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POLOGNE

**FIRST SECTION**

ECHR-LE4.1jR OBS IMSI CHB  
KKZ/ro

21/02/2023

**Applications concerned**

8520/22 Epler v. Poland  
10335/22 Skubiszewski v. Poland

Dear Sir,

**Communication of the applications to the respondent Government**

I write to inform you that following a preliminary examination of the admissibility of the above applications on 15/02/2023, the President of the Section to which the applications had been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of part of the applications should be given to the Government of Poland and that the Government should be invited to submit a statement of facts together with written observations on the admissibility and merits of the complaints under Article 11 of the Convention and in case no. 10335/22, additionally under Article 6 § 1 concerning the alleged violation of the right to a hearing by an “independent and impartial tribunal established by law”.

**Statement of facts and observations**

The Government have been requested to submit a statement of facts together with their observations at the latest on 13/06/2023. These will be sent to you in order that you may submit written observations in reply on behalf of the applicants, together with any claim for just satisfaction under Article 41 (cf. Rule 60). **Please do not send any submissions before being asked to do so by the Court.** Any unsolicited submissions will normally not be included in the case files for consideration by the Court (Rule 38 § 1).

The Government have been requested to deal with the questions set out in the document appended to this letter (Subject matter of the case prepared by the Registry of the Court and Questions to the parties).

**Friendly settlement**

The Government have also been requested to indicate by 13/06/2023 their position regarding a friendly settlement of these applications and to submit any proposals they may wish to make in this regard (Rule 62), in particular in respect of pecuniary awards and costs and expenses. The same request will be made of you when you receive their observations.

**Official languages**

I would inform you that at this stage of the proceedings, according to Rule 34 § 3, all communications of applicants or their representatives shall as a rule be made in one of the Court's official languages, English or French.

### **Public access to cases**

I should draw your attention to Rule 33 of the Rules of Court, according to which documents deposited with the Registry by the parties or by any third parties are to be accessible to the public, unless the President of the Section decides otherwise for the reasons set out in Rule 33 § 2. It follows that as a general rule any information contained in the documents which you lodge with the Registry, including information about identified or identifiable persons, may be made accessible to the public, disclosed, translated and disseminated. Moreover, such information may appear in the Court's HUDOC data base accessible via the Internet if the Court includes it in a decision or judgment.

### **Third parties**

I would further inform you that in view of your nationality, the Government of France have been invited to state whether they wish to submit written comments on the case (see Article 36 § 1 of the Convention and Rule 44). You will be informed of that Government's response in due course.

### **Representation**

Lastly, I would draw your attention to Rule 36 §§ 2 and 4 according to which an applicant needs to be represented by an "advocate" before the Court at this stage of the proceedings. I would therefore invite you to complete and return to me, by **02/05/2023**, the enclosed form. If you have any difficulties in finding an advocate, your local or national bar association may be able to assist you.

Failure to return this form may lead the Court to conclude that you are no longer interested in pursuing your applications and to strike them out of its list of cases.

### **Information note**

You will find on the Court's Internet site ([www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)) an information note to applicants on the proceedings after communication of an application.

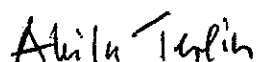
### **Partial decision**

As regards the remainder of the applications, the President of the Section, sitting in a single-judge formation (assisted by a rapporteur as provided for in Article 24 § 2 of the Convention), declared it inadmissible.

Having regard to all the material in his possession and in so far as he has jurisdiction to examine the allegations made, he considered that the conditions of admissibility provided for in Articles 34 and 35 of the Convention were not fulfilled.

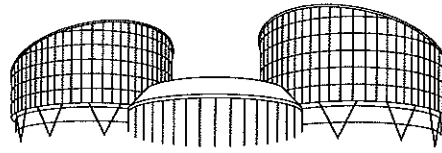
This decision is final. It is not open to appeal before the Grand Chamber or any other body. The Registry cannot provide you with any further information about the single judge's decision. This information has been communicated to you in accordance with Rule 52A of the Rules of Court.

Yours faithfully,



A. Teplán  
Acting Deputy Section Registrar

Enc.: Subject matter of the cases  
Authority form  
List of Bar Associations



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

Published on 6 March 2023

## FIRST SECTION

Applications nos. 8520/22 and 10335/22  
Marek Tadeusz EPLER against Poland  
and Marcin Wojciech SKUBISZEWSKI against Poland  
lodged on 31 January 2022  
communicated on 15 February 2023

### SUBJECT MATTER OF THE CASES

The applications concern the interdiction to hold an assembly in the closed zone in the vicinity of Polish-Belarussian border, in which a state of emergency had been announced.

In 2021 hundreds of illegal migrants tried to cross the border and get from Belarus to Poland, apparently with the support of Belarussian authorities. In response to that crisis, on 2 September 2021 the President announced, for a period of 30 days, a state of emergency in several communes along the Polish-Belarussian border. With some exceptions listed in the Ordinance of the Council of Ministers of 2 September 2021, it was forbidden to enter the whole territory encompassed by the state of emergency. It was likewise forbidden, among other things, to organise or hold assemblies or meetings.

#### **As regards application no. 8520/22**

The applicant wished to organise an assembly on 17 September 2021 in Usnarz Górny, among other things, to commemorate the victims of the aggression of the Soviet Union on Poland on 17 September 1939, to remind the Polish people that they had been refugees themselves and to stress that the Polish people had a moral obligation to help those in danger of their lives, allowing refugees enter the territory of Poland. It was estimated that some ten persons would participate in the planned assembly. On 14 September 2021 the Mayor of Szudziłowo forbade the assembly reminding the applicant that

a state of emergency had been announced and that the right to organise and hold assemblies had been suspended on the whole territory of the state of emergency.

The applicant's appeal was dismissed by the Białystok Regional Court on 16 September 2021. His further interlocutory appeal was dismissed by the Białystok Court of Appeal on 17 September 2021.

**As regards application no. 10335/22**

On 9 September 2021 the applicant, a national of Poland and France, declared to the mayor of Terespol that he wished to hold an assembly on 17 September 2021 “to protest against the actions by State authorities that are unlawful and exacerbate the migration crisis”. The expected number of participants, as declared by the applicant, was ten persons. On 13 September 2021 the mayor issued a decision prohibiting the planned assembly. The decision was based on the state of emergency that had been announced along the Polish-Belarussian border. On 15 September 2021 the Lublin Regional Court dismissed the applicant's appeal. The decision was issued by a judge appointed to the court by the President of Poland pursuant to the recommendation of the National Council of the Judiciary (*Krajowa Rada Sądownictwa*, “the NCJ”) as established under the Amending Act on the NCJ and certain other statutes of 8 December 2017 (*ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*; “the 2017 Act”). On 17 September 2021 the Lublin Court of Appeal dismissed the applicant's further appeal.

The applicants complain that the state of emergency was introduced without a legal basis and that their rights under Article 11 of the Convention were violated. In no. 10335/22, the applicant additionally complains that his case was examined by a judicial formation of the ordinary court with newly appointed judge which gave rise to a violation of his right to an “independent and impartial tribunal established by law”, in breach of Article 6 § 1 of the Convention.

### QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants' freedom of assembly within the meaning of Article 11 § 1 of the Convention?
2. If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

### ADDITIONAL QUESTION IN no. 10335/22 SKUBISZEWSKI

3. Was the Lublin Regional Court which dealt with the applicant's case at first instance on 15 September 2021 (case no. IX GNs 3/21) an "independent and impartial tribunal established by law" as required by Article 6 § 1 of the Convention?

Reference is made to the fact that the applicant's case was examined at first instance by a judge appointed in the procedure established by the Law of 8 December 2017 Amending the Act on the National Council of the Judiciary. In their replies, the parties are invited to refer to the Court's judgments in *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022, and *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 205-290, 1 December 2020.

