



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 9 July 2019

FIRST SECTION

Application no. 43572/18
Jan GRZEȔA
against Poland
lodged on 4 September 2018

STATEMENT OF FACTS

The applicant, Mr Jan GrzeȔa, is a Polish national, who was born in 1956 and lives in Piła. He is represented before the Court by Mr M. Pietrzak and Ms M. Mączka-Pacholak, lawyers practising in Warsaw.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is a Supreme Administrative Court judge sitting in the Gorzów Wielkopolski Regional Administrative Court.

On 11 January 2016 the applicant was elected by the General Assembly of Judges of the Supreme Administrative Court with the participation of the Representatives of the General Assemblies of Judges of the Regional Administrative Courts as member of the National Council of the Judiciary (“the NCJ”; *Krajowa Rada Sądownictwa*) for a four-year term, until 11 January 2020.

The NCJ is a constitutional organ charged with safeguarding the independence of courts and judges (Article 186 § 1 of the Constitution). One of its competences is to assess candidates for judicial offices at every level of the judiciary. The candidatures proposed by the NCJ are submitted to the President of the Republic for appointment.

The NCJ's composition is prescribed in Article 187 § 1 of the Constitution.

In November 2015 the Government undertook a number of legal and factual measures regarding the Constitutional Court. The NCJ adopted opinions containing critical assessment of successive bills on the Constitutional Court. Subsequently, it adopted opinions on the other Government's proposals in the area of the administration of justice regarding the organisation of ordinary courts, trainee judges and judicial secondments. In its opinions the NCJ pointed out the risks to the independence of the judiciary posed by those proposals.

In January 2017 the Government announced plans for a large-scale judicial reform regarding the NCJ, the Supreme Court and the ordinary courts. The Minister of Justice explained that a comprehensive reform was needed in order to, *inter alia*, increase the efficiency of the administration of justice and render election of the NCJ members more democratic.

The Government submitted to the Sejm (the lower house of the Polish parliament) a bill amending the Act on the NCJ. Two further bills on the Supreme Court and the Organisation of Ordinary Courts were submitted by the deputies of the majority.

The first bill amending the Act on the NCJ was assessed critically by the NCJ, the Supreme Administrative Court, the National Bar Association, the Ombudsman and the OSCE Office for Democratic Institutions and Human Rights in their respective opinions of 30 January, 31 January, 5 April, 12 April and 5 May 2017. The opinions stated that the proposed amendments violated the Constitution in that they allowed the legislature to gain control over the NCJ in contradiction with the principle of the separation of powers. The amendments would also result in the termination of the constitutionally prescribed four-year mandate of judicial members of the NCJ.

In July 2017 the adoption of the three bills by parliament sparked large public protests. On 31 July 2017 the President of the Republic vetoed the bills amending the Act on the NCJ and on the Supreme Court. The third bill was signed and entered into force.

Subsequently, on 26 September 2017 the President submitted to the Sejm his own bill amending the Act on the NCJ. This bill was assessed negatively by the National Bar Association, the Supreme Court, the NCJ, the Ombudsman and the National Council of Attorneys at Law in their respective opinions of 17 October, 23 October, 31 October and 12 November 2017.

The bill was adopted by the Sejm and Senate (the upper house of the Polish parliament) on 8 and 15 December 2017 respectively. It was signed by the President on 20 December 2017 and entered into force on 17 January 2018.

Pursuant to section 6 of the Act Amending the Act on the NCJ (“the 2017 Amending Act”), the mandates of the judicial members of the NCJ elected on the basis of the previous Act would continue until the day preceding the beginning of the term of office of the new members of the NCJ.

On 6 March 2018 the Sejm elected fifteen judges as new members of the NCJ. On the same date, pursuant to section 6 of the 2017 Amending Act, the applicant’s mandate as member of NCJ was *ex lege* prematurely terminated. The applicant did not receive any official notification regarding the termination of his mandate.

According to the applicant, the 2017 Amending Act did not provide any procedure, judicial or otherwise, with a view to contesting the premature termination of his mandate.

The applicant remains in office as judge of the Supreme Administrative Court.

B. Relevant domestic law and practice

1. Constitution of the Republic of Poland

Article 10

“1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.”

Article 186 § 1

“1. The National Council of the Judiciary shall safeguard the independence of courts and judges.”

Article 187

“1. The National Council of the Judiciary shall be composed as follows:

1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;

2) fifteen judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;

3) four members chosen by the Sejm from amongst its Deputies and two members chosen by the Senate from amongst its Senators.

2. The National Council of the Judiciary shall choose, from amongst its members, a chairperson and two deputy chairpersons.

3. The term of office of those chosen as members of the National Council of the Judiciary shall be four years.

4. The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.”

2. *The Act of 8 December 2017 Amending the Act on the National Council of the Judiciary (ustawa z dnia 8 grudnia 2017 o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw; “the 2017 Amending Act”).*

Before the entry into force of the 2017 Amending Act, the Act on the National Council of the Judiciary provided that judicial members of this body were to be elected by the relevant assemblies of judges at different levels of the judiciary.

The 2017 Amending Act granted to the Sejm the competence to elect judicial members of the NCJ for a joint four-year term of office (section 9a § 1). It stipulated that the joint term of new members of the NCJ begins on the day following the day of their election (section 9a § 3).

Pursuant to section 6 of the 2017 Amending Act, the mandates of judicial members of the NCJ elected on the basis of the previous Act shall continue until the day preceding the beginning of the term of office of the new members of the NCJ.

3. *Relevant case-law of the Constitutional Court regarding the National Council of the Judiciary*

The following judgments of the Constitutional Court are relevant in the context of the present case:

- a. the Constitutional Court’s judgment of 18 July 2007, no. K 25/07;
- b. the Constitutional Court’s judgment of 20 June 2017, no. K 5/17.

C. Relevant international materials

1. United Nations

The Special Rapporteur on the independence of judges and lawyers undertook an official visit to Poland from 23 to 27 October 2017. The report of 5 April 2018 on his mission to Poland contains findings relevant for the present case in §§ 63-70 and 85.

2. OSCE

OSCE Office for Democratic Institutions and Human Rights prepared Final opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland of 5 May 2017 at the request received from the Chairperson of the NCJ.

3. *Council of Europe*

The following documents are relevant in the context of the present case:

(a) **Committee of Ministers**

Recommendation CM Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, adopted on 17 November 2010.

(b) **Consultative Council of European Judges**

1. Opinion no. 10(2007) on the Council for the Judiciary at the service of society adopted on 23 November 2007;
2. The Magna Carta of Judges (Fundamental Principles) adopted in November 2010, § 13;
3. Opinion of the CCJE Bureau of 7 April 2017 on the Draft Act of 23 January 2017 on the Polish National Council of the Judiciary;
4. Opinion of the CCJE Bureau of 12 October 2017 (CCJE-BU(2017)9REV) with respect to the Draft Act of September 2017 presented by the President of Poland amending the Act on the Polish National Council of the Judiciary.

(c) **Venice Commission**

1. Report on the Independence of the Judicial System, Part I: the Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), § 32;
2. Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court proposed by the President of Poland and on the Act on the Organisation of Ordinary Courts adopted by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017, CDL-AD(2017)031), §§ 15-31.

(d) **Commissioner for Human Rights**

In his letter of 31 March 2017 to the Speaker of the Sejm, the Council of Europe's Commissioner for Human Rights expressed his concerns about the bill on Amendments to the Act on the NCJ.

4. *European Union*

On 20 December 2017 the European Commission proposed to the Council to adopt a decision under Article 7(1) of the Treaty on European Union regarding the rule of law in Poland. Its reasoned proposal contains findings relevant for the present case in §§ 137-145.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that he was denied access to a tribunal to contest the arbitrary and premature termination of his mandate as member of the NCJ. He was elected member of this body for a four-year term prescribed in Article 187 § 3 of the Constitution and had a right to retain his mandate for the duration of the term of office, that is until 11 January 2020. The premature termination of his mandate violated the Constitution and the rule of law.

In the applicant's view, the 2017 Amending Act was a reaction to the NCJ's criticism of the actions undertaken by the legislative and executive branch aimed at undermining the independence of the courts and of the Constitutional Court. It was further motivated by the majority's wish to subordinate the NCJ to the legislative branch.

2. The applicant complains under Article 13 of the Convention that he was deprived of any procedure, judicial or other, whereby he could contest the premature termination of his mandate as member of the NCJ.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case (cf. *Baka v. Hungary* [GC], no. 20261/12, §§ 100-118, 23 June 2016)?

2. Did the applicant have a "civil right" within the meaning of Article 6 § 1 of the Convention? The parties are requested to produce any existing domestic case-law on disputes relating to service of members of the National Council of the Judiciary.

3. If Article 6 § 1 of the Convention under its civil head was applicable to the present case, did the applicant have access to a court for the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

4. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention in relation to the early termination of his mandate?