted in the withheld part of her remuneration being paid in full.

126. In conclusion, the Government argued that the domestic authorities had carried out a careful analysis and had sought to strike a balance between the protection of the applicant's private life and the need to pursue the aforementioned legitimate aims. Consequently, they submitted that no violation of Article 8 of the Convention had occurred in the case.

3. *The Court's assessment*

127. As established above, the lifting of the applicant's immunity and her ensuing suspension from exercising judicial duties affected her private life to a very significant degree (see paragraph 100 above). The impugned measures therefore constituted an interference with the applicant's right to respect for her private life (see *Tuleya*, cited above, § 428).

128. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned.

(a) "In accordance with the law" - general principles

129. The general principles concerning the lawfulness of interference have been summarised in *Tuleya* (cited above, §§ 430-33).

(b) Application of the general principles to the present case

130. In terms of statute law, the Court observes that the decision on the lifting of the applicant's immunity was based on section 80(2c) of the Act of 27 July 2001 on the Organisation of Ordinary Courts (see *Wróbel v. Poland* (dec.), § 30, 25 March 2025), while her suspension was based on section 129(2) and (3) of the same Act (see *Tuleya*, cited above, § 144). However, even though the interference complained of had a basis in statute law, the question arises whether it was lawful for the purposes of the Convention, notably whether the relevant legal framework was foreseeable in its application and compatible with the rule of law (see *Gumenyuk and Others*, § 97 and *Tuleya*, § 439, both cited above).

131. The Court notes that, in accordance with Article 181 of the Polish Constitution, a judge cannot be held criminally liable without the prior consent of a court, while pursuant to Article 180 § 2 of the Constitution, suspension of a judge from office can only result from a court judgment (see *Tuleya*, cited above, §§ 143 and 440). In the case of *Reczkowicz* (cited above) the Court has previously found that the DCSC failed to satisfy the requirements of an “independent and impartial tribunal established by law” as prescribed in Article 6 § 1 of the Convention. It is also to be reiterated that, in that context, the Court has held that the irregularities in the appointment process compromised the legitimacy of the DCSC to the extent that, following an inherently deficient procedure for judicial appointments, it lacked the attributes of a “tribunal” which is “lawful” (see *Reczkowicz*, cited above, § 280).

132. The Court further notes that the CJEU held, in its judgment of 15 July 2021 in *Commission v. Poland (Disciplinary regime for judges)*, C-791/19, EU:C:2021:596, that Poland had failed to fulfil its obligations under Article 19(1) of the Treaty on European Union by, in particular, “failing to guarantee the independence and impartiality of the Disciplinary Chamber of the Supreme Court” (see *Tuleya*, cited above, §§ 229-31 and 441). Furthermore, the Supreme Court in a resolution on legal interpretation of 23 January 2020 found that the DCSC had “structurally fail[ed] to fulfil the criteria of an independent court within the meaning of Article 47 of the Charter and Article 45 § 1 of the Constitution of the Republic of Poland and Article 6 § 1 [of the Convention]” (ibid., §§ 199-200).

133. In view of the foregoing and having regard to its above considerations under Article 6 § 1 (see paragraphs 79-84 above), the Court finds that the decision permitting the applicant to be held criminally liable, suspending her and reducing her salary (see paragraph 13 above) was given by a body which cannot be considered a “court” for the purposes of the Convention, despite the explicit requirements under Article 181 and Article 180 § 2 of the Polish Constitution that decisions of that kind must emanate from a court (see *Tuleya*, cited above, §§ 143 and 442).

134. The impugned interference thus cannot be regarded as lawful in terms of Article 8 of the Convention because it was not based on a “law” that afforded the applicant proper safeguards against arbitrariness (*ibid.*, §§ 432 and 443).

135. This conclusion in itself is sufficient for the Court to establish that the interference with the applicant’s right to respect for her private life was not “in accordance with the law” within the meaning of Article 8 of the Convention (compare with *Tuleya*, cited above, § 443).

(c) Conclusion

136. In view of its conclusion that the interference in the present case was not lawful, the Court is dispensed from having to examine whether it pursued any of the legitimate aims referred to in Article 8 § 2 and whether it was necessary in a democratic society.

137. There has accordingly been a violation of Article 8 of the Convention on the basis that the interference at issue was not “in accordance with the law”.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

138. The applicant complained that the DCSC’s resolution of 12 October 2020 lifting her immunity and suspending her from her judicial duties had amounted to a violation of her freedom of expression in so far as it had been taken in reaction to (i) her public activity, particularly her criticism of the reorganisation of the judiciary by the then Government, as well as her role as President of the Judges’ Association Themis and to (ii) the civil action she had lodged against the Minister of Justice (see paragraph 11 above). She relied on Article 10 of the Convention, of which the relevant part provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

1. *The parties’ submissions*

139. Relying on essentially the same arguments as those raised under Article 8, the Government maintained that (i) the applicant had failed to avail

herself of the remedies available under domestic law for her complaint under Article 10, in particular a civil action for the protection of her personal rights under Articles 23 and 24 of the Civil Code, and that (ii) the applicant had lost her victim status on account of the favourable second-instance resolution of the DCSC.

140. The applicant contested the Government's objections. She claimed that no effective remedy was available to her under domestic law and that she maintained her victim status, referring to the same arguments as made earlier in respect of the complaint under Article 8 (see paragraphs 104-105 and 109 above).

2. The Court's assessment

141. The Court notes that the applicant's complaint under Article 10 concerns the DCSC's resolution of 12 October 2020 lifting the applicant's immunity and suspending her from judicial duties. The Government argued, in general terms, that the applicant should have had recourse to a civil action for the protection of her personal rights. However, they offered no explanation as to how that remedy could have provided redress for the applicant's grievances under Article 10 of the Convention. The Court finds that its above conclusions as to the lack of effectiveness of a civil claim for infringement of personal rights regarding the applicant's situation in respect of Article 8 equally apply to the complaint under Article 10 (see paragraph 106 above). The present objection must accordingly be dismissed.

142. Concerning the objection as to the lack of victim status on the part of the applicant, the Court reiterates that the second-instance resolution of the DCSC of 7 June 2021 offered no acknowledgment that a violation had occurred in respect of her. Consequently, the Court finds that its conclusions as to the applicant's victim status under Article 8 (see paragraphs 111-113) also apply with respect to the complaint under Article 10.

143. The Court further notes that the complaint under Article 10 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

144. The applicant submitted that she was one of the most outspoken representatives of the judicial community in Poland, never hesitating, when delivering judgments and taking part in the public debate, to take opportunities to draw the public's attention to legal arguments, the requirements of the rule of law, and the responsibility and accountability of those in power. She stated that, as a result, her rulings and public activity

resonated widely as a voice of the independent judiciary, while also attracting hostile reactions from the then Polish authorities and from circles favourable to the then Government. She noted that her activities had been described by Amnesty International in an article entitled “Stories of unbreakable judges – Igor Tuleja, Paweł Juszczyszyn and Beata Morawiec”².

145. The applicant argued that there had been an interference with her freedom of expression. She averred that the measures taken against her, namely the proceedings aimed at lifting her judicial immunity and charging her with crimes, were the consequence of (i) her public criticism of the authorities’ actions aimed at undermining judicial independence; (ii) her being the President of the Judges’ Association Themis, itself very active in public debate; and (iii) her decision to bring proceedings against the Minister of Justice in connection with her unlawful dismissal from the post of President of the Cracow Regional Court.

146. The applicant reiterated that the association over which she presided had regularly spoken up in defence of the independence of the judiciary in Poland in general, as well as in defence of repressed judges and other independent lawyers facing disciplinary proceedings related to their activities in defence of the rule of law. She further submitted that the association had been actively criticising the then Minister of Justice, including by calling for his resignation.

147. The applicant observed that the actions aimed at lifting her judicial immunity had been taken several months after her civil claim against the Minister of Justice had been upheld at first instance. She further argued that the then Minister of Justice, Mr Zbigniew Ziobro, had had a strongly negative personal attitude towards her which, she contended, was evidenced by the public criticism, by the Minister, of the second-instance resolution of the DCSC (see paragraph 21 above). She added that in bringing the proceedings against the Minister of Justice, she had not been acting to protect only her own interests; rather, it had been her response to allegations against the whole of the judicial community in Cracow. As the former President of the Cracow Regional Court and as the President of the Judges’ Association Themis, she had felt that it was her duty to defend her own reputation and that of her fellow judges at the Cracow courts.

148. The applicant further argued that the view, according to which the impugned actions against her had been taken as a reprisal for her public activity, was shared by the public. She cited the interview with Judge Safjan in support of her submissions in that respect (see paragraph 18 above).

149. The applicant stated that the true aim of all the measures taken against her by the authorities had been to produce a “chilling effect” with a view to discouraging her and other judges from taking a position on the

² <https://www.amnesty.org.pl/stories-of-unbreakable-judges-igor-tuleja-pawel-juszczyszyn-and-beata-morawiec/>

Government's actions against the judiciary. She submitted that the sole fact that she had continued participating in the public debate on matters relating to the judiciary and the rule of law did not mean that the "chilling effect" was absent in her case. She also referred to the "hate campaign scandal", which had involved high-ranking public officials (see paragraph 9 above).

150. The applicant maintained that a sanction did not need to be imposed in order to achieve a chilling effect, as the mere fact of having been investigated or the risk of being investigated under unclearly drafted and interpreted legislation could constitute a violation of the right to freedom of expression. She referred to the case of *Altuğ Taner Akçam v. Turkey* (no. 27520/07, 25 October 2011) in that connection.

151. The applicant contended that the series of stigmatising messages from the representatives of the authorities, as well as the media smear campaign against her, had all been elements leading to the unlawful decision of the DCSC lifting her judicial immunity and suspending her from her duties. In the same vein, the actions of the State Prosecutor's Office had been taken with a view to ultimately removing her from judicial office. In the applicant's view, an examination of the sequence of events in their entirety clearly showed that sanctions against her had been introduced in reaction to her public statements and activity in defence of judicial independence as well as to the civil lawsuit she had filed against the Minister of Justice.

152. The applicant submitted that the lifting of her immunity, reduction of her salary and suspension from judicial duties (see paragraphs 13, 15-16 above) had also constituted the authorities' warning to all judges, showing what could happen to them for publicly defending the rule of law and the independence of the judiciary. In her view, the DCSC's resolution had to be seen against the background of all the circumstances of the case. The proceedings before the DCSC had become a pretext for the legal harassment of the applicant and for imposing unlawful restrictions on her freedom of expression.

153. The applicant stressed that in publicly addressing threats to judicial independence she had complied with the obligations arising from Article 178 § 3 of the Constitution. She stated that it was her obligation as a judge to speak out in protection of judicial independence and referred on that point to the Magna Carta of Judges (Fundamental Principles) adopted by the Consultative Council of European Judges (CCEJ) and the Sofia Declaration on Judicial Independence and Accountability adopted by the European Network of Councils for the Judiciary (ENCJ). The applicant emphasised that both in the exercise of her judicial duties and in her public statements she had always been guided by the law and the principles of the judicial profession.

154. In the applicant's view, the course of events in her case and a significant portion of the evidence adduced by her before the Court confirmed the existence of a causal link between the exercise of her freedom of

expression and the measures taken against her by the authorities, in particular the DCSC's resolution of 12 October 2020.

155. The applicant argued that the interference at issue did not meet the requirements of Article 10 § 2 of the Convention. The applicant maintained that the interference with her freedom of expression resulting from the DCSC's resolution of 12 October 2020 had not been "prescribed by law".

156. She further argued that the interference at issue had not pursued any legitimate aim within the meaning of Article 10 § 2 of the Convention. All her actions as a judge and all her public statements had been intended in fact to maintain the authority and impartiality of the judiciary, which had been undermined by the authorities then in power. She referred in that regard to the DCSC's second-instance resolution finding a lack of reasonable suspicion that she had committed an offence.

157. The applicant contended that the impugned interference had not been necessary in a democratic society. She argued that none of her actions – whether the exercise of her judicial functions, her involvement in public debate, her being the President of the Judges' Association Themis, or her bringing proceedings against the Minister of Justice – could justify the interference with her freedom of expression.

158. In her view, there had been no "pressing social need" that could justify the lifting of her immunity.

159. The applicant argued that the proceedings before the Disciplinary Chamber, a body which did not meet the requirements of an "independent and impartial tribunal established by law", could not be regarded as fair or attended by adequate procedural safeguards.

2. The Government's submissions

160. The Government maintained that there had been no interference with the applicant's freedom of expression. They stressed that the DCSC's resolution of 12 October 2020 had not related to any statements or views expressed by the applicant in the context of a public debate, her role as the President of the Judges' Association Themis or her action against the Minister of Justice but had been based solely to her alleged criminal activities. The Government added that the criminal proceedings concerning corruption in the Cracow Court of Appeal, in connection with which the prosecutor had sought to lift the applicant's immunity, had been initiated in 2016. Almost sixty persons, including those in managerial positions, had been charged in those proceedings.

161. Furthermore, the Government emphasised that following the DCSC's first-instance resolution the applicant had continued her public activities. Therefore, the applicant had not been pressured by anyone to remain silent and no authorities had legally obliged her to refrain from publicly commenting on political events and legislative developments. Relying on the above information, the Government maintained that it would

be unfounded to claim that measures undertaken with regard to the applicant had amounted to an interference with her freedom of expression.

162. For those reasons, the applicant's case differed significantly, in the Government's view, from those of *Baka v. Hungary* ([GC], no. 20261/12, 23 June 2016) and *Kudeshkina v. Russia* (no. 29492/05, 26 February 2009) in the following two aspects. Firstly, in both of those cases the applicants had been subjected to harsh sanctions in the form of removal either from the office of judge or from the position of court president. By contrast, in the present case no sanction had been imposed on the applicant and no disciplinary proceedings had been initiated against her. Secondly, the Court had found in the two above-mentioned cases that the impugned measures had had a "chilling effect" on judges who had expressed criticism of constitutional and legislative reforms affecting the organisation of the justice system (*Baka*, cited above, §§ 168-76) or who wished to participate in public debate on the effectiveness of the judicial institutions (*Kudeshkina*, cited above, §§ 97-99). However, in the present case the applicant had continued to criticise the attempts to reform the justice system and thus it did not appear that the impugned measures had produced any "chilling effect".

163. In that regard, the Government argued that mere allegations that the contested measures had had a "chilling effect", without clarifying in which specific situation such an effect had occurred, was not sufficient to constitute interference for the purposes of Article 10 of the Convention (they referred to *Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland* (dec.), no. 68995/13, § 72, 12 November 2019).

164. Referring to *Morice v. France* ([GC], no. 29369/10, §§ 128 and 162, ECHR 2015), the Government stated that the particular task of the judiciary in society required judges to observe a duty of discretion. That duty pursued a specific aim: the discourse of judges was received as the expression of an objective assessment which committed not only the judge expressing himself or herself as an individual, but also, through that judge, the entire justice system. In addition, judicial authorities, in the exercise of their adjudicatory function, were required to exercise maximum discretion not only with regard to the cases with which they dealt, but also in expressing criticism towards fellow public officers and, in particular, other judges (the Government referred to *Di Giovanni v. Italy*, no. 51160/06, 9 July 2013).

165. Having regard to the case-law cited above, the Government submitted that judicial office was associated with certain limitations, including in the area of freedom of speech. In the Polish legal system, those limitations were prescribed in the Constitution and in statute law. The interviews and public statements delivered by the applicant indicated that she might have failed to observe the duty of discretion and lacked restraint in exercising her freedom of expression, contrary to Article 178 of the Constitution, which imposed an obligation of impartiality on judges, this being inextricably linked to the principle of independence.

166. Should the Court decide that the DCSC's resolution of 12 October 2020 amounted to an interference with the applicant's freedom of expression, the Government argued that the interference had satisfied the requirements of Article 10 § 2 of the Convention.

167. The Government submitted that the interference complained of had been "prescribed by law", referring to their earlier submissions with regard to the complaint under Article 8 of the Convention (see paragraph 120 above). The DCSC's resolution of 12 October 2020 had been adopted owing to a reasonable suspicion that the applicant might have committed criminal offences. The Government noted that the applicant, as a judge, must have been familiar with the scope of the applicable provisions of the Criminal Code, which were precise and accurate. In addition, referring to *Brambilla and Others v. Italy* (no. 22567/09, § 64, 23 June 2016), they argued that judges, compared with journalists, should all the more be expected to know the law and to realise what actions might fulfil the constitutive elements of specific offences.

168. The Government maintained that the measures at issue had pursued the legitimate aims of the prevention of crime and the protection of the reputation of others as well as maintaining the authority and impartiality of the judiciary. They submitted that the DCSC had been obliged to issue the resolution of 12 October 2020 as it had been necessary in the light of the reasonable suspicion that the applicant had committed an offence while exercising her judicial duties.

169. In addition, the Government submitted that the criminal proceedings had not constituted a penalty, nor had they led to the imposition of one. The resolution of 12 October 2020 had been issued owing to a reasonable suspicion that the applicant might have committed an offence. The applicant had not been dismissed, but only temporarily suspended from her position and retained the possibility of exercising the profession of judge in the future. The applicant's salary had been reduced for the period of the suspension but was later paid in full. Therefore, the measure had corresponded to the gravity of the offence in question and had not been disproportionately severe.

170. In conclusion, the Government submitted that the domestic authorities had struck a proper balance between the need to achieve the relevant aims prescribed in paragraph 2 of Article 10 of the Convention and the protection of the applicant's freedom of expression. Consequently, they argued that no violation of Article 10 had occurred in the case.

3. *The Court's assessment*

(a) **Whether there has been an interference**

(i) *General principles*

171. The general principles regarding the application of Article 10 to civil servants in general, and to members of the judiciary in particular, were

summarised by the Court in *Tuleya* (cited above, §§ 515-17) and in *Baka* (cited above, §§ 140-42).

(ii) *Application of the general principles to the present case*

172. The Court notes that the reasoning of the DCSC's resolution of 12 October 2020 does not directly refer, in any way, to the applicant's public activity, nor to her legal dispute with the Minister of Justice. The Court deems it important to acknowledge, however, that the applicant, in her capacity as a judge and the President of the Judges' Association Themis, publicly expressed her views on the legislative reforms related to the judicial system and the impact of those reforms on the functioning of the courts (see paragraphs 8-9 above).

173. The applicant alleged that the impugned measures had been taken against her by the authorities in response to her public activity, including her critical statements on the Government's reorganisation of the judiciary, and to her lawsuit against the Minister of Justice; she averred that they had amounted to an interference with her freedom of expression. The Government disagreed.

174. In order to ascertain whether the measures complained of amounted to an interference with the applicant's exercise of freedom of expression, the scope of those measures must be determined by placing them in the context of the facts of the case and the relevant legislation (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 43, ECHR 1999-VII; *Baka*, cited above, § 143; and *Żurek*, § 205, cited above).

175. The Court would stress that the applicant's case must be seen against the background of the reorganisation of the judiciary in Poland. The Court previously noted in *Grzęda* (cited above) that the whole sequence of events in Poland vividly demonstrated that successive judicial reforms had been aimed at weakening judicial independence, starting with the grave irregularities in the election of judges of the Constitutional Court in December 2015, and continuing, in particular, with the remodelling of the NCJ and the setting-up of new chambers in the Supreme Court, while extending the Minister of Justice's control over the courts and increasing his role in matters of judicial discipline (*ibid.*, § 348). The Grand Chamber in *Grzęda* went on to observe that as a result of the successive reforms, the judiciary – an autonomous branch of State power – had been exposed to interference by the executive and legislative powers and thus substantially weakened (*ibid.*). In addition to those earlier observations on the sequence of events, the Court finds it noteworthy that the impugned resolutions of the DCSC given in the instant case and in that of Judge Tuleya (see paragraph 13 above and *Tuleya*, cited above, § 43) were adopted only 37 days apart.

176. As regards the DCSC's resolution of 12 October 2020, the Court notes the following. Since at least January 2018, the applicant, notably in her

role as President of the Judges' Association Themis, was one of the most outspoken critics of the Government reforms affecting the judiciary among the Polish judges.

177. In that respect, the Court notes that (i) the measures leading to the lifting of her immunity and her suspension were initiated by prosecutors of the State Prosecutor's Office directly subordinate to the Prosecutor General, who was also the Minister of Justice – Mr Zbigniew Ziobro, and that (ii) the association presided over by the applicant directly criticised that person in its public statements, even going as far as calling for his resignation (see paragraph 9 above). The resolution itself was adopted by the DCSC, which the Court previously found failed to satisfy the requirements of a “independent and impartial tribunal established by law” prescribed in Article 6 § 1 of the Convention (see *Reczkowicz*, cited above, and paragraphs 82-84 above).

178. The Court also notes that the finding of the DCSC's first-instance judge that there was a reasonable suspicion of the applicant having committed offences was overturned on appeal. The Court considers relevant for the issue under review that the second-instance panel of the DCSC found that the allegations of criminal misconduct against the applicant were unsubstantiated (see paragraph 15 above), which would appear to support the applicant's claim that the measures taken against her by the authorities (that is the criminal investigation into her alleged wrongdoings and the request for lifting her judicial immunity) were aimed at silencing her (see paragraphs 145 and 149 above). It therefore finds that in the circumstances of the case there are grounds to consider that the authorities' actions culminating in the DCSC's resolution of 12 October 2020 could be regarded as a disguised sanction for the applicant's exercise of her freedom of expression.

179. Taking account of the above-mentioned context and having regard to the sequence of events in their entirety, rather than as separate and distinct incidents, the Court considers that there is *prima facie* evidence of a causal link between the applicant's exercise of her freedom of expression and the DCSC's decision lifting her immunity and suspending her from her judicial duties.

180. The above conclusion is further corroborated by the documents submitted by the applicant which refer to the public perception that such a causal link existed (see paragraph 18 above).

181. Irrespective of the above, the Court observes the applicant's argument that the actions aimed at lifting her immunity were taken some time after her civil claim against the Minister of Justice had been upheld at first instance and while these proceedings were still pending on appeal (see paragraphs 11, 12 and 147 above). It is to be noted, however, that the applicant does not rely on the specific content of her lawsuit or any other submissions lodged with the competent court within those proceedings; rather, she appears to be claiming that the very action of instituting

proceedings against the Minister of Justice constituted a form of expression protected under Article 10. The Court reiterates, in this context, that it has already found that forms of conduct such as instituting proceedings may be protected under Article 10 of the Convention (albeit as a form of whistleblowing, such as lodging a criminal complaint against one's employer – see *Heinisch v. Germany*, no. 28274/08, § 43, ECHR 2011 (extracts)). However, seeing as the applicant's activity in public debate, both individually and in her capacity as the President of the Judges' Association Themis, clearly constituted a form of "expression" protected under Article 10, there is no need to examine whether the applicant's legal action as such was also covered by that Article.

182. The Government argued that the DCSC's resolution of 12 October 2020 lifting the applicant's immunity and suspending her from judicial duties was connected with the applicant's alleged criminal actions, rather than with her exercise of her freedom of expression. However, having regard to the entire context of the case, the Court does not find those arguments convincing or supported by specific evidence. Accordingly, it agrees with the applicant that the actions aimed at lifting her judicial immunity were prompted by the views and criticisms that she had publicly expressed in her professional capacity.

183. In view of the above, the Court concludes that the impugned measures constituted an interference with the exercise of the applicant's right to freedom of expression, as guaranteed by Article 10 of the Convention (see, *Tuleya*, cited above, § 531, and the case-law cited therein). It remains therefore to be examined whether the interference was justified under Article 10 § 2.

(b) Whether the interference was justified

(i) Prescribed by law

184. To be justified under Article 10 § 2 of the Convention, an interference with the right to freedom of expression must have been "prescribed by law", intended for the pursuit of one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society" to achieve that aim or aims.

(α) General principles concerning the lawfulness of an interference

185. The general principles regarding the lawfulness of an interference with freedom of expression were summarised by the Court in the case of *Magyar Kétfarkú Kutya Párt v. Hungary* ([GC], no. 201/17, §§ 93-96, 20 January 2020) and, more recently, in *Danileț v. Romania* ([GC], no. 16915/21, §§ 119-25, 15 December 2025).

(β) Application of the general principles to the present case

186. The Court has already examined, in the context of the complaint under Article 8 of the Convention, the question of the compliance of the DCSC's resolution of 12 October 2020 with domestic law and the rule of law and found that the impugned decision was given by a body which cannot be considered a "court" for the purposes of the Convention, despite the explicit requirements under Article 181 and Article 180 § 2 of the Polish Constitution that decisions of that kind must emanate from a court. It finds that the same reasons are relevant with regard to the applicant's complaint under Article 10 of the Convention (compare, *Tuleya*, cited above, § 539).

187. The Court further considers that the requisite procedural safeguards were not put in place to prevent arbitrary application of the relevant substantive law. As established above, the decision on the lifting of the applicant's immunity and her suspension was taken by the DCSC, which failed to meet the requirements of an "independent and impartial tribunal established by law" (see paragraphs 82-84 above, and compare *Tuleya*, cited above, § 540).

188. The impugned interference thus cannot be regarded as having been lawful in terms of Article 10 of the Convention as it was not based on a "law" that afforded the applicant proper safeguards against arbitrariness (see *Danileț v. Romania*, cited above, § 124). It follows that the interference with the applicant's freedom of expression was not "prescribed by law" within the meaning of Article 10 of the Convention.

(ii) *Whether there was a legitimate aim*

189. In view of its conclusion that the interference in the present case was not lawful, the Court is dispensed from having to examine whether it pursued any of the legitimate aims referred to in Article 10 § 2 and was necessary in a democratic society. However, in the context of this case the Court considers it important to examine that question.

190. The Government claimed that the measures at issue pursued the legitimate aims of the prevention of crime and the protection of the reputation of others as well as maintaining the authority and impartiality of the judiciary. The applicant, on the other hand, argued that the interference had not served any legitimate aim.

191. The Court reiterates that, as part of her role as the President of the Judges' Association Themis, the applicant was one of the most outspoken critics of legislative reforms affecting the judicial system and of the impact of those reforms. The Court further notes that the applicant referred to the principle recently established in its case-law that the general right to freedom of expression of judges to address matters concerning the functioning of the justice system may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental

values come under threat (see *Żurek*, cited above, § 222). Having regard to the circumstances of the present case, it appears that the measures taken by the authorities could be characterised as a strategy aimed at intimidating (or even silencing) the applicant in connection with the views that she had expressed in defence of the rule of law and judicial independence. The Court considers that the impugned measures undoubtedly had a “chilling effect” in that they must have discouraged not only the applicant but also other judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary (see *Tuleya*, cited above § 544 and the case-law cited therein).

192. Having regard to the general context of the applicant’s case, as well as to its particular features, the Court cannot accept that the interference complained of pursued any of the legitimate aims relied upon by the Government for the purposes of Article 10 § 2.

193. There has accordingly been a violation of Article 10 of the Convention on the basis that the interference at issue was not “prescribed by law” and did not pursue any of the legitimate aims permitted for the purposes of that provision.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

194. The applicant complained under Article 13 of the Convention that she had been deprived of an effective domestic remedy in relation to her case being heard by the DCSC at both instances. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

195. The Court notes that the complaint under Article 13 is essentially the same as that under Article 6 § 1. It reiterates that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI, and *Grzęda*, cited above, § 352).

196. Consequently, the Court finds that it is not necessary to examine separately the admissibility and merits of the complaint under Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

197. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

198. The applicant claimed a total of 22,313.97 Polish zlotys (PLN; approximately 5,360 euros (EUR)) in respect of pecuniary damage corresponding to the loss of earnings resulting from the reduction of her salary ordered by the DCSC.

199. The applicant also claimed EUR 75,000 in respect of non-pecuniary damage connected with the suffering and distress she suffered on account of the violation of her rights. She submitted that the lifting of her immunity by the DCSC had been at odds with the Polish Constitution as well as with European standards and had been motivated by political considerations. The unlawful lifting of her immunity had damaged her reputation and undermined her competence to hold judicial office in the eyes of the public. The applicant maintained that her private and professional life had been completely disrupted as a result of the DCSC's resolution lifting her immunity. She had had to devote a considerable amount of her time and energy to defending herself against various investigations, inquiries, press comments and attacks on her personal interests. The applicant emphasised that, unlike other judges who had suffered from repression in Poland, she had not been charged with merely disciplinary offences, but with serious criminal offences punishable by imprisonment and that even after the second-instance resolution of the DCSC some politicians, including the Minister of Justice, had continued to publicly suggest that she had committed reprehensible acts. All of the above-mentioned circumstances had resulted in her experiencing a huge amount of stress, which, in turn, had resulted in a health disorder for which she had been receiving psychiatric treatment since 29 September 2020.

200. The Government asked the Court to reject the applicant's claims under both heads of damage since, in their view, the application was inadmissible and no violation of the Convention had occurred. Furthermore, the Government argued that the applicant had failed to substantiate her claims in respect both of pecuniary and non-pecuniary damage.

201. The Government additionally submitted that the applicant's claims were of a premature character. As regards the claim in respect of pecuniary damage, they contended that the applicant had failed to put the claim before a domestic court. Moreover, in so far as the applicant had referred to non-pecuniary damage stemming from negative comments published by third-parties in relation to her case, the Government argued that the applicant should have availed herself of a civil action brought against the authors of such comments.

202. Furthermore, concerning the claim in respect of non-pecuniary damage, the Government argued that the amount claimed was, in any event, excessive in the light of the circumstances of the case.

203. Were the Court to find a violation of the Convention in the present case, the Government submitted that the finding of a violation should be

regarded as constituting sufficient just satisfaction. Alternatively, they invited the Court to assess the issue of just satisfaction on the basis of its practice in similar cases and national economic circumstances.

204. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, making an assessment on an equitable basis and having regard to its finding of violations of Article 6 § 1, Article 8 and Article 10 of the Convention, the Court considers it reasonable to award the applicant EUR 21,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

205. The applicant claimed EUR 20,000 for the costs of legal representation before the Court, for which she submitted a copy of the legal services agreement between her and her representative, Mr. M. Wawrykiewicz. She also claimed EUR 1,131.88 in respect of translation costs, in support of which she submitted an invoice.

206. The Government contended that the applicant's claims in respect of the translation costs could not be considered as necessarily incurred given the fact that pursuant to Rule 36 (5a) of the Rules of Court the lawyer or attorney representing an applicant before the Court should speak one of the official languages of the Court, and that parties are entitled to submit documents to the Court in the language in which they were issued. Consequently, there is no obligation to translate them.

207. The Government further argued that the claim in respect of legal representation before the Court was excessive. They emphasised that the applicant had not submitted an invoice or any other proof of payment in respect of the claimed amount of costs. They also pointed out that the legal services agreement specified different variants of remuneration, that is (a) the standard amount of EUR 20,000 or (b) – in the event of a higher award in respect of costs – that higher amount, or (c) in the absence of a specific award for costs – an amount corresponding to 15% of the amount awarded to the applicant, but (d) in any event, no less than EUR 100. The Government argued that, if the representative considered that last amount sufficient, the Court should not award the applicant reimbursement of costs in an amount higher than in other similar cases.

208. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 6,000, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 6 § 1, 8 and 10 of the Convention admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been a violation of Article 10 of the Convention;
5. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 21,000 (twenty-one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President