



Ban on entry to the *Sejm* for displaying a banner violated the Convention

In today's **Chamber** judgment¹ in the case of [Drozd v. Poland](#) (application no. 15158/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned a one-year ban imposed on the applicants on entering the *Sejm* (the Polish Parliament's lower house). They were banned for displaying a banner – which read “Defend Independent Courts” (*Brońcie niezależnych sądów*) – in the grounds of the *Sejm* during a protest against the Government's planned reforms to the judiciary.

The Court felt that a distinction should be made between that incident, which had occurred outside the *Sejm* building, and incidents inside which interfered directly with the orderly conduct of parliamentary debate. It found that the ban had been given without any procedural safeguards. In particular, the applicants had simply received letters from the Head of Parliament Security informing them that they were banned, without any clear procedure for challenging the measure.

Principal facts

The applicants, Paweł Drozd and Dagmara Drozd, are Polish nationals who were born in 1964 and 1967 respectively and live in Mrozów (Poland). They are members of an informal civic movement, Citizens of the Polish Republic (*Obywatele RP*), which engages in political protests.

In the summer of 2017, a series of protests against planned reforms of the judiciary took place in Poland. On 22 June 2017, the applicants participated in a peaceful demonstration against the reforms outside the grounds of the *Sejm*. They were granted entry passes to the *Sejm* to observe the parliamentary debate. As soon as they had gone through the entrance gate into the grounds, they unfurled a banner carrying the slogan “Defend Independent Courts” (*Brońcie niezależnych sądów*). They were immediately escorted out of the grounds and their entry passes were taken off them. The Head of the Parliamentary Service subsequently banned them from entering the premises for a year. Their appeals against the ban, which they alleged limited their right to have access to public information, were rejected because the Head of Parliament Security was not an administrative authority, and his decisions could not be challenged before the administrative courts.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), the applicants complained that the ban on their entering the *Sejm* had infringed their Convention rights. They argued that the decision of the Head of Parliament Security had had no proper legal basis and lacked precision and clarity on when and for how long somebody's right to enter the grounds and buildings of the *Sejm* could be restricted. They contended that the sanction was disproportionate and had been imposed arbitrarily and without a way of challenging it effectively before a court.

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.

The application was lodged with the European Court of Human Rights on 9 March 2019.

Third-party submissions were received from the Commissioner for Human Rights of the Republic of Poland.

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

Marko **Bošnjak** (Slovenia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaale **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 10

The Court observed that the ban on entering the *Sejm*'s buildings and grounds had prevented the applicants from being able to obtain first-hand information on the activities of public administration bodies. It had thus interfered with their right to freedom of expression.

It understood that the ban had had a basis in domestic law, namely in a provision of the Speaker's Ordinance, and had been aimed at preventing any disruption to the work of the *Sejm*. At the same time, it acknowledged that it was legitimate for members of the public to want to obtain first-hand and direct knowledge of the events and debates taking place in the *Sejm*. It was therefore necessary to weigh up the Parliament's need to maintain orderly conduct of parliamentary business against the public's need to receive first-hand information on an important societal issue.

The Court felt that a distinction should be made between that incident, which had occurred outside the *Sejm* building, and incidents inside which interfered directly with the orderly conduct of parliamentary debate. It was not able to conclude whether the applicants had disrupted traffic within the *Sejm* grounds, as alleged by the Government and refuted by the applicants.

However, even if that had been the case, it was important to consider whether any precautions had been taken to make sure that the ban was not implemented arbitrarily. The Court observed that the parliamentary Speaker's Ordinance contained a provision allowing a ban on access to the buildings and grounds "in justified cases, with a view to maintaining peace and order and ensuring the security of the *Sejm* and Senate". However, the provision did not provide any opportunity for the person sanctioned to present arguments in his/her defence. In the applicants' case, they had simply received letters from the Head of Parliament Security informing them that they were banned from entering the *Sejm* for a year. Moreover, the ordinance did not provide any clear procedure for challenging the measure.

Therefore, the Court considered that the ban had been implemented without any procedural safeguards. It concluded that the interference with the applicants' right to freedom of expression had not been "necessary in a democratic society" and that there had been a violation of Article 10 of the Convention.

Article 11

As the applicants' complaints did not concern their right of peaceful assembly with others, the Court examined the applicants' grievances only from the standpoint of Article 10.

Just satisfaction (Article 41)

The Court held that Poland was to pay the applicants jointly 1,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,361 in respect of costs and expenses.

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.