

## Refusal without reasons in 2008 by the then Polish President to appoint candidates to judicial posts and absence of judicial review, breached Convention

In today's Chamber judgment<sup>1</sup> in the case of [Sobczyńska and Others v. Poland](#) (application no. 62765/14 and 2 others) the European Court of Human Rights held, unanimously, that there had been a violation of Article 6 (access to a court) of the European Convention on Human Rights.

The case concerned a refusal in 2008 by the then President of the Republic to appoint the applicants to vacant judicial posts, without giving reasons, despite their having successfully participated in a competitive selection procedure and the absence of judicial review of that decision.

The Court found that the applicants had had a right to a fair procedure in the examination of their applications for a judicial post and had had a legitimate and reasonable expectation they would be given proper consideration. As the applicants had not been informed of the reasons for the President's refusal to appoint them and had been unable to challenge that refusal, they had not been protected against what could legitimately be suspected to be an arbitrary decision.

### Principal facts

The applicants, Aleksandra Sobczyńska, Adrian Klepacz and Rafał Brukiewicz are Polish nationals, who, at the time in question, were working in various district courts as junior judges.

In 2006 they applied for vacant posts as district court judges. Their applications were approved by the National Council of the Judiciary ("the NCJ") and were sent to the then President of the Republic with a motion that the applicants be appointed. On 03 January 2008 the President issued a decision refusing to appoint the candidates, which was published in the Official Gazette of the Republic of Poland on 16 January 2008. No reasons were given for that decision. It was the first time that a President had declined to appoint candidates recommended by the NCJ.

Various challenges brought by the applicants were unsuccessful as the national courts found that they lacked jurisdiction in the matter.

### Complaints, procedure and composition of the Court

Relying on Article 6 (access to a court), the applicants argued that they had been denied the right of access to a court as the national courts had refused to hear their cases concerning the President of the Republic's decision not to appoint them as judges.

The application was lodged with the European Court of Human Rights on 7 September 2014.

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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).

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

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

and also Ilse Freiwirth, *Section Registrar*.

## Decision of the Court

While no “right to become a judge” existed in the Polish legal system, Polish Constitutional law enshrined a general principle of equal access to public office, including judicial office, and required that decisions on that matter be taken through a transparent procedure offering candidates protection against arbitrary refusal. The administrative courts had found that the decisions of the President of the Republic fell outside their jurisdiction. However, in some of their judgments on the matter, they had gone beyond that finding and had made important observations on the danger that would be posed to the constitutional principle of equal access to public service if the President were to have unlimited power to refuse judicial appointments.

At the time, the applicants had been sitting junior judges who were already exercising judicial functions essentially identical to those of fully qualified judges. Their entitlement to be considered for judicial posts arose from their existing junior-judge status and from the detailed statutory framework governing progression from that status to full judicial office. The applicants had obtained all the necessary clearances and had subsequently undergone a selection procedure. Having assessed their applications on the basis of competency and integrity criteria, the NCJ had then submitted a motion for the President of the Republic to appoint them to relevant vacant judicial posts. In such circumstances, the Court held that the applicants had had a legitimate and reasonable expectation that their applications would be given proper consideration, subject to transparent and objective evaluation devoid of arbitrariness.

However, the applicants had been given absolutely no reasons for the President’s decision refusing to appoint them against the motion of the NCJ. Most importantly, they had been given no official decision that they could challenge in court. Consequently, it was legitimate for the applicants to have suspected an element of arbitrariness in the presidential decision. The Court did not rule out the possibility that in accordance with domestic law, the President might, on an exceptional basis, submit a request inviting the NCJ to reconsider a motion to appoint a judge, provided that that request was duly reasoned.

The Court concluded that the applicants had a general right of equal access to public service within the judiciary. The general right in question took the form of the right to a fair procedure in the examination of an application for a judicial post. As they had not been informed of the reasons for the decision refusing their appointment and had been unable to challenge that decision in court, they had not been protected against what could legitimately be suspected as arbitrariness in the contested decision of the President of the Republic.

There had therefore been a violation of the applicants’ right of access to a court under Article 6.

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

The Court held that Poland was to pay each of the applicants 13,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in English.*

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