



## Polish man who was given custodial penalty for protesting during a trial of communist-era generals suffered rights violations

In today's **Chamber judgment**<sup>1</sup> in the case of [Słomka v. Poland](#) (application no. 68924/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights, and

**a violation of Article 10 (right to freedom of expression)** of the European Convention.

The case concerned the applicant's 14-day custodial sentence for contempt of court after shouting slogans during the trial of communist-era generals who ordered martial law in the 1980s.

The Court held that the applicant's actions had aimed at criticising the judiciary and a perceived lack of justice, rather than at insulting the judges. He had been sentenced to a custodial penalty by those same judges, without an opportunity to present his arguments. A subsequent appeal decision had not remedied the procedural shortcomings.

The circumstances of the case raised an objectively justified fear of a lack of impartiality and there had been a violation of Article 6. There had also been a violation of Article 10 because the interference with his right to freedom of expression had not been necessary in a democratic society.

### Principal facts

The applicant, Adam Słomka, is a Polish national who was born in 1964 and lives in Katowice (Poland).

Mr Słomka is a former opposition activist who was imprisoned by the communist authorities in 1982.

He was in court when on 12 January 2012 the trial judges were to deliver their judgment in the case of three high-ranking members of the Military Council of National Salvation, which imposed martial law in 1981.

After the judges had arrived in the courtroom, Mr Słomka jumped behind the judges' table and shouted, "This is a mockery of justice!" Some other members of the public also shouted similar slogans. The judges left the courtroom. Mr Słomka was removed, but returned later and continued shouting out statements in the same vein.

The presiding judge decided to read the verdict out in a neighbouring room. Later that day Mr Słomka was sentenced in his absence to 14-days' imprisonment for contempt of court. Several days later he was arrested and taken to the Warsaw Remand Centre.

He lodged an interlocutory appeal, arguing, among other things, that he had not disturbed the court so much as to warrant such a penalty. His appeal was dismissed in March 2012, after he had served his sentence. The appeal court's findings included the argument that his disrespectful behaviour had interfered with the solemn nature of court proceedings and the court's dignity and had disrupted the proceedings.

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).

## Complaints, procedure and composition of the Court

Relying on 6 §§ 1 and 3 (a), (b) and (c) (right to a fair trial / right to be informed promptly of the accusation / right to adequate time and facilities for preparation of defence / right to legal assistance of own choosing), he complained, among other things, of the unfairness of the proceedings leading to the custodial penalty owing to a lack of impartiality on the part of judges as they were the ones who had been offended and had imposed the penalty. He also alleged a lack of equality of arms and a lack of objectivity on the part of the court. In addition, he complained that the penalty had been carried out before his interlocutory appeal had been examined in court.

Under Article 10 (freedom of expression), he complained of the disproportionate severity of the punishment.

The application was lodged with the European Court of Human Rights on 20 September 2012.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Ksenija **Turković** (Croatia),  
Aleš **Pejchal** (the Czech Republic),  
Krzysztof **Wojtyczek** (Poland),  
Pauliine **Koskelo** (Finland),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### Article 6

The applicant’s comments in court could be viewed as a general challenge to the authority of the judiciary and as criticism of various aspects of the organisation and course of the trial. He had not used insulting or derogatory language. The judges had been the object of the applicant’s action, not in direct or personal terms, but as an institution whose decisions had allegedly undermined justice.

The Court noted that the bench had consisted of three judges and that no proceedings were held before a different panel on Mr Słomka’s liability for his protest. Such a situation was aggravated by the fact that he had no opportunity to present his side of the case and because the contempt judgment was in summary form. In addition, he had been given the maximum possible penalty.

Although the appeal judgment which upheld the sentence had included reasoning and Mr Słomka had been able to present arguments, this had not remedied the earlier procedural shortcomings. Furthermore, the appeal had had no practical effect as he had already served his 14-day sentence.

The Court found that the accumulation of roles between the complainant and judge in the case, where a custodial penalty had been applied, could lead to objectively justified fears of a lack of impartiality under the test for such issues set out in its case-law. There had therefore been a violation of Article 6. It saw no need to examine Mr Słomka’s equality of arms complaint.

### Article 10

The Court noted that courts were not immune from criticism or scrutiny, but a distinction had to be drawn between a form of expression which was an insult to a court or its members and one which was a criticism.

Mr Słomka had suffered an interference with his right to freedom of expression as he had been held in custody for 14 days for his actions. The Court accepted that the penalty had been in accordance with the law and had pursued a legitimate aim, within the meaning of Article 10.

However, it noted its finding that the decision had breached Article 6 and considered that the restriction had not been accompanied by effective and adequate safeguards. There had therefore been a violation of Article 10 as the interference had not been necessary in a democratic society.

### Other Articles

The applicant had complained that he had served his sentence by the time the appeal court had determined his case, in essence alleging that his challenge to the lawfulness of his detention had not been dealt with speedily. However, the Court held that its findings under Article 6 and Article 10 meant that this complaint did not raise a separate issue under Article 5 § 4 (right to liberty and security / right to have lawfulness of detention decided speedily by a court).

### 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 850 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.