



## Decision suspending judge from duties discouraged her, and other judges, from speaking out against judicial reforms

In today's Chamber judgment<sup>1</sup> in the case of [Morawiec v. Poland](#) (application no. 46238/20) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (access to court), Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) of the European Convention on Human Rights.**

Ms Morawiec is a judge. Since 2018 she has been the President of the Judges' Association Themis, which has publicly criticised the Government's reforms affecting the judiciary.

The case concerns rulings by the Disciplinary Chamber of the Supreme Court ("the DCSC") relating to Ms Morawiec's immunity from prosecution and to her suspension from judicial duties, which she argues were taken in reaction to her public criticisms of the judicial reforms and a successful civil action she had brought against the Minister of Justice in 2017.

The Court held, as it had in previous cases, that the DCSC was not a "tribunal established by law". It found that the measures taken by the authorities to lift Ms Morawiec's immunity and to suspend her from judicial duties could be characterised as a strategy aimed at intimidating her and that those measures must have had a "chilling effect", discouraging not only her, but also other judges from participating in public debate on legislative reforms.

### Principal facts

The applicant, Beata Morawiec, is a Polish national who was born in 1964 and lives in Libertów (Poland).

Ms Morawiec is a judge. She has been the President of the Judges' Association Themis since 2018. Under her presidency the association has been actively involved in the public debate concerning the reorganisation of the judiciary.

In November 2017 the then Minister of Justice, Zbigniew Ziobro, dismissed Ms Morawiec from her post as President of the Cracow Regional Court, stating in a press release that she had failed to properly supervise the administrative activities of that court. In January 2018 Ms Morawiec lodged a civil claim against the State, demanding an apology for the contents of the press release which, she argued, had damaged her reputation. In January 2019 the Warsaw Regional Court allowed her claim. Following the dismissal of an appeal, the Minister was ordered to publish an apology and to pay a certain sum to a charity.

In September 2020 a prosecutor of the Internal Affairs Department of the State Prosecutor's Office applied to the DCSC, seeking to lift Ms Morawiec's immunity with a view to charging her with several criminal offences, including intentional abuse of power by a public official, misappropriation of funds and bribery. The prosecutor alleged that she had accepted a mobile phone from a defendant in a

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).

criminal case in exchange for delivering a judgment in his favour and that she had accepted public funds to write a report that she had never actually written.

On 12 October 2020 the DCSC, sitting in a single-judge formation, lifted Ms Morawiec's immunity and suspended her from judicial duties. It reduced her salary by 50%. Ms Morawiec appealed against that resolution arguing, among other things, that the DCSC had not been a "tribunal established by law".

On 7 June 2021 the DCSC, sitting in a three-judge formation, quashed the first-instance resolution and refused to lift Ms Morawiec's immunity. The appeal panel dismissed the applicant's complaints that the DCSC had not been a "tribunal established by law" but held that the evidence adduced by the prosecutor had been insufficient to substantiate the criminal charges against her. Shortly thereafter, Ms Morawiec resumed her judicial duties.

Various individuals and organisations have publicly expressed their support for Ms Morawiec. These include, Judge Safjan, a then judge of the Court of Justice of the European Union and a former President of the Polish Constitutional Court, the European Association of Judges, the MEDEL (*Magistrats européens pour la démocratie et les libertés*) and the Association of European Administrative Judges.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and Article 8, Ms Morawiec complained that the proceedings concerning the lifting of her immunity and her suspension from judicial duties had been conducted by the DCSC, a body which did not satisfy the requirements of "an independent and impartial tribunal established by law" and that her right to private life had been violated by that body's decision.

Relying on Article 10, Ms Morawiec complained that the DCSC's resolution had amounted to a violation of her freedom of expression in so far as it had been taken in reaction to (i) her public activity, particularly her criticism of the reorganisation of the judiciary by the then Government, and her role as President of the Judges' Association Themis and (ii) the civil action she had lodged against the Minister of Justice.

The application was lodged with the European Court of Human Rights on 20 October 2020.

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

Ivana Jelić (Montenegro), *President*,  
Erik Wennerström (Sweden),  
Raffaele Sabato (Italy),  
Frédéric Krenc (Belgium),  
Davor Derenčinović (Croatia),  
Alain Chablais (Liechtenstein),  
Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, *Section Registrar*.

## Decision of the Court

### Article 6

The parties disagreed as to whether Ms Morawiec had retained victim status in view of the favourable resolution of the DCSC of 7 June 2021.

The Court found that, following that resolution, the adverse consequences for Ms Morawiec no longer persisted. The DCSC had refused to lift Ms Morawiec's immunity, had terminated her suspension and remuneration had been paid out to her.

However, Ms Morawiec's complaint did not concern the material fairness of the proceedings before the DCSC but, rather, the alleged lack of compliance of that body with the requirements of a "tribunal established by law". The DCSC appeal panel had been composed of judges appointed in the same procedure as the judge who had examined the case at first instance and the appeal panel had dismissed the complaints raised by Ms Morawiec that the DCSC was not a "tribunal established by law".

Against that background, and considering that the conditions of acknowledgment and redress for the breach of the Convention were cumulative, the Court found that, in the specific circumstances of Ms Morawiec's case, the resolution of 7 June 2021 had not deprived her of her status as a victim in relation to her complaint under Article 6 § 1.

As it had in previous cases, the Court concluded that the DCSC, which had examined Ms Morawiec's case, was not a "tribunal established by law".

There had therefore been a violation of Article 6 § 1 of the Convention.

### Article 8

The lifting of Ms Morawiec's immunity and her ensuing suspension from exercising judicial duties had affected her private life to a very significant degree and those measures constituted an interference with her right to respect for her private life.

The Court found that the decision in question had been made by a body which could not be considered a "court" for the purposes of the Convention, despite the explicit requirement under the Constitution that such a decision had to be made by a court.

There had therefore been a violation of Article 8.

### Article 10

Ms Morawiec's case had to be seen against the background of the reorganisation of the judiciary in Poland.

In her capacity as a judge and the President of the Judges' Association Themis, Ms Morawiec had publicly expressed her views on the legislative reforms related to the judicial system and the impact of those reforms on the functioning of the courts. Since at least January 2018, she had been one of the most outspoken critics of the Government reforms affecting the judiciary among Polish judges.

The Court noted that (i) the measures leading to the lifting of her immunity and her suspension had been initiated by prosecutors who were directly subordinate to the Prosecutor General, who was also the Minister of Justice, and that (ii) the association presided over by Ms Morawiec had directly criticised that person in its public statements, even going as far as calling for his resignation.

The Court considered that there had been *prima facie* evidence of a causal link between Ms Morawiec's exercise of her freedom of expression and the DCSC's decision to lift her immunity and to suspend her from her judicial duties and agreed with her argument that those actions had been prompted by the views and criticisms that she had publicly expressed in her professional capacity.

The decision in question had been given by a body which could not be considered a "court" for the purposes of the Convention, despite the explicit requirements under the Polish Constitution that decisions of that kind had to be made by such a body. The interference with Ms Morawiec's right to freedom of expression could not be regarded as having been lawful.

The measures taken by the authorities could be characterised as a strategy aimed at intimidating (or even silencing) Ms Morawiec in connection with the views that she had expressed in the defence of the rule of law and judicial independence. The Court considered that the measures in question must have had a “chilling effect” in that they must have discouraged not only Ms Morawiec 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.

There had been a violation of Article 10 of the Convention.

### **Just satisfaction (Article 41)**

The Court held that Poland was to pay Ms Morawiec 21,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 in respect of costs and expenses.

*The judgment is available only in English.*

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