

## Polish authorities attempted to silence well-known judge

In today's **Chamber judgment**<sup>1</sup> in the case of [Żurek v. Poland](#) (application no. 39650/18) the European Court of Human Rights held:

by, six votes to one, that there had been a **violation of Article 6 § 1 (right of access to court)** of the European Convention on Human Rights, and

unanimously, that there had been a **violation of Article 10 (freedom of expression)**.

Mr Żurek is a judge. He was also spokesperson for the National Council of the Judiciary (NCJ), the constitutional body in Poland which safeguards the independence of courts and judges. In that capacity, he has been one of the main critics of the changes to the judiciary initiated by the legislative and executive branches of the new Government which came to power in 2015.

The case concerned his removal from the NCJ before his term had ended, and his complaint that there had been no legal avenue to contest the loss of his seat. It also concerned his allegation of a campaign to silence him.

Following the same reasoning as in the recent Grand Chamber case [Grzęda v. Poland](#) (no. 43572/18), the Court found that the lack of judicial review of the decision to remove Mr Żurek from the NCJ had breached his right of access to a court.

The Court also found that the accumulation of measures taken against Mr Żurek – including his dismissal as spokesperson of a regional court, the audit of his financial declarations and the inspection of his judicial work – had been aimed at intimidating him because of the views that he had expressed in defence of the rule of law and judicial independence.

In finding these violations, the Court emphasised the overall context of successive judicial reforms, which had resulted in the weakening of judicial independence and what has widely been described as the rule-of-law crisis in Poland.

### Principal facts

The applicant, Waldemar Żurek, is a Polish national, who was born in 1970 and lives in Rzeplin (Poland).

He is a judge of the Cracow Regional Court and was the court's spokesperson. He was also a member of the NCJ, first elected in 2010 and then re-elected in 2014 for a second four-year term of office.

In 2014 he was appointed the NCJ's spokesperson, and, in that capacity, became one of the main critics of the changes to the judiciary initiated by the legislative and executive branches of the new Government which had come to power in 2015. He pointed in particular to the threat to judicial independence stemming from the Government's proposals.

His mandate as a member of the NCJ was, however, prematurely ended in 2018, following the entry into force of new legislation in the context of wide-scale reform to the judiciary.

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](http://www.coe.int/t/dghl/monitoring/execution).

In particular, the amendments to the Act on the NCJ of 2017 provided that judicial members of the NCJ would no longer be elected by judges but by the *Sejm* (the lower house of the Parliament), and that the newly elected members would immediately replace those elected under the previous legislation. Thus, when the *Sejm* elected 15 judges as new members of the NCJ on 6 March 2018, the applicant's mandate was terminated. He did not receive any official notification. In consequence, he also ceased to act as the NCJ's spokesperson.

Earlier in 2018 the applicant had also been removed from his position as Cracow Regional Court's spokesperson.

In his case before the European Court, Mr Żurek submitted information on a number of other measures taken against him by the authorities, including: the Central Anti-Corruption Bureau carrying out an audit of his financial declarations between November 2016 and April 2018; and, the Ministry of Justice ordering an inspection of his work at the Cracow Regional Court in April 2017 as well as the declassification of his financial declaration in June 2018. He also submitted that at least five sets of disciplinary proceedings have been initiated against him, which are still ongoing.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to court) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, Mr Żurek alleged that he had been denied access to a tribunal and that there had been no procedure, judicial or otherwise, to contest the premature termination of his mandate.

Also relying on Article 10 (freedom of expression), he alleged that his dismissal as spokesperson for the regional court, combined with the authorities' decisions to audit his financial declarations and to inspect his judicial work, had been intended to punish him for expressing criticism of the Government's legislative changes and to warn other judges off of doing the same.

The application was lodged with the European Court of Human Rights on 6 August 2018.

The following third parties were granted leave to intervene in the proceedings: the European Network of Councils for the Judiciary; the Commissioner for Human Rights of the Republic of Poland; Amnesty International jointly with the International Commission of Jurists; the "Judges for Judges" Foundation (the Netherlands) jointly with Professor L. Pech; the Helsinki Foundation for Human Rights (Poland); the Judges' Association Themis and the Polish Judges' Association Iustitia.

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

Marko **Bošnjak** (Slovenia), *President*,  
Péter **Paczolay** (Hungary),  
Krzysztof **Wojtyczek** (Poland),  
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 noted that the Government had not provided any reasons justifying the absence of judicial review of the decision to prematurely end the applicant's mandate at the NCJ, simply reiterating their arguments as to the inapplicability of Article 6 to the case.

However, as in the recent Grand Chamber case *Grzęda v. Poland*, the Court found that the applicant's "right" to serve a full term had indeed been arguable under domestic law and that that "right" attracted the protection of Article 6.

Article 6 § 1 was therefore applicable in the case and the lack of judicial review of the decision to remove Mr Żurek from the NCJ had seriously impaired his right of access to a court.

Again as in *Grzęda*, the Court emphasised the overall context of the various judicial reforms undertaken by the Polish Government, including that of the NCJ that had affected the applicant, which had resulted in the weakening of judicial independence and what has widely been described as the rule-of-law crisis in Poland.

The Court therefore held that there had been a violation of Article 6 § 1. It also held that it was not necessary to examine separately the admissibility and merits of the complaint under Article 13 of the Convention given that it was essentially the same as that under Article 6 § 1.

### Article 10

The Government argued that the measures taken against Mr Żurek had been neutral and had applied to all judges, and had not therefore interfered with his right to freedom of expression.

The Court found, however, that the measures had to be seen in context: namely, against the general background of the Government's successive reforms aimed at weakening judicial independence; and, specifically, that they had all followed the applicant's public statements – in interviews, in online articles and on the NCJ's YouTube channel – between 2015 and 2018 criticising the Government's proposed laws and policies in respect of the judiciary, that they had all been taken by bodies controlled or appointed by the executive and that they had not apparently been triggered by any substantiated irregularity on his part, in particular as concerned the audit of his finances and the inspection of his work.

The Court emphasised that the applicant, as a judge and member/spokesperson of the NCJ, not only had the right but a duty to speak out in defence of the rule of law and judicial independence. Indeed, he was one of the most important figures of the judicial community in Poland who had steadily defended those fundamental values, making his statements from a strictly professional perspective. As such, a high degree of protection of freedom of expression was called for in his case as well as strict scrutiny of any interference with his rights.

On scrutinising the measures against the applicant, the Court noted that the audit had been triggered by some unspecified irregularity and had lasted 17 months without any concrete results, while the inspection of the applicant's work at the Cracow Regional Court had been initiated merely one day after receipt of an anonymous letter which had essentially concerned his criticism of the reform of the judiciary rather than any alleged misconduct or ability to exercise his judicial functions. Furthermore, the decision to dismiss him as spokesperson for that court had been taken without obtaining the Board's opinion, as required under the relevant legislation.

The Court found that the accumulation of such measures could be characterised as a strategy aimed at intimidating (or even silencing) the applicant because of his views. On the material before it, the Court found that there was no other plausible motive.

The measures, moreover, undoubtedly had a “chilling effect” in that they had to 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.

Bearing in mind the paramount importance of freedom of expression on matters of general interest, the Court was of the opinion that there had been an interference with the applicant’s right to freedom expression and that that interference had not been “necessary in a democratic society”.

Accordingly, the Court concluded that there had been a violation of Article 10 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Poland was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

#### Separate opinion

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

*The judgment is available only in English.*

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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.