



Proceedings in Poland contravened right to procedural safeguards in expulsion to Belarus case

In today's Chamber judgment¹ in the case of [Poklikayew v. Poland](#) (application no. 1103/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to the European Convention on Human Rights.

The case concerned Mr Poklikayew's expulsion from Poland in 2012 on national security grounds without his being fully informed of the reasons.

The Court observed that Mr Poklikayew had received only very general information about the accusations against him, while no specific actions by him which allegedly endangered national security could be seen from the file. Nor had he been provided with any information about the possibility of accessing the documents in the file through a lawyer with the required security clearance. He had already been expelled to Belarus, making it very difficult for him to plead his case. The fact that the final decision had been taken by independent judicial authorities at a high level was not enough to counterbalance the limitations on his procedural rights.

Principal facts

The applicant, Oleg Poklikayew, is a Belarusian national who was born in 1980 and lives in Belarus. He moved to Poland in 2006 where he settled, having been granted a permanent residence permit in view of his Polish origins. He subsequently found a job and bought an apartment there.

On 23 January 2012 the head of the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*) asked for Mr Poklikayew to be expelled under the Aliens Act of 13 June 2003 on the grounds that "his continued stay in Poland would constitute a threat to the State's defence or the security of the State". It was noted that he had been cooperating with the Belarusian secret services since 2000. Mr Poklikayew was notified that proceedings for revocation of his permanent residence permit and for expulsion from Poland had been set in motion.

On 13 February 2012 the Mazowiecki Governor classified certain documents in the file as secret. On 16 March 2012 the Governor decided to revoke the applicant's residence permit and to expel him from Poland. Based on the evidence collected, the Governor held that Mr Poklikayew's continued stay in Poland was a threat to the country, to national security, or to public security and order.

Mr Poklikayew was expelled from Poland on 20 March 2012. He was forbidden from entering and remaining in the Schengen Area for a period of five years, with immediate effect.

On 2 April 2012 he lodged an appeal against the expulsion decision, alleging that he had unjustly been considered a threat to national security. His lawyer asked for access to the classified part of the case file but was not given it. He repeated his request on several occasions, to no avail.

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.

On 21 August 2012 the head of the Office for Foreigners (*Szef Urzędu do Spraw Cudzoziemców*) upheld the first-instance decision, noting that the authorities had obtained sufficient information to have to restrict Mr Poklikayew's right to settle in Poland for reasons of national security and that classified documents justified that decision. No further reasons could be provided because of the threat to national security.

Mr Poklikayew appealed again. On 16 July 2013 the Warsaw Regional Administrative Court upheld the second-instance decision to expel him, having been provided with all the classified documents. The court noted that the Internal Security Agency had found out that Mr Poklikayew had been cooperating with the Belarusian secret services since 2000 and in that capacity had carried out assignments on Polish territory. The court held that in view of the information contained in the classified documents, the contested decision was the right one. Lastly, the court found that Mr Poklikayew could have and in fact had actively participated in the proceedings. He had been notified of them and had been given an opportunity to present arguments and evidence. It put forward that he had consulted the case file on 6 February 2012 and had obtained information about the nature of the allegations made against him.

Mr Poklikayew lodged a cassation appeal against that judgment, noting that the reasoning of the judgment had not included the information contained in the classified part and submitting that the Regional Court had not pointed to any facts that supported their findings. On 28 July 2015 the Supreme Administrative Court dismissed the cassation appeal, observing in particular that the analysis of the secret material which had been carried out by the authorised bodies was binding and sufficient.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial) and 13 (right to an effective remedy), Mr Poklikayew complained that he had not benefited from sufficient procedural safeguards in the expulsion proceedings and therefore had not been able to defend himself effectively. More specifically he alleged that he had not been notified of the actual accusations against him, that neither he nor his lawyer had had access to the case file and that the decision to expel him had been enforced immediately.

The application was lodged with the European Court of Human Rights on 28 December 2015.

A third-party intervention was received from the Helsinki Foundation for Human Rights.

The Court decided to examine the applicant's allegations solely under Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to the Convention.

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

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

In its Grand Chamber judgment [Muhammad and Muhammad v. Romania](#), the Court already held that immigrants being expelled had to be informed of the factual elements which had led the national authorities to consider that they represented a threat to national security, and that they had to be given access to the content of the documents and the information in the case file. They should have an effective opportunity to submit reasons against their expulsion and should be protected against any arbitrariness.

The Court found that Mr Poklikayew's rights to be informed of the factual elements behind the decision to expel him and to have access to the documents and the information relied on had been severely limited. However, the need for such limitations had not been justified by an independent authority at national level. The Court therefore had to evaluate whether any measures had been put in place in the proceedings against Mr Poklikayew to counterbalance the effects of those limitations.

The Court observed that Mr Poklikayew had received only very general information about the accusations against him, while no specific actions by him which allegedly endangered national security could be seen from the file. Nor had he been provided with any information about the possibility of accessing the documents in the file through a lawyer with the required security clearance. The fact that he had already been expelled to Belarus made it very difficult for him to plead his case. Furthermore, the fact that the final decision had been taken by independent judicial authorities at a high level was not enough to counterbalance the limitations on his procedural rights.

In view of the proceedings as a whole and taking account of the discretion ("margin of appreciation") allowed to States in such matters, the Court found that the limitations imposed on Mr Poklikayew's rights under Article 1 of Protocol No. 7 had not been counterbalanced in the national proceedings, in violation of Article 1 of Protocol No. 7 to the Convention.

Just satisfaction (Article 41)

The Court held that Poland was to pay the applicant 6,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,640 in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpres@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Jane Swift (tel.: + 33 3 88 41 29 04)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

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.