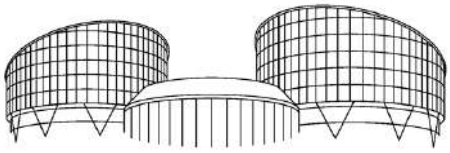

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DROZD v. POLAND

(Application no. 15158/19)

JUDGMENT

Art 10 • Freedom of expression • Lack of adequate procedural safeguards for one-year ban on informal civic movement members on entering the Parliament for displaying banner during a peaceful demonstration outside its grounds • No opportunity under domestic law to be involved in relevant decision-making procedure • Lack of clear procedure for challenging the impugned ban

STRASBOURG

6 April 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Drozd v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak*, President*,
Krzysztof Wojtyczek,
Alena Poláčková,
Ivana Jelić,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 15158/19) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Mr Paweł Drozd ("the first applicant") and Ms Dagmara Drozd ("the second applicant"), on 9 March 2019;

the decision to give notice to the Polish Government ("the Government") of the complaints under Articles 10 and 11 of the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Commissioner for Human Rights, who was granted leave to intervene by the President of the Section;

Having deliberated in private on 14 March 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the sanctioning of the applicants with a one-year ban on entering the *Sejm* (the lower house of the Polish Parliament) for displaying a banner on the grounds of the *Sejm* in the context of a peaceful demonstration.

THE FACTS

2. The applicants were born in 1964 and 1967 respectively and live in Mrozów. They were represented by Ms M. Mączka-Pacholak, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

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

I. BACKGROUND TO THE CASE

5. The applicants are members of an informal civic movement, Citizens of the Polish Republic (*Obywatele RP*), which engages in political protests and actions.

6. In the summer of 2017, a series of protests against planned reforms of the judiciary took place in Poland (see *Reczkowicz v. Poland*, no. 43447/19, §§ 8-9, 22 July 2021).

II. EVENTS OF 22 JUNE 2017

7. On 22 June 2017 the applicants took part in a peaceful demonstration (relating to the planned reform of the judiciary) which was held outside the grounds of the *Sejm*. On the same day the applicants were granted single entry passes allowing them to enter the *Sejm* and observe the parliamentary debate. As soon as they passed through the entrance gate into the grounds and were making their way to the *Sejm*'s building, the applicants unrolled a banner reading "Defend Independent Courts" (*Brońcie niezależnych sadów*).

8. According to the applicants, they had not caused any danger to road traffic within the grounds of the *Sejm*. There were no pedestrians or vehicles on the road at the time of the demonstration. The applicants had behaved passively and had only wished to convey their message to the parliamentarians.

9. According to the Government, the Parliament Security Service (*straż marszałkowska*) had asked the applicants to act in a manner consistent with the purpose of their visit. The applicants had not complied and had blocked an internal road which caused a danger to road traffic.

10. The applicants were immediately escorted from the *Sejm*'s grounds. They were also obliged to return their single entry passes.

III. DECISION OF THE HEAD OF THE PARLIAMENT SECURITY SERVICE

11. By letters of 14 July 2017 the applicants were informed that, given that they had disturbed public order and that they had refused to comply with the instructions of the Parliament Security Service, on 22 June 2017 the Head of that Service (*Komendant Straży Marszałkowskiej* – "the Head of Parliament Security") had decided to ban them from entering the *Sejm* until 21 June 2018. The first applicant received the letter on 7 August 2017 and the second applicant on 31 July 2017.

IV. APPEAL PROCEEDINGS

12. On 30 August 2017 the applicants appealed against those decisions to the Warsaw Regional Administrative Court. They emphasised, in particular,

that the decision of the Head of Parliament Security was based on internal regulations (the Speaker's ordinance; see paragraph 20 below). Those regulations were not sufficiently foreseeable as they lacked clarity and precision. Moreover, the ban on entering the *Sejm* had limited their right to have access to public information. In their pleadings they relied mainly on Article 61 of the Polish Constitution (right of access to public information).

13. On 22 January 2018 the Warsaw Regional Administrative Court gave two decisions and rejected the applicants' appeals as inadmissible in law. The court held that the letter of the Head of Parliament Security had not constituted an administrative decision. The Parliament Security Service was a uniformed formation directly subordinate to the Speaker of the *Sejm* (*Marszałek Sejmu*). Therefore, the Head of Parliament Security was not an administrative authority and his decisions could not be challenged before the administrative courts.

14. The applicants lodged cassation appeals against these decisions. In particular, they complained, relying on Article 45 of the Polish Constitution (right to a fair trial) and Articles 6 and 13 of the Convention, that they did not have access to a court in order to challenge the restriction on their right of access to public information.

15. On 29 August and 16 November 2018, the Supreme Administrative Court dismissed their cassation appeals. The court endorsed the reasoning of the Warsaw Regional Administrative Court. It confirmed that the Head of Parliament Security was not a public administration authority and that the measures issued by him had not been taken in the context of a public administration procedure; they did not have the status of either an act or an activity as referred to in section 3(2) point 4 of the Administrative Courts Act (see paragraph 22 below). The court further noted that, according to the Rules of Procedure of the *Sejm* (*Regulamin Sejmu*), there was no right for members of the public to participate in parliamentary sessions and the decision in that respect was left to a competent authority (see paragraphs 18, 19 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

16. Article 54 of the Constitution guarantees freedom of expression and provides in its relevant part as follows:

> "Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information."

17. Article 61 of the Constitution, in so far as relevant, provides:

> "1. Each citizen shall have the right to obtain information on the activities of organs of public authority and on persons discharging public functions ...

2. The right to obtain information shall encompass the right of access to documents and entry to sittings of collective organs of public authority formed by universal suffrage, and include the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paragraphs 1 and 2 above may be imposed by statute solely to protect the freedoms and rights of other persons ... public order, security, or important economic interests of the State.

4. The procedure for the provision of information referred to in paragraphs 1 and 2 above shall be specified by statute, and, regarding the *Sejm* and the Senate, by their rules of procedure."

II. RULES OF PROCEDURE OF THE *SEJM*

18. Pursuant to the Rules of Procedure of the *Sejm* of 30 July 1992 (*Regulamin Sejmu*), members of the public may watch the *Sejm* debates from the public gallery in accordance with the rules specified by the Speaker of the *Sejm*.

19. Rule 170 § 4 of the Rules of Procedure, provides as follows:

"Persons and delegations invited by the Speaker of the *Sejm* and employees of the Chancellery of the *Sejm* authorised by the Speaker are also entitled to access the Chamber of the *Sejm*."

III. ACCESS TO THE *SEJM*

20. On 9 January 2008 the Speaker of the *Sejm* issued an ordinance on access to the buildings managed by the Chancellery of the *Sejm* and access and entry to the grounds under the management of the Chancellery of the *Sejm* (*w sprawie wstępu do budynków pozostających w zarządzie Kancelarii Sejmu oraz wstępu i wjazdu na tereny pozostające w zarządzie Kancelarii Sejmu*). The ordinance provides that for valid reasons (specifically, to maintain order and guarantee safety), the Head of Parliament Security may impose a temporary ban on access to the *Sejm*'s buildings and grounds. In particular, this may occur if the person concerned does not respect the internal regulations of the *Sejm*, disturbs order during their visit or undermines the dignity of the *Sejm*. The relevant provision, Article 21, provides as follows:

"1. In justified cases, with a view to maintaining peace and order and ensuring the security of the *Sejm* and the Senate, the Head of Parliament Security, after notifying the Head of the Chancellery of the *Sejm* and the Head of the Chancellery of the Senate, may temporarily suspend the right of access to the buildings and grounds of a person to whom the document referred to in Article 5 § 1 points 4-8 and Article 7 § 1 point 1 has been issued, or to cancel such document.

2. The provision of paragraph 1 shall apply, in particular, if it is found that the person to whom the document has been issued does not observe the regulations or disturbs the peace and order in the buildings and grounds, or undermines the dignity of the *Sejm* or the Senate, behaves improperly or grossly infringes the right to privacy of other persons."

IV. CIVIL PROCEDURE CODE

21. Article 199^1 of the Civil Procedure Code (*Kodeks postepowania cywilnego*) provides as follows:

> "The court may not reject a claim on the ground that a public administration body or an administrative court is competent to hear the case, if a public administrative authority or an administrative court has already declared itself not competent in the case."

V. ADMINISTRATIVE COURTS ACT

22. Section 3(2) of the Administrative Courts Act of 30 August 2002 (*Prawo o postępowaniu przed sądami adminstracyjnymi*) ("the 2002 Act"), as applicable at the material time, provided in so far as relevant:

> "3. [Scope of jurisdiction of administrative courts].
>
> ...
>
> (2) Control of public administration activities by administrative courts includes adjudicating on complaints against:
>
> 1) administrative decisions;
>
> 2) decisions issued in administrative proceedings which are subject to complaint or which terminate the proceedings, as well as decisions deciding a case on the merits;
>
> 3) decisions issued in enforcement and security proceedings which are subject to a complaint, with the exception of decisions of a creditor on the inadmissibility of a plea entered and decisions the subject of which is the position of a creditor on a plea entered;
>
> 4) other than those specified in points 1-3, acts or activities in the field of public administration concerning the rights or obligations arising from the provisions of law, excluding acts or activities undertaken as part of administrative proceedings specified in ..., and proceedings to which the provisions of the aforementioned Acts apply;
>
> ..."

VI. RELEVANT CASE-LAW OF ADMINISTRATIVE COURTS

23. On 13 December 2018 the Warsaw Regional Administrative Court gave a judgment (IV SA/Wa 1979/18) dismissing an appeal lodged by a member of a non-governmental organisation (NGO) against a decision of the Head of Parliament Security refusing access to a plenary session of the *Sejm*. The court confirmed that the decision of the Head of Parliament Security was an act in the field of public administration relating to the rights and obligations resulting from legal provisions (section 3(2) point 4 of the 2002 Act). That judgment is not final.

24. On 12 February 2019 the Warsaw Regional Administrative Court examined appeals lodged by two journalists (Court IV SA/Wa 2001/18 and IV SA/Wa 2018/18) who had been refused access to plenary sessions of the *Sejm*. The court found that the measures were not justified. It further stated

that while it was technically the Head of Parliament Security who had refused to issue single entry passes to the journalists, the decision had in fact been made by the Speaker of the *Sejm*, as the Head of Parliament Security was not an administrative organ and had merely executed the speaker's order. This decision related to an activity in the area of public administration (section 3(2) point 4 of the 2002 Act).

25. On 7 July 2022 the Supreme Administrative Court upheld the Regional Administrative Court's judgment of 12 February 2019 (III OSK 1363/21) and dismissed a cassation appeal lodged by the Speaker of the *Sejm*.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicants complained that the restrictions imposed on their access to the *Sejm*'s buildings had constituted a breach of their rights guaranteed by Article 10 of the Convention. They further invoked in substance Article 11 of the Convention. Those provisions of the Convention read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Scope of the case

27. The Court observes that in the present case the applicants did not raise any complaints in relation to their participation in the demonstration held on the *Sejm* grounds or their right of peaceful assembly with others. Their complaint before the Court concerns specifically the sanction imposed on them by the Head of Parliament Security after they had displayed a banner on the grounds of the *Sejm*. Consequently, having regard to the circumstances of the present case, and bearing in mind that it is master of the characterisation to be given in law to the facts of a complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers it appropriate to examine the applicants' grievances only from the standpoint of Article 10 of the Convention (compare *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 91, 26 April 2016).

B. Admissibility

1. Non-exhaustion

(a) The parties' submissions

28. The Government submitted, firstly, that the applicants had failed to make use of the remedy provided for in Article 199^1 of the Civil Procedure Code (see paragraph 21 above). In accordance with this provision, a civil court cannot dismiss a claim on the ground that it falls within the competence of public administration or the administrative courts, if an administrative authority has already declared itself not competent to examine the case. In the Government's view the applicants should have lodged a claim relating to the impugned measure with a civil court, and that court would have been obliged to examine it.

29. Secondly, the Government argued that the applicants had failed to raise their complaints before the domestic courts. They noted that in the domestic proceedings the applicants had only invoked Article 61 of the Polish Constitution (the right to obtain information on the activities of bodies of public authority) and had not relied on Article 54 of the Constitution (freedom of expression).

30. The applicants disagreed with the Government. They stressed that they had made use of all the available domestic remedies as they had challenged the decisions of the Head of Parliament Security before the administrative courts. This had been the only appropriate and relevant legal avenue in the circumstances of their cases. The fact that their appeals had ultimately been unsuccessful did not render the remedy ineffective. As regards the remedy provided for by article 199^1 of the Civil Procedure Code, as referred to by the Government, the applicants noted that this was merely a procedural provision. The Government had failed to indicate which particular

substantive provision could have been invoked by them in such proceedings before the civil courts.

31. With regard to the second limb of the Government's objection, the applicants maintained that they had raised the substance of their Convention complaints before the domestic courts. In the domestic proceedings they had invoked Article 61 of the Polish Constitution, which guaranteed the right to obtain information on the activities of public administration authorities. In their view there was a very clear relation between their right to obtain public information under Article 61 of the Polish Constitution and their freedom to receive and impart information guaranteed by Article 10 of the Convention.

(b) The Court's assessment

32. The Court notes that the general principles on the exhaustion of domestic remedies were restated in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

33. In connection with the Government's objection that the applicants should have lodged an appeal with the civil courts, the Court notes the applicant's submissions that Article 199^1 of the Civil Procedure Code is a procedural provision that relates to a situation where an administrative authority has declared itself not competent to examine a case. However, it does not create any substantive legal rules as such (see paragraphs 21 and 30 above). In the present case the Government did not specify which substantive legal provision could have been invoked in the applicants' case. They also failed to produce any examples of domestic practice which might have demonstrated the effectiveness of that remedy for the purposes of Article 35 § 1 of the Convention.

34. In view of those considerations and the absence of any examples of domestic practice, the Court is unable to accept the Government's argument and considers that the applicants were not required to avail themselves of any additional legal avenue.

35. Secondly, as to whether the applicants raised, at least in substance, the issues relating to freedom of expression, the Court observes that in the proceedings before the administrative courts the applicants indeed had not relied specifically on Article 10 of the Convention or Article 54 of the Polish Constitution. However, in their appeals they did invoke Article 61 of the Polish Constitution, alleging that the ban on entering the *Sejm* amounted to a limitation on their right to public information (see paragraph 12 above). Accordingly, the Court considers that by claiming a breach of their right to access public information the applicants were effectively raising all the relevant arguments under Article 10 of the Convention before the domestic courts. The applicants thereby provided the national authorities with the opportunity of putting right the violations alleged against them.

36. Against that background, the Court concludes that the applicants did everything that could reasonably have been expected of them to exhaust the national avenues of redress. The Court thus rejects the Government's preliminary objection on that point.

2. Six-month rule

(a) The parties' submissions

37. The Government also argued that the applicants had failed to comply with the six-month rule under Article 35 § 1 of the Convention. They noted that the applicants' removal from the *Sejm*'s grounds on 22 June 2017 had not been the subject of any complaint before the domestic authorities. Furthermore, the applicants had been banned from entering the *Sejm* on 31 July and 7 August 2017 (date of delivery of the letters of the Head of the Parliamentary Security) whereas their application to the Court was lodged on 9 March 2019. Relying on the Court's case-law (*Fernie v. the United Kingdom* (dec.), no. 14881/04, 5 January 2006), the Government observed that the applicants could not extend the time-limit by pursuing an ineffective remedy for their complaints under the Convention.

38. The applicants disagreed. They maintained that a complaint to an administrative court against the decision of the Head of Parliament Security was in principle an effective remedy. In that regard they referred to the judgments given by administrative courts in other cases in which the courts had examined similar complaints on the merits (see paragraphs 23-25 above). The applicants also submitted that the proceedings before the administrative courts in their cases had been directly aimed at remedying the alleged breach of their rights under Articles 10 and 11 of the Convention.

(b) The Court's assessment

39. The Court reiterates that the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. If an applicant has recourse to a remedy which is doomed to fail from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016).

40. In the present case, the applicants lodged appeals with the Warsaw Regional Administrative Court against the decision of the Head of Parliament Security. Their appeals were examined by courts at two levels of jurisdiction and ultimately dismissed on the grounds that the decision of the Head of Parliament Security could not be challenged before the administrative courts (see paragraphs 13 and 15 above). While the effectiveness of this remedy has been contested by the Government, the applicants submitted examples of domestic judgments given in similar cases where the administrative courts had accepted complaints against measures imposed by the Head of Parliament

Security and examined them on the merits (see paragraphs 23-25 and 38 above). In view of the above, the Court considers that the applicants should not be penalised for having tried to find a legal solution at the domestic level through available remedies that did not exclude any prospect of success.

41. Accordingly, the final decisions in the case were given by the Supreme Administrative Court on 29 August 2018 (notified on 10 September 2018) and 16 November 2018 (see paragraph 15 above) whereas the applicants lodged their application with the Court on 9 March 2019. That being so, the Court concludes that the applicants complied with the six-month term laid down in Article 35 § 1 and the Government's objection should therefore be dismissed.

3. Lack of significant disadvantage

(a) The parties' submissions

42. Lastly, the Government contended that the applicants had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They submitted that the records of parliamentary debates were accessible in the form of minutes and online broadcasts to public. Thus, the applicants could not reasonably claim that their right to obtain information on the *Sejm's* activities had been breached on account of their having been deprived of access to the parliament's premises.

43. The applicants disagreed with the Government's submissions and argued that the right to obtain information on the activities of bodies of public administration was a right guaranteed by the Polish Constitution.

(b) The Court's assessment

44. The Court finds that the question whether the applicants have suffered a "significant disadvantage" in the instant case is closely linked to their complaints about a breach of their right to freedom of expression. It therefore considers that this particular objection raised by the Government should be joined to the merits of the case.

4. Overall conclusion on admissibility

45. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The applicants

46. The applicants submitted that the measure imposed by the Head of Parliament Security banning them from entering the *Sejm* for one year had constituted an interference with their freedom of expression.

47. They further argued that the decision of the Head of Parliament Security could not be regarded as a proper legal basis for restricting their right to freedom of expression. The decision had been issued pursuant to Article 21 of the Speaker's ordinance, which was an internal instrument relating to issues concerning access to the *Sejm*'s buildings. Moreover, the ordinance had been issued by the Speaker of the *Sejm* and did not belong to the closed catalogue of sources of law. Article 21 of the ordinance had lacked precision and clarity. It had not specified the reasons which might justify suspending an individual's right to enter the grounds and buildings of the *Sejm*, referring only to "justified cases", the interpretation of which was left to the Head of Parliament Security. Furthermore, this provision had not indicated a minimum or maximum period for which the restriction could be imposed. In their view, the applicants could not have foreseen with any certainty that their actions would result in a temporary ban on access to the *Sejm*.

48. The applicants further maintained that the temporary ban on entering the *Sejm* had not been "necessary in a democratic society". They had merely taken part in a peaceful assembly in the grounds of the *Sejm* and unrolled a banner reading "Defend Independent Courts". They had received passes authorising them to enter the *Sejm* grounds. By unrolling the banner they had not posed any threat to public safety and had caused no disturbance to public order or endangered the rights of other persons. Furthermore, their actions had not undermined the dignity of the *Sejm* and they had not caused any danger to road traffic in the vicinity of the *Sejm*.

49. In their view there had been no "pressing social need" to justify the interference with their freedom under Article 10 of the Convention. They had merely participated in a public debate on a controversial issue relating to the reforms of the judiciary.

50. They further contended that the ban on entering the *Sejm* for a period of one year amounted to a disproportionate sanction. This sanction had been imposed in an arbitrary manner on the basis of vague legal provisions. The Head of Parliament Security had not provided any arguments in support of the measure. It had also been imposed *ex post facto* and *in absentia*. Lastly, they had been notified about the measure by letters and there had been no way to challenge it effectively before a court.

51. They concluded that the temporary ban on entering the *Sejm* could have had a "chilling effect" on public speech.

(b) The Government

52. The Government argued that there had been no interference with the applicants' freedom of expression. The applicants had not been disturbed when expressing their opinions during a demonstration. The measure had been imposed on the applicants as a consequence of their actions and had not affected their freedom of expression.

53. The measure had been imposed under Article 21(1) of ordinance no. 1 of the Speaker of the *Sejm*. In the Government's view, the applicants could have foreseen that their actions would entail the application of measures aiming at ensuring public safety. The relevant provisions had been accessible to the public and had met the required level of precision and foreseeability. In addition, the measure imposed had served the legitimate aim of ensuring public safety, protecting the rights of others and preventing disorder.

54. The Government submitted that the actions of the domestic authorities had been necessary in a democratic society. The measure imposed on the applicants had resulted from their failure to respect the rules concerning the security of the *Sejm*'s buildings and its grounds and had been relatively lenient. Contrary to the case of *Selmani* (*Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, 9 February 2017), the applicants in the present case had not been journalists and thus they had had no automatic entitlement, on account of their profession, to be granted a pass authorising them to enter the *Sejm* premises. Furthermore, the applicants had not been subjected to any administrative fine on account of their actions. The Government also reiterated that there was no general obligation to allow access to any place, private or public, to an unauthorised person wishing to express his or her opinions.

55. Lastly, the reasons for the decisions concerning the applicants, namely their deliberate disregard for the relevant rules, had been explained in the letters from the Head of Parliament Security. The Government concluded that there had been no violation of Article 10 of the Convention.

2. Submissions by the third-party intervener

56. The Commissioner for Human Rights of the Republic of Poland ("the Commissioner"), stressed that the present case should be seen in the light of a general policy aimed at restricting freedom of expression and supressing critical opinions about those in power. The Commissioner referred to instances of restrictions on the ability of journalists to move freely within the parliamentary buildings, changes in the public funding of NGOs and limitations on the access of Polish citizens to Parliament.

57. The Commissioner stressed that the right to access sessions of the *Sejm* was linked, in the Polish Constitution, to the right to obtain information on the activities of public bodies as well as of persons carrying out public functions. The exercise of that right was also closely linked to the exercise of

freedom of expression under Article 10 of the Convention. Under Article 4 of the Constitution, supreme power in the Republic of Poland should be vested in the Nation, which exercised such power directly or through its representatives. Therefore, citizens should be empowered to oversee the work of their representatives. In the Commissioner's view the provisions of Speaker's ordinance no. 1 did not constitute a lawful basis for the limitation of the Constitutional right to information.

58. The intervener further noted that there were two strands in the case-law of the administrative courts with respect to persons who appealed against the decisions of the Head of Parliament Security. Initially, the administrative courts had found such appeals to be inadmissible in law on the ground that the Head of Parliament Security was not considered to be "an administrative authority" (see, for example the judgment of the Warsaw Regional Administrative Court of 4 October 2018 (case IV SA/Wa 1892/18)). Subsequently however, the courts adopted a different approach. In a judgment of 13 December 2018, the Warsaw Administrative Court (case IV SA/Wa 1979/18) held that it could examine an appeal against the measure taken by the Head of Parliament Security, as such a measure constituted an act of public administration (see paragraph 23 above). Likewise, in two judgments of 12 February 2019 (cases IV SA/Wa 2001/18 and IV SA/Wa 2018/18), the same court had confirmed that a refusal to grant access to a meeting of a collegial body of public authority was an act relating to legitimate Constitutional rights and fell within the competence of administrative courts (see paragraph 24 above).

3. The Court's assessment

(a) General principles

59. The general principles concerning the necessity of an interference with the right to freedom of expression were summarised in the case of *Pentikäinen v. Finland* ([GC], no. 11882/10, §§ 87-91, ECHR 2015).

60. The Court further reiterates that all persons, including journalists, who exercise their freedom of expression undertake "duties and responsibilities", the scope of which depends on their situation and the technical means they use (see, for example, *Handyside v. the United Kingdom*, 7 December 1976, § 49 *in fine*, Series A no. 24).

61. Furthermore, when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, ECHR 2013 (extracts)) and may be characterised as a social "watchdog" warranting similar protection under the Convention as that afforded to the press (ibid. and see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016).

62. Apart from the above factors, the fairness of proceedings and the procedural guarantees afforded are factors which in some circumstances may have to be taken into account when assessing the proportionality of an interference with freedom of expression (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 133, 17 May 2016, with further references).

(b) Application of those principles to the present case

(i) Whether there was an interference

63. The Court observes that the measure imposed on the applicants – the ban on entering the *Sejm*'s buildings and grounds for a period of one year (see paragraph 11 above) – clearly had some adverse effects on them, specifically by preventing them from obtaining information on the activities of public administration bodies, which in turn negatively impacted the applicants' ability to exercise their right to freedom of expression. The Court therefore dismisses the Government's argument that the impugned measures had not affected the applicants' rights under Article 10 of the Convention (see paragraph 52 above) and accepts that there was an interference with their right to freedom of expression (see *Selmani and Others*, cited above, § 61).

64. In the light of paragraph 2 of Article 10, such an interference with the applicants' right to freedom of expression must be "prescribed by law", have one or more legitimate aims and be "necessary in a democratic society" (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 141, 27 June 2017).

(ii) Whether the interference was justified

65. The parties agreed that the impugned interference had had a basis in domestic law, namely Article 21 of the Speaker's ordinance of 2008 (see paragraphs 47, 53 above). The applicants disputed the quality of that law, submitting that it had lacked precision and clarity as it had not specified the reasons which might justify suspending the right of an individual to enter the premises of the *Sejm* and so left a wide margin of interpretation to the Head of Parliament Security (see paragraph 47 above). However, the Court does not consider that the provision in question was overly broad or unclear. In any event, the applicants' argument was more specifically directed towards the question whether the interference was "necessary in a democratic society", a matter which the Court will examine below (see *Kasabova v. Bulgaria*, no. 22385/03, § 52, 19 April 2011).

66. The Court further accepts that the sanction imposed on the applicants could be understood as being aimed at preventing any disruption to the work of the *Sejm* and so ensure its effective functioning, and therefore as pursuing the legitimate aims of "prevention of disorder" and "protection of the rights

of others" (compare *Mándli and Others v. Hungary*, no. 63164/16, § 57, 26 May 2020).

67. In the present case the applicants took part in a peaceful demonstration outside the *Sejm* grounds. They had further obtained single entry passes to enter the *Sejm* premises and upon entering the grounds they displayed a banner reading "Defend Independent Courts". Immediately afterwards they were escorted from the grounds (see paragraphs 7-10 above). The Court accepts the applicants' argument that by unrolling the banner they had been participating in a public debate on the issue of the reforms of the judiciary and wished to convey their message to the parliamentarians (see paragraph 48 above).

68. As regards the applicants' interest in being allowed entry to the *Sejm* following that incident, the Court also accepts that this could be related to matters in which the public had a legitimate interest of being informed, for example by obtaining first-hand and direct knowledge based on personal experience of the events and deliberations taking place in the Polish *Sejm* (compare, *Selmani and Others*, cited above, § 84). The competing interests to be weighed up in the instant case are thus both public in nature, namely: (i) the public interest in the ability of the Parliament Security Service to maintain order on the *Sejm* grounds and ensure public safety and the orderly conduct of the parliamentary business, and (ii) the public interest in receiving information on an issue of importance to society (compare *Mándli and Others*, cited above, §§ 66 and 67).

69. The Court further notes that it had already emphasized the fundamental interest of ensuring the effective functioning of Parliament in a democracy (see *Karácsony and Others*, cited above, § 143 with further references). The Court has also accepted that parliaments were entitled to some degree of deference in regulating conduct in Parliament to avoid disruption in parliamentary work and that the Court's scrutiny of such regulations should be limited (see *Mándli and Others* cited above § 69).

70. In this connection the Court notes that as the incident occurred outside the *Sejm* building the present case should be distinguished from situations where measures have been taken in response to speech or conduct directly interfering with the orderly conduct of parliamentary debate (see *Karácsony and Others* and *Selmani and Others*, both cited above).

71. The Court further observes that in the case at hand the parties disagreed as to whether the applicants' action had caused any disruption to the ordinary work and functioning of the *Sejm*. The Government maintained that the applicants had failed to respect the rules about the security of the *Sejm* premises and blocked an internal road (see paragraph 9 above). At the same time the applicants argued that they had not disturbed or undermined the dignity of *Sejm* by their actions. They had not blocked the internal roads of the *Sejm*'s grounds as there had been no pedestrians or vehicles in the vicinity at the time of the demonstration (see paragraph 8 above). In turn, the Head of

Parliamentary Security in the letters to the applicants merely stated that they had "disturbed public order" (see paragraph 11 above). However, this finding was not scrutinised by any public body. Given that the parties submitted conflicting accounts the Court does not have a sufficient basis on which to conclude whether or not the applicants disregarded any internal regulations on road traffic within the Sejm grounds.

72. However, even assuming that the sanction imposed on the applicants was supported by relevant and sufficient reasons, the Court considers it more appropriate to focus its review on whether the restriction on the applicants' right to freedom of expression was accompanied by effective and adequate safeguards against abuse (see *Mándli and Others,* cited above, §§ 71, 72).

73. With regard to the manner in which the sanction was imposed on the applicants, the Court is mindful that the procedural safeguards should be adapted to the parliamentary context, bearing in mind the generally recognised principles of parliamentary autonomy and the separation of powers (ibid., § 72). It does not exclude a review by a public body set forth by the parliament.

74. The Court observes in that regard that at the material time, domestic law, namely the ordinance of the Speaker of the Sejm of 9 January 2008 (see paragraph 20 above), contained a provision allowing suspension of the right of access to the buildings and grounds "in justified cases, with a view to maintaining peace and order and ensuring the security of the *Sejm* and Senate". The provision did not provide for any opportunity for persons thus sanctioned to be involved in the relevant decision-making procedure. The procedure in the applicants' case consisted of letters sent by the Head of Parliament Security informing them of a temporary ban from entering the *Sejm* (see paragraph 11 above). Furthermore, it appears that the ordinance did not provide any clear procedure for challenging the measure where the applicants could have presented their arguments.

75. Having regard to the foregoing, the Court considers that in the circumstances of the case the impugned interference with the applicants' right to freedom of expression was not accompanied by adequate procedural safeguards.

76. In the light of the above considerations, the Court dismisses the Government's preliminary objection (see paragraphs 42 and 44 above) to the effect that the applicants did not suffer a "significant disadvantage". It further concludes that the interference with the applicants' right to freedom of expression was not "necessary in a democratic society" within the meaning of Article 10 of the Convention and that, accordingly, there has been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. The applicants claimed 1,000 euros (EUR) jointly in respect of non-pecuniary damage.

79. The Government contested this claim.

80. The Court accepts that the applicants sustained non-pecuniary damage – such as distress and frustration resulting from the restriction imposed on them in the present case – which is not sufficiently compensated for by the finding of a violation of the Convention. It awards the amount claimed in full, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicants also claimed, jointly, EUR 198 for the costs and expenses incurred before the domestic courts and EUR 2,163 for those incurred before the Court.

82. The Government agreed that the applicants had submitted documents in support of their claims and asked the Court to assess whether those costs had been necessarily incurred and were reasonable as to quantum.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,361 to the applicants jointly, covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection of a lack of significant disadvantage and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,361 (two thousand three hundred and sixty-one euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President