



## Insufficient procedural safeguards against arbitrariness in the case of a senator who was allegedly forced to resign

In today's **Chamber** judgment<sup>1</sup> in the case of **G.K. v. Belgium** (application no. 58302/10) the European Court of Human Rights held, by a majority (six votes to one), that there had been:

**a violation of Article 3 of Protocol No. 1 (right to free elections)** to the European Convention on Human Rights.

The case concerned a former Belgian senator who alleged that she had been unlawfully deprived of her seat after being forced to resign under pressure from members of her party. She withdrew her resignation several days later, arguing that her consent was invalid, but the Senate took formal note of her resignation and ratified her successor's credentials.

The Court found in particular that G.K.'s resignation as a senator had been accepted by the Senate despite the fact that she had not been afforded any procedural safeguards against arbitrariness; this had impaired the very essence of her rights under Article 3 of Protocol No. 1.

The Court observed, among other things, that the discretion enjoyed by the Senate had not been circumscribed with sufficient precision by the provisions of domestic law; that neither the applicant nor her lawyer had been heard by the Bureau, the body empowered to review the validity of the applicant's resignation; that the Bureau had been made up of senators, two of whom had been directly accused by the applicant of involvement in exerting pressure on her; and that the plenary sitting of the Senate, at which the resignation had been approved, had not been conducted in such a way as to remedy the shortcomings in the proceedings before the Bureau, since the two senators accused by the applicant had been present, whereas she had been prevented by Senate security staff from entering the chamber.

### Principal facts

The applicant, G.K., is a Belgian national who was elected to the Senate in the June 2010 parliamentary elections.

In August 2010, during a private trip to Asia, G.K. was suspected of drug-related offences, which she denied. She informed the President of the Belgian Senate. On her return to Brussels, the President of the Senate summoned her to a meeting attended by two other senators from her own party. According to G.K., at the end of the meeting she was forced to sign a pre-written resignation letter.

In September 2010 the director of the Senate confirmed receipt of the resignation. Several days later, G.K. informed the President of the Senate that she wished to continue her term as a senator, arguing that she had been coerced into signing the resignation letter. She was subsequently informed that it would be for the plenary Senate to give a decision on the merits of the case when verifying the credentials of her successor.

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 October 2010 the Senate held a plenary sitting at which it found that there was no cause to dispute the validity of G.K.'s resignation. It thus took formal note of the resignation and G.K.'s successor was sworn in. According to G.K., she was prevented from entering the chamber of the Senate.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 of Protocol No. 1 (right to free elections) to the Convention, G.K. complained that she had been deprived of her seat in the Senate.

The application was lodged with the European Court of Human Rights on 8 December 2010.

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

Robert **Spano** (Iceland), *President*,  
Paul **Lemmens** (Belgium),  
Julia **Laffranque** (Estonia),  
Valeriu **Grițco** (Republic of Moldova),  
Stéphanie **Mourou-Vikström** (Monaco),  
Ivana **Jelić** (Montenegro),  
Arnfinn **Bårdsen** (Norway),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 3 of Protocol No. 1 \(right to free elections\)](#)

The Court noted firstly that it had already found that the refusal to accept the withdrawal of a member of parliament's resignation or forfeiture of his or her seat pursued a legitimate aim, namely safeguarding legal certainty in relation to the electoral process. It went on to observe the following.

**Firstly**, in so far as G.K. had explicitly stated on several occasions that her resignation had been forced and that she wished to retain her seat in the Senate, there was at the very least a dispute as to the validity of her resignation. However, at the time of the events, neither the law nor the Rules of the Senate had provided for a procedure in the event of the withdrawal of a senator's resignation. In particular, it had not been specified whether a resignation took effect *ipso facto* and was irrevocable or whether it only became irrevocable after being approved by the plenary Senate. Thus, in the absence of any regulations, the Senate's legal department had been asked to produce two opinions, eventually finding that it was for the plenary Senate to rule on the validity of the resignation at the time of verifying the successor's credentials. Accordingly, the Court concluded that the discretion enjoyed by the Senate had not been circumscribed with sufficient precision by the provisions of domestic law.

**Secondly**, the proceedings before the Senate had not afforded procedural safeguards against arbitrariness. The Rules of the Senate had provided that the Bureau was required to review the credentials of the applicant's successor, and thus, indirectly, the validity of her resignation. However, neither the applicant nor her lawyer had been heard by the Bureau. Nor had the applicant been invited to submit her arguments in writing before the adoption of the report. The Bureau had indicated that it had drawn up its report on the basis of the evidence before it, which included statements made by the applicant and her lawyer in two letters. Furthermore, no reasons had been given as to why the Bureau had rejected the applicant's arguments and had found that there was no cause to dispute the validity of her resignation.

**Thirdly**, the Bureau had been made up of senators, two of whom had been directly accused by the applicant of having been involved in exerting pressure on her at the time she had signed her resignation letter. There was no evidence to suggest that the two senators in question had refrained from taking part in the debate on the validity of the applicant's resignation. As the Bureau had met in private, it was impossible to know what part they had played in the discussions. Accordingly, the composition of the Bureau of the Senate in the applicant's case had not been such as to counter the impression that the senators directly accused by her had played a dominant role in the decision-making process.

**Fourthly**, the plenary sitting of the Senate had not been conducted in such a way as to remedy the shortcomings in the proceedings before the Bureau. The two senators accused by the applicant had also been present at the plenary sitting on 12 October 2010 and there was no indication that they had abstained from voting. Furthermore, the applicant had not had an opportunity to be heard and to raise her arguments since she had been prevented by the Senate security staff from entering the chamber.

**Accordingly**, the Court found that the applicant's resignation as a senator had been accepted by the Senate despite the fact that she had not been afforded any procedural safeguards against arbitrariness; this had impaired the very essence of her rights under Article 3 of Protocol No. 1. There had therefore been a violation of that Article.

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

The Court held that Belgium was to pay G.K. 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 29,968.59 in respect of costs and expenses.

#### Separate opinion

Judge Mourou-Vikström expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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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.