



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

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FIRST SECTION

Application no. 17392/26
Marcin DZIURDA and Others
against Poland
lodged on 30 April 2026
communicated on 7 July 2026

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

B. Background of the case

3. The present application is a follow-up to the Court's judgment in *Xero Flor w Polsce sp. z o.o. v. Poland* (no. 4907/18, 7 May 2021). In that case, the Court found a violation of Article 6 § 1 of the Convention as regards the applicant company's right to a "tribunal established by law" on account of presence on the bench of the Constitutional Court of a judge (M.M.) whose election had been vitiated by grave irregularities, as regards the rule that a judge of the Constitutional Court was to be elected by the lower chamber of the Polish Parliament (*Sejm*) whose term of office covered the date on which his seat became vacant (*ibidem*, § 277). In particular, the Court found that the President of the Republic had breached that rule by refusing to receive the oath of office from judges elected by the seventh-term *Sejm* in October 2015 and instead receiving it from other persons (including M.M.), elected by the

eighth-term *Sejm* in December of that year (ibid., §§ 8-9, §§ 18-20, §§ 277-78 and §§ 289-291).

4. Between December 2024 and December 2025 six vacancies arose in the Constitutional Court (in connection with the retirement of, inter alia, M.M.).

C. Election of the applicants to the Constitutional Court

5. On 13 March 2026, the *Sejm* elected the four applicants, along with two other persons (M. B. and D. S.), as judges of the Constitutional Court for a 9-year term.

6. According to the applicable legal framework (see Relevant legal framework below), judges elected by the *Sejm* take up their duties after taking the oath of office before (*wobec*) the President of the Republic.

7. The President of the Republic has only invited M. B. and D. S. (see paragraph 5 above) for a swearing in ceremony which took place on 1 April 2026. Those persons have since taken up their office as judges of the Constitutional Court.

8. On the same day, the applicants have requested the President of the Republic to set a date for their swearing in ceremony, to no avail.

9. On 7 April 2026 the applicants sent a letter to the President informing him that, having received no response to their previous letters, they intended to take the oath of office in the presence of the President of the Republic at the *Sejm* on 9 April 2026.

10. On 9 April 2026 the applicants, together with the two other judges (see paragraph 7 above), took the oath of office in the *Sejm*, in the presence of various public officials and other persons, including a notary. The President of the Republic was not present. The ceremony was broadcasted via the *Sejm*'s online channel and covered by the media.

11. The applicants signed a written version of the oath, explicitly addressing it to the President of the Republic. The written oath was notarised and then sent to the Chancellery of the President of the Republic of Poland.

12. The applicants then proceeded, with the other judges, to the premises of the Constitutional Court. They were allowed to enter the building but not to take up their duties as judges. The President of the Constitutional Court made public statements that he did not consider the oath of office taken by the applicants to be valid.

D. Interim measure indicated by the Court and the information subsequently submitted by the parties

13. On 5 May 2026, at the request lodged by the applicants, the Court (that is, the Chamber of the First Section) decided, in the interests of the parties and the proper conduct of the proceedings before it, to provisionally

indicate to the Government of Poland, under Rule 39 of the Rules of Court, that the Respondent State should ensure that its competent authorities refrain from hindering the taking up and exercise of judicial duties by the applicants as judges of the Constitutional Court until any further decision on the applicants' request for interim measures is taken.

14. According to the latest information submitted by the parties, the applicants have not been allowed to take up their duties as judges of the Constitutional Court.

E. Judgment of the Constitutional Court of 12 May 2026 (case no. K 3/26)

15. On 12 May 2026, in case no. K 3/26, the Constitutional Court gave a judgment in which it held, *inter alia*, that the statutory obligation of the President of the Republic to receive the oath of office from persons elected by the *Sejm* as judges of the Constitutional Tribunal had been unconstitutional.

16. The 5-person bench of the Constitutional Court which gave the above judgment included two judges (J. Piskorski and J. Wyrembak) whose election had previously been found to be irregular (for details, see *M.L. v. Poland*, no. 40119/21, §§ 169-74, 14 December 2023).

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LEGAL FRAMEWORK AND PRACTICE ALREADY SUMMARISED

17. The relevant domestic legal framework and practice are set out in *Xero Flor w Polsce sp. z o.o. v. Poland* (cited above, §§ 4-63 and § 108).

II. DOMESTIC LEGAL FRAMEWORK

A. Act of 30 November 2016 on the Status of Judges of the Constitutional Court

18. The relevant parts of the Act of 30 November 2016 on the Status of Judges of the Constitutional Court provide as follows

Section 2

“1. The [Constitutional] Court shall be composed of fifteen judges.

2. Judges of the [Constitutional] Court shall be elected by the *Sejm*. The term of office of a judge shall be nine years. The rules governing the election procedure and the relevant time-limits shall be determined by the Rules of Procedure of the *Sejm*.”

Section 3

“A person eligible to be a judge of the [Constitutional] Court shall be distinguished by outstanding legal knowledge and shall meet the requirements necessary for holding the office of a judge of the Supreme Court or a judge of the Supreme Administrative Court.”

Section 4

“1. A person elected as a judge of the [Constitutional] Court shall take the following oath before the President of the Republic of Poland: “I solemnly swear that, in the performance of the duties entrusted to me as a judge of the Constitutional Court, I shall faithfully serve the Nation, safeguard the Constitution, and discharge my duties impartially and with the utmost diligence.” The oath may be taken with the additional words: “So help me God.”

2. Refusal to take the oath shall be deemed equivalent to resignation from the office of judge of the [Constitutional] Court.”

Section 5

“The judicial service relationship of a judge (*stosunek służbowy sędziego*) of the [Constitutional] Court shall commence upon taking the oath. After taking the oath, the judge shall promptly report to the [Constitutional] Court in order to assume his or her duties; the President of the [Constitutional] Court shall assign cases and ensure conditions enabling the judge to perform his or her duties.”

Section 6

“In the exercise of his or her office, a judge of the [Constitutional] Court shall be independent and subject only to the Constitution.”

Section 18

“1. The mandate of a judge of the Court shall expire before the end of the term of office in the event of:

- 1) the death of the judge;
- 2) resignation from office by the judge;
- 3) final conviction of the judge by a court for an intentional offence prosecuted by public indictment or for an intentional fiscal offence;
- 4) a final disciplinary decision removing the judge from office.

2. The expiry of the mandate of a Court judge shall be declared by:

- 1) in the case referred to in paragraph 1(1), the President of the [Constitutional] Court by way of an order;
- 2) in the cases referred to in paragraph 1(2)–(4), the General Assembly by way of a resolution.

3. The President of the Court shall promptly transmit to the Marshal of the Sejm the order or resolution declaring the expiry of the mandate of the Court judge.

....”

Chapter 4
Retirement (*stan spoczynku*)
Section 31

“A judge of the [Constitutional] Court shall retire upon the expiry of his or her term of office.”

B. Rules of Procedure of the *Sejm*

19. The relevant parts of the Resolution of the *Sejm* of the Republic of Poland of 30 July 1992 - Rules of Procedure of the *Sejm* of the Republic of Poland state as follows:

Chapter 5
Election, appointment and dismissal of State authorities
Section 26

“1. The *Sejm* shall elect the ... judges of the Constitutional Court”

...

Section 31

“1. The election or appointment of persons to State offices referred to in Articles 26-29 shall be carried out by an absolute majority of votes.

...

4. A resolution on election, appointment or dismissal shall be published in the Official Gazette of the Republic of Poland “Monitor Polski”.”

COMPLAINTS

20. The applicants complain under Article 6 § 1 of the Convention that they have been deprived of judicial review in connection with the following rights: (i) the right to effectively take up and exercise their judicial functions at the Constitutional Court, which – they claim – has been arbitrarily and continuously denied to them; (ii) the right to serve a full, 9-year term as Constitutional Court judges; (iii) the right of equal access to public service.

21. Under the same provision they also complain that preventing them from taking up and exercising judicial functions at the Constitutional Court violates their individual independence as judges. They further argue that they have not been given access to a court to effectively protect their judicial independence.

22. Relying on Article 8 of the Convention, the applicants complain that their private and professional life has been seriously affected by the impossibility to take up and exercise their duties, notably in view of the facts that they had to give up their previous professional occupations.

23. Raising Article 13 in conjunction with Articles 6 and 8 of the Convention, the applicants additionally complain that they have no effective remedy against the above situation at the domestic level.

24. The applicants also complain, under Article 34 of the Convention, that the respondent State has failed to implement the Court's interim measures which, in turn, undermined their right to individual application.

25. Finally, under Article 18 in conjunction with Article 8 of the Convention, the applicants complain that the interference with their right to private life was pursued for a purpose other than those prescribed by the Convention, that is to restrict their individual judicial independence as well as the independence of the Constitutional Court and to silence individuals inconvenient to political authorities.

QUESTIONS TO THE PARTIES

Article 6 § 1 – access to a court

1. Is Article 6 § 1 of the Convention under its civil head applicable in the present case? In particular:

(a) was there ever a genuine and serious “dispute” (“*contestation*”) over any civil right of the applicants?

(b) specifically, can the applicants claim to have a civil right to take up and hold the office of Constitutional Court judges to which they have been elected over a full 9-year term?

2. If so, did the applicants have access to a court for the determination of their civil rights, in accordance with Article 6 § 1 of the Convention?

Article 6 § 1 – judicial independence

3. Can Article 6 § 1 of the Convention be interpreted in such a way as to recognise a subjective right for Constitutional Court judges to have their individual independence safeguarded and respected by the State?

4. If so, was the applicants' independence respected by the State in the present case?

Article 8

5. Has the refusal to allow the applicants to take up and exercise their duties as judges of the Constitutional Court produced “very serious consequences” affecting the applicants’ private lives to a “very significant degree”, so as to make Article 8 of the Convention applicable (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 115-17, 25 September 2018)?

6. If so, has there been an interference with the applicants’ right to respect for their private lives? In the affirmative, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention?

Article 13 in conjunction with Articles 6 and 8

7. Did the applicants have an effective remedy within the meaning of Article 13 of the Convention in respect of the alleged violations of Articles 6 and 8 of the Convention?

Article 34

8. Has there been any hindrance by the respondent State in the present case with the effective exercise of the applicant’s right of application, ensured by Article 34 of the Convention? Reference is made to the information submitted by the parties that the applicants have not been allowed to take up and exercise their duties as judges of the Constitutional Court after 5 May 2026.

Article 18 in conjunction with Article 8

9. Has there been a breach of Article 18 taken in conjunction with Article 8 of the Convention? Were the restrictions imposed by the State on the applicants, purportedly for a legitimate aim pursuant to Article 8 of the Convention, applied for a purpose other than the one envisaged by that provision, contrary to Article 18 of the Convention (see *Juszczyszyn v. Poland*, no. 35599/20, §§ 306-38, 6 October 2022)?

APPENDIX

Application no. 17392/26

No.	Applicant's Name	Year of birth	Nationality	Place of residence	Represented by
1.	Marcin DZIURDA	1972	Polish	Warsaw	Sylvia GREGORCZYK-ABRAM Paweł FILIPEK
2.	Anna KORWIN PIOTROWSKA	1969	Polish	Opole	
3.	Krystian MARKIEWICZ	1976	Polish	Katowice	
4.	Maciej Henryk TABOROWSKI	1978	Polish	Warsaw	