



Removal by the Minister of Justice of vice-presidents of Kielce Regional Court did not respect their right of access to a court

In today's Chamber judgment¹ in the case of **Broda and Bojara v. Poland** (applications no. 26691/18 and 27367/18) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The case concerned the applicants' complaint that they did not have any remedy allowing them to challenge the decisions of the Minister of Justice to put a premature end to their term of office as vice-presidents of the Kielce Regional Court.

The Court emphasised the importance of safeguarding the independence of the judiciary and respect for procedural fairness in cases concerning the careers of judges. It observed that the national legal framework applicable to the applicants' removal did not clarify the conditions in which the heads of a court could be removed from office, by way of exception to the principle that a judge should be guaranteed security of tenure during his or her term of office. Almost all the powers in such matters were concentrated in the hands of the representative of the executive, and the National Council of the Judiciary, in particular, was excluded from the process. The Court further noted that the applicants had not been heard or informed of the reasons for the ministerial decisions. Lastly, there had been no review of those removal decisions by a body that was independent of the Ministry of Justice.

As the premature termination of the applicants' term of office as court vice-presidents had not been examined either by an ordinary court or by another body exercising judicial duties, the respondent State had infringed the very essence of the applicants' right of access to a court.

Principal facts

The applicants, Mr Mariusz Broda and Ms Alina Bojara, are Polish nationals who were born in 1969 and 1960 and live in Kielce (Poland).

Having served as judges since 1998 and 1988 respectively, Mr Broda and Ms Bojara were appointed to the Kielce Regional Court on 14 April 2014 and 25 October 1995. In October and May 2014, they were appointed as vice-presidents of the same court by the Minister of Justice for a six-year term of office.

On 2 January 2018 the Deputy State Secretary to the Minister of Justice informed them by letter of the termination of their term of office as vice-president, pursuant to section 17(1) of the Law of 12 July 2017 amending the Law on the organisation of the ordinary courts.

Mr Broda and Ms Bojara asked the Deputy State Secretary to the Minister of Justice to inform them of the reasons for the ministerial decisions that had been taken and the remedies available to them. In response they were informed that, under section 17 of the Law of 12 July 2017, the Minister of Justice was empowered, within six months from the entry into force of this Law, that is to say from

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

12 August 2017 to 12 February 2018, to dismiss the heads of courts without having to satisfy the conditions laid down in sections 23 to 25 of the Pusp Act, as in force from 12 August 2017, and without any obligation for the Minister to communicate the reasons for his decision to those concerned. They were also informed that no appeal lay against the removal decisions of the Minister of Justice.

Mr Broda and Ms Bojara reiterated their request. They argued that it was clear from the ministerial letters addressed to them that their removal had been due to alleged “administrative shortcomings” in the Kielce Regional Court and that to retain them in office had been deemed detrimental to the “proper functioning of the courts”. They considered that these statements were completely unfounded and had damaged their reputation as vice-presidents and judges. They maintained that the performance of their duties had never been called into question but had, on the contrary, always been appreciated within their profession.

On 16 May and 13 June 2018 the Ministry of Justice informed Mr Broda and Ms Bojara by letter that the Minister of Justice had exercised his prerogative to dismiss heads of courts pursuant to section 17(1) of the Law of 12 July 2017 and that they had misinterpreted the ministerial statement of reasons concerning them. The Ministry added that the Minister was entitled to apply the various measures at his disposal not only to remedy shortcomings that had been observed within the courts but also to make improvements even when the situation was satisfactory.

On 1 April 2019 Ms Bojara took early retirement.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), the applicants complained that they had been dismissed from their posts as vice-presidents of a court, alleging that their removal had been unlawful and arbitrary and that there had been no specific judicial remedy enabling them to challenge the decision.

The application was lodged with the European Court of Human Rights on 1 June 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija Turković (Croatia), *President*,
Krzysztof Wojtyczek (Poland),
Gilberto Felici (San Marino),
Erik Wennerström (Sweden),
Raffaele Sabato (Italy),
Lorraine Schembri Orland (Malta),
Ioannis Ktistakis (Greece),

and also Renata Degener, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court began by noting that it was clear from the ministerial letters that the decisions of the Minister of Justice to remove the applicants from office could not be appealed against. It could be seen from the Government’s submissions that the exclusion of an appeal against removal was intended to facilitate the implementation of ministerial reforms of the Polish judicial system.

The Court emphasised the increasing importance that the Council of Europe and other international instruments, and the case-law of international courts, attached to the principle of respect for

procedural fairness in cases concerning the removal or dismissal of judges, and in particular to the intervention of an authority independent of the executive and legislative branches of government in any decision affecting the termination of a judge's term of office.

The Court observed that the applicants had been prematurely removed from their posts as heads of a court by the Minister of Justice acting under section 17 of the Law of 12 July 2017. This legislation had been transitional and had empowered the Minister to remove the heads of a court at his own discretion without being bound by any substantive or procedural conditions. The impugned decisions of the Minister of Justice had not contained reasons and were not subject to review by an external body that was independent of the Minister concerned.

In the light of all the information available to it, the Court concluded, first, that the applicants' removal had been based on a legislative provision whose compatibility with the requirements of the rule of law appeared doubtful and, secondly, that the measure was not surrounded by any of the fundamental safeguards of procedural fairness. The ministerial decisions to remove the applicants had not been accompanied by any reasons.

The Court noted that the national legal framework applicable at the time of the applicants' removal did not protect them in any way against the premature and arbitrary termination of their duties as vice-presidents of a court. Yet judges had to enjoy protection against arbitrary action by the executive and only a review of the legality of that decision by an independent judicial body would be capable of making that right effective.

The Court emphasised the importance of safeguarding the independence of the judiciary and respect for procedural fairness in cases concerning the careers of judges. It observed that the national legal framework applicable to the applicants' removal did not clarify the conditions in which the heads of a court could be removed from office, by way of exception to the principle that a judge should be guaranteed security of tenure during his or her term of office. Almost all the powers in such matters were concentrated in the hands of the representative of the executive, and bodies of judicial self-administration such as the National Council of the Judiciary, in particular, had been excluded from the process. The Court further noted that the applicants had not been afforded the right to make representations and had not been informed of the reasons for the ministerial decisions. Lastly, there had been no review of those removal decisions by a body that was independent of the Ministry of Justice.

The Court noted with concern that in their observations the respondent Government had stated that the legislative framework for the premature removal of heads of courts had enabled them to bypass the relevant procedures. The Court pointed out, however, that it was precisely these procedures which provided the safeguards underlying the principle, enshrined in Article 6 of the Convention, that an "independent tribunal" – within the meaning of that Convention provision – must necessarily ensure security of tenure, irrespective of whether the judge concerned was removed from his or her judicial duties or only from the administrative functions held within the judiciary. In view of the importance of the role of judges in protecting Convention rights, the Court considered it imperative that procedural safeguards be put in place to ensure that judicial autonomy was properly protected from undue influence. Public confidence in the judiciary was at stake.

As the premature termination of the applicants' term of office as vice-presidents of a court had not been examined either by an ordinary court or by another body exercising judicial duties, the respondent State had infringed the very essence of the applicants' right of access to a court. There had thus been a violation of the right of access to a court guaranteed by Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Poland was to pay each of the applicants 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

Separate opinion

Judge **Wojtyczek** expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.