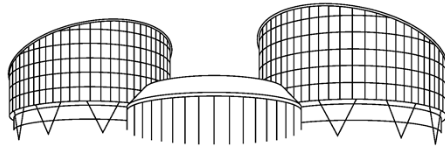

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 13523/12 and 14030/12
Dariusz BARSKI against Poland
and Bogdan ŚWIĘCZKOWSKI against Poland

The European Court of Human Rights (Fourth Section), sitting on 2 February 2016 as a Chamber composed of:
András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above applications lodged on 2 March 2012,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant in the first case, Mr Dariusz Barski (“the first applicant”), is a Polish national, who was born in 1968 and lives in Aleksandrów Łódzki.

2. The applicant in the second case, Mr Bogdan Święczkowski (“the second applicant”), is a Polish national, who was born in 1970 and lives in Sosnowiec. Both applicants were represented before the Court by Mr M. Górski, a lawyer practising in Łódź.

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## A. The circumstances of the case

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

4. The applicants were high-ranking prosecutors. The first applicant had served, *inter alia*, as the Deputy Prosecutor General and the Deputy Minister of Justice. Both applicants acquired the status of a "prosecutor in inactive service" (*prokurator w stanie spoczynku*) in May 2010.

5. The applicants stood for election to the Sejm (the first Chamber of the Parliament) from the list of the Law and Justice party as non-partisan candidates.

6. On 22 September 2011, during the electoral campaign before parliamentary elections, the National Council of the Prosecution Service (*Krajowa Rada Prokuratury*), a body composed of senior prosecutors, Members of Parliament, the Minister of Justice, the Prosecutor General and the representative of the President of the Republic, passed a resolution expressing a view on the participation of prosecutors standing for election in political activities. The National Council opined that prosecutors, including prosecutors in inactive service had the right to stand for election to Parliament. It noted that the prosecutors in inactive service enjoyed a privileged position in comparison to the prosecutors in service in that when elected members of parliament the former were not required to renounce their status of prosecutors in inactive service. The National Council recommended that this situation had to be addressed by the legislature. At the same time, it reminded all prosecutors of the statutory ban on engaging in political activity.

7. The applicants were elected members of the Sejm on 9 October 2011. The results of the elections were published on 12 October 2011. On an unspecified date the applicants were requested by the Speaker of the Sejm (*Marszałek Sejmu*) to renounce their status of prosecutors in inactive service.

8. On 18 October 2011 the National Council of the Prosecution Service passed a new resolution in which it opined that both prosecutors in service and prosecutors in inactive service could not hold their position and sit as Member of Parliament at the same time. The Council stated that its previous opinion of 18 September 2011 had only concerned the period of electoral campaign.

9. On 27 October 2011 the Speaker of the Sejm issued two respective orders declaring that the applicants had forfeited their parliamentary seats under Article 103 § 2 of the Constitution in conjunction with Article 249 § 1 of the Electoral Code. He observed that the prohibition of holding jointly a parliamentary seat and other public office ("*incompatibilitas*") was the consequence of the principle of the separation of powers and of the political neutrality of the public service. The Constitution prescribed in Article 103

§§ 1 and 2 the absolute and directly applicable ban on joint holding of the office of a deputy with other positions listed in this provision. The scope of this ban could not be restricted by statutory regulations.

10. The Speaker noted that the ban on holding jointly a parliamentary seat and the office of a prosecutor was prescribed in Article 103 § 2 of the Constitution. This rule was also reflected in the statutory norms, namely section 30 § 1 of the Act on the Exercise of the Mandate of the Member of the Sejm and of the Senate (hereinafter "The Act on the Exercise") and section 65a § 1 of the Act on the Prosecution Service. The scope of those various provisions was not identical, in particular with regard to the consequences of the breach of the impugned ban. The Act on the Exercise stated that deputies could not concurrently work in the position of a prosecutor and permitted in such a case for a prosecutor to benefit from an unpaid leave of absence. On the other hand, the Act on the Prosecution Service required that a prosecutor who had been elected to hold a position in a State organ forfeit his office of the prosecutor, unless he acquired the status of a prosecutor in inactive service. The Speaker acknowledged the above divergences in respect of the impugned ban between the statutory regulation on the one hand and the constitutional regulation on the other. Nonetheless, the Speaker considered that he was obliged to apply the constitutional rule prescribed in Article 103 § 2 and disregard the statutory provisions incompatible with that rule.

11. The next issue to determine was the interpretation of the term "prosecutor" employed in Article 103 § 2 of the Constitution and whether this term encompassed prosecutors in inactive service. The Speaker noted that this was an autonomous constitutional term which could not be limited to its statutory definitions. Having analysed the relevant provisions of the Act on the Prosecution Service as well as the case-law of the Constitutional Court and of the Supreme Court, the Speaker found that the term "prosecutor" employed in Article 103 § 2 of the Constitution encompassed equally prosecutors in inactive service.

12. The Speaker noted that within fourteen days of the final result of the elections the applicants could have declared that they had renounced their status of prosecutors in inactive service. In the absence of such a declaration, the Speaker held that the applicants had forfeited their parliamentary seats.

13. The first applicant lodged an appeal with the Supreme Court. He argued, *inter alia*, that the Speaker had erred in finding that the term "prosecutor" used in Article 103 § 2 of the Constitution comprised prosecutors in inactive service. He further maintained that the Speaker had suddenly adopted a new interpretation of the term which was inconsistent with its statutory understanding (section 65a § 1 of the Act on the Prosecution Service and section 30 of the Act on the Exercise) as well as contrary to existing practice. He further invoked the first resolution of the

National Council of the Prosecution Service which stated that a prosecutor in inactive service could hold the office of a deputy jointly with his status of a prosecutor in inactive service. In addition, the Speaker's finding that the first applicant had to irrevocably forfeit his status of the prosecutor in inactive service in order to keep his parliamentary seat breached the constitutional provisions on proportionality and equality. Lastly, invoking, *inter alia*, Article 6 § 1 of the Convention, the applicant submitted that the Speaker had not informed him about the procedure initiated in his case and had not offered him a possibility to make representations.

14. The second applicant appealed too. He alleged, *inter alia*, that the Speaker had wrongly applied Article 103 § 2 and other provisions of the Constitution regulating the right of access to the public service and the right to stand for election as well as the relevant provisions of the Electoral Code. He also invoked Article 14 of the Convention. His main contention was that the ban prescribed in Article 103 § 2 of the Constitution did not apply to prosecutors in inactive service.

15. On 9 November 2011, the Supreme Court, sitting *in camera*, dismissed the applicants' respective appeals.

16. The Supreme Court first inquired about the existing practice with regard to judges and prosecutors in inactive service sitting as MPs. It established that there had been one case of a judge in inactive service who sat as a Senator (Member of the Senate, the second Chamber of the Polish Parliament) between 2001 and 2007. In that case no action was taken by the Speaker of the Senate. There had been no such cases concerning prosecutors in inactive service. In one case concerning a judge in inactive service, the First President of the Supreme Court objected to the participation of this judge in the capacity of an expert in the works of the parliamentary commission of inquiry, considering it being incompatible with the duty of political neutrality of judges. In the Supreme Court's view, the existing practice was inconsistent and did not support the applicants' contention that prosecutors in inactive service could sit as MPs.

17. The Supreme Court carried out a detailed analysis of the term "prosecutor" within the meaning of Article 103 § 2 of the Constitution. It noted first that this provision used the term "prosecutor" without any qualification which signified that it was applicable to all prosecutors, i.e. persons appointed to a post of a prosecutor. At the date of the entry into force of the Constitution, that is on 17 October 1997, the appointment to a post of a prosecutor ended with retirement. Subsequently, on 1 January 1998 the Amendment to the Prosecution Service Act introduced the status of a "prosecutor in inactive service" (in parallel to the status of a "judge in inactive service"). Following this amendment, the public-law employment relationship of a prosecutor began with his appointment and continued until his or her death (save for cases when a prosecutor renounced it or was divested of it as a result of a judgment). The said amendment altered the

meaning of the term "prosecutor" and from its entry into force the term covered not only prosecutors in active service, but also "prosecutors in inactive service".

18. This finding was confirmed by the case-law of the Constitutional Court (judgment of 6 March 2007, case no. SK 54/06) and of the Supreme Court (*inter alia*, judgment of 29 September 2005, case no. SDI 22/05). Both courts underlined that a prosecutor in inactive service (or judge in inactive service) did not cease to be a prosecutor (judge) and the holder of a public office. Prosecutors in inactive service continued their public-law employment relationship with the exception of the obligation to carry out their duties. The legislator wished to preserve the authority of the office of a prosecutor (judge) and thus bestowed particular privileges on those who had held those offices in exchange for the resignation from certain rights. The Act on the Prosecution Service linked the status of a prosecutor in inactive service with a number of obligations such as disciplinary responsibility, the limitation on taking any other employment or gainful activity, the requirement to uphold the dignity of the office and the ban on engaging in political activity. At the same time prosecutors in inactive service received a special pension (*uposażenie*) which was more favourable than an ordinary old-age pension. It was further clear that a prosecutor in inactive service could voluntarily renounce his status and all the corresponding rights and obligations.

19. In conclusion, the Supreme Court held that there was no doubt that the term "prosecutor" employed in Article 103 § 2 of the Constitution covered both prosecutors in service and prosecutors in inactive service. It noted that the interpretation of the provisions of the Constitution, like in the present case, could not be determined by the content of statutory norms, in particular by section 65a of the Act on the Prosecution Service. The ban on holding jointly a parliamentary seat and the position of a prosecutor, comprising prosecutor in inactive service, was directly prescribed in the Constitution. Accordingly, the fact of a prosecutor going into inactive service could not revoke the ban set out in Article 103 § 2 of the Constitution; it was necessary that a prosecutor in inactive service renounce his status the prosecutor in inactive service.

20. Furthermore, the Supreme Court noted that according to section 44 § 3 of the Act on the Prosecution Service, prosecutors were prohibited from joining any political party and from engaging in any political activity. In accordance with the Supreme Court's case-law, this provision was also applicable to prosecutors in inactive service, while there was no doubt that sitting as a deputy was a political activity. In the Supreme Court's view, the rules on disqualification were aimed at ensuring political neutrality of the public service and the transparent operation of the parliament free from undue influence and the conflict of interest. They were further proportional to those aims. The Supreme Court held that the constitutional provisions on

the equality (Article 32 § 2), the right of access to the public service (Article 60) and the right to be elected (Article 99) had not been infringed. The ban which affected the applicant had its origin in the Constitution itself and the drafters of the Constitution had carried out a balancing exercise of the various competing interests. Furthermore, the applicants had had time to consider their options and the possibility to renounce their status of prosecutors in inactive service.

21. The Supreme Court found that no provision of the Convention, in particular Article 3 of Protocol No. 1 or Article 14, had been breached in the applicants' case. In its view, Article 3 of Protocol No. 1 did not concern the rules on disqualification. The applicants had exercised their right to be elected a deputy, but in order to keep their parliamentary seat they had to renounce their status of a prosecutor in inactive service. The Supreme Court relied on the decision *Briķe v. Latvia* (no. 47135/99, 29 June 2000) in which the Court had dismissed the complaint of a judge who complained that in order to stand for election to Parliament she had had to resign from her judicial office. The Supreme Court found that the same approach was applicable, *mutatis mutandis*, to the situation of the applicants in the present case.

22. The Supreme Court further held that Article 6 § 1 of the Convention was not applicable to the proceedings at issue because they concerned political rights. It noted, in passing, that the applicants had been summoned to renounce their status of the prosecutor in inactive service.

23. The first applicant filed a constitutional complaint. He alleged that the relevant provisions of the Electoral Code breached the constitutional right of access to the public service (Article 60), the right to stand for election (Article 99 § 1) as well as Article 103 § 2 of the Constitution in that prosecutors in inactive service could not sit as Deputies. On 25 September 2013 the Constitutional Court discontinued the proceedings, having found, *inter alia*, that the ban on holding jointly the offices of a prosecutor in inactive service and of an MP was prescribed directly in the Constitution and therefore the Constitutional Court had no jurisdiction to decide the case (case no. SK 44/12). It noted, *obiter dicta*, that the inconsistent interpretation of Article 103 § 2 of the Constitution should be unified.

## B. Relevant domestic law

### *1. Constitutional provisions*

24. Article 99 § 1 of the Constitution provides:

> "Every citizen having the right to vote, who, no later than on the day of the elections, has attained the age of 21 years, shall be eligible to be elected to the Sejm."

25. Article 103 § 2 of the Constitution reads as follows:

> "No judge, public prosecutor, officer of the civil service, soldier on active military service or officer of the police or of the services of State protection shall exercise the mandate of a Deputy."

### *2. Electoral Code*

26. Article 247 of the Electoral Code, in its relevant part, provides as follows:

> "1. The expiration of the mandate of a Deputy shall occur in the following cases:
>
> ...
>
> 5) holding on the election day of an office or position, which according to the provisions of the Constitution of the Republic of Poland or statutes could not be held jointly with the office of a Deputy, subject to the provision of § 3."

27. Article 247 § 3 states that an expiration of the mandate of a Deputy in the situation described above will take place if a Deputy did not submit to the Speaker of the Sejm a declaration resigning from his other office or position within fourteen days of the official result of the election being published.

28. Article 334 § 2 of the Electoral Code provides that a Member of the European Parliament cannot hold jointly his or her mandate with those offices or positions which according to the Constitution or statutes cannot be held jointly with the mandate of a Deputy.

### *3. The Act on the Prosecution Service*

29. Section 44 § 3 of the Act on the Prosecution Service provides that a prosecutor cannot join a political party or be involved in any political activity.

30. Section 65a § 1 of the same Act reads as follows:

> "A prosecutor who was nominated, appointed or elected to hold office in the State organs, local self-government, diplomatic service, consular service or in the organs of the international or supranational organisations acting on the basis of an international agreement ratified by the Republic of Poland shall resign from his position unless he goes into inactive service."

## COMPLAINTS

31. The applicants complained under Article 3 of Protocol No. 1 to the Convention about the decision stripping them of their parliamentary seat. They argued that the State was free to define conditions of access to elected offices; however, any such regulation had to be coherent, proportionate and non-discriminatory. The applicants further asserted that the National

Council of the Prosecution Service had confused them and the voters by first announcing that a prosecutor in inactive service did not have to renounce his status in the case of being elected and subsequently, shortly after the elections, adopting a contrary position. The applicants claimed that the authorities had changed the interpretation of the law to their detriment and invoked the special rules which applied to the opposition since they stood for an opposition party. The applicants relied on the *Lykourezos v. Greece* (no. 33554/03, ECHR 2006-VIII) and referred to three factors: a) a clear suggestion based on the wording of the Act on the Prosecution Service and the Act on the Exercise that the ban at issue did not apply to prosecutors or judges in inactive service; b) previous constitutional practice under which judges or prosecutors in inactive service were not disqualified from holding a parliamentary seat; and c) the variable position of the National Council of the Prosecution Service.

32. The applicants further alleged a breach of Article 14 in conjunction with Article 3 of Protocol No. 1 to the Convention. They claimed to have been discriminated against comparing their position with that of the prosecutors in service. They asserted that, pursuant to section 65 a § 2 of the Act on the Prosecution Service, a prosecutor in service who was elected MP had the right to return to his previous position provided that the period of sitting as an MP did not exceed nine years, while a prosecutor in inactive service did not have that possibility. Once the prosecutor in inactive service renounced his status, he or she had no possibility of returning to it, including his special pension. The applicants also alleged that judges and prosecutors were treated differently from other categories of civil servants referred to in Article 103 § 2 of the Constitution. They referred to the example of the retired officer of the service of the State protection, Mr T. Kaczmarek, who had been elected member of the Sejm but had not had his mandate forfeited. Furthermore, prosecutors in inactive service could be elected a local councillor, a mayor or a Member of the European Parliament, or serve as a minister.

33. The applicants also complained under Article 6 § 1 of the Convention that the procedure in their case had not conformed to the requirements of "a fair and public hearing". They claimed that the Speaker had not heard them. Furthermore, the Supreme Court held a session *in camera* (*posiedzenie*) and the applicants were not invited to plead their case before that court. They argued that their case should be distinguished from the *Pierre-Bloch* case.

# THE LAW

## A. Joinder of the applications

34. Given their similar factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

## B. The complaint under Article 3 of Protocol No. 1

35. The applicants complained under Article 3 of Protocol No. 1 about the decision resulting in forfeiture of their parliamentary seats. In their view, the Speaker of the Sejm and the Supreme Court had erroneously interpreted the domestic law in finding that prosecutors in inactive service were disqualified from sitting as an MP. Article 3 of Protocol No. 1 reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

36. Article 3 of Protocol No. 1 to the Convention implies the subjective rights to vote and to stand for election (*Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 47-51, Series A no. 113; *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 57-58, ECHR 2005-IX; *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 102-103, ECHR 2006-IV; and *Tănase v. Moldova* [GC], no. 7/08, §§ 154-155, ECHR 2010).

37. Although those rights are important, they are not absolute. There is room for "implied limitations", and Contracting States must be given a margin of appreciation in this sphere (see *Mathieu-Mohin and Clerfayt*, § 52; *Hirst*, § 60; and *Ždanoka*, § 103, all cited above). The margin in this area is wide, seeing that there are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision (see *Hirst*, § 61, cited above, and *Ždanoka*, *loc. cit.*).

38. In particular, the Contracting States enjoy considerable latitude in establishing criteria governing eligibility to stand for election, and in general, they may impose stricter requirements in that context than in the context of eligibility to vote (see *Ždanoka*, § 115; *Tănase*, § 156, both cited above; and *Paksas v. Lithuania* [GC], no. 34932/04, § 96, ECHR 2011 (extracts)).

39. However, while the margin of appreciation is wide, it is not all-embracing. It is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. It has

to satisfy itself that the restrictions imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness; that they pursue a legitimate aim; and that the means employed are not disproportionate. In particular, such restrictions must not thwart "the free expression of the opinion of the people in the choice of the legislature" (see *Mathieu-Mohin and Clerfayt*, § 52; *Hirst*, § 62; *Ždanoka*, § 104; and *Tănase*, §§ 157 and 161, all cited above).

40. In the present case, the applicants were eligible to stand for election to the Sejm. Following their election, they were invited by the Speaker of the Sejm to renounce their status of the prosecutor in inactive service. The Speaker found that pursuant to Article 103 § 2 of the Constitution the applicants were prohibited from holding jointly their parliamentary seat and the status of prosecutors in inactive service. In the absence of the requested resignation, the Speaker declared that the applicants had forfeited their parliamentary seats. The Supreme Court upheld the Speaker's decision. The decision in the applicants' case was motivated by the need to ensure the political neutrality of the public service and transparent operation of parliament free from the conflict of interest (see paragraphs 9 and 19 above). Those aims must be considered legitimate for the purposes of restricting the exercise of the applicants' right to stand for election under Article 3 of Protocol No. 1.

41. The Court recalls that the obligation imposed on civil servants to resign before they stand for election is not disproportionate to the legitimate aim of political impartiality of the public service (*Ahmed and Others v. the United Kingdom*, 2 September 1998, §§ 73 and 75, *Reports of Judgments and Decisions* 1998-VI, where the senior local government officers were prevented from standing for election unless they resigned). The same holds true for judges whose independence, impartiality and neutrality are the common values of the State Parties to the Convention (*Briķe v. Latvia* (dec.), no. 47135/99, 29 June 2000, where a judge was not eligible to stand for election unless she resigned from her office). In *Ahmed and Others* as well as in *Briķe* (both cited above) the Court has accepted far-reaching restrictions on the right to stand for election in respect of civil servants and judges. *A fortiori*, there is no reason to question the restrictions applicable to the applicants, prosecutors in inactive service, which were of a less strict nature since they were not prevented from standing for election.

42. Furthermore, the Court notes that the impugned restrictions on the exercise of the applicants' right to stand for election only operated for as long as the applicants wished to maintain their status of a prosecutor in inactive service. If the applicants wanted to hold their parliamentary seat, they were at liberty to renounce their status of a prosecutor in inactive service (see, *mutatis mutandis*, *Ahmed and Others*, § 75, and *Briķe*, both cited above). Under the domestic legislation they had fourteen days to take their decision (see paragraph 26 above).

43. In addition, the applicants strongly contested the interpretation of Article 103 § 2 of the Constitution in their case, claiming that prosecutors in inactive service, in contrast to prosecutors in active service, were not disqualified from sitting as a member of parliament.

44. The Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law: the national authorities are, in the nature of things, particularly qualified to settle issues arising in this connection. The Court cannot question the national courts' interpretation except in the event of flagrant non-observance of, or arbitrariness in the application of, the domestic legislation in question (see, among other authorities, *Kruslin v. France*, 24 April 1990, § 29, Series A, no. 176-A; *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII; *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II; *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 90, ECHR 2006-XI; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-50, 20 October 2011; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 110, 15 October 2015).

45. In the present case, the Supreme Court undertook a thorough analysis of the issue, notably the legal characteristics of the status of a prosecutor in inactive service. It relied on its earlier case-law and the Constitutional Court's judgment of 6 March 2007 (case no. SK 54/06). The Supreme Court concluded that under Article 103 § 2 of the Constitution the disqualification at issue applied to both prosecutors in active service and prosecutors in inactive service. It dismissed the applicants' arguments to the contrary, finding that the scope of the constitutional ban could not be determined by the content of the statutory norms. The applicants also relied on the constitutional practice regarding judges and prosecutors in inactive service sitting as MPs. The Supreme Court established that there had been only one such case of a judge in inactive service and held that there was no consistent practice in this respect to support the applicants' assertion (see paragraph 16 above). Having regard to the foregoing, the Court cannot discern any arbitrariness in the findings of the Supreme Court.

46. In so far as the applicants relied on *Lykourezos v. Greece*, the Court notes that in this case the applicant, a practising lawyer, was elected a member of parliament in 2000 for a four-year term and was disqualified from his seat in 2003 on the basis of a constitutional amendment adopted in 2001. In that case the Court held that the absolute professional disqualification during the applicant's term of office had come as a surprise to him and his constituents and found a breach of Article 3 of Protocol No. 1. The applicants' case is clearly distinguishable from *Lykourezos v. Greece*. The applicants were disqualified from sitting as deputies before they had been sworn in and in application of the constitutional ban which had been in place long before.

47. Lastly, the applicants invoked special rules which applied to the opposition since they had stood for election from the list of an opposition party. The Court is not persuaded by this argument. The applicants must have been aware that in accordance with the Supreme Court's case law (see paragraph 19 above) they were prohibited from joining any political party and from involvement in any political activity as long as they remained prosecutors in inactive service. It is difficult to see how the applicants envisaged reconciling this ban with sitting as a deputy which is a political activity *par excellence*.

48. Having regard to the above considerations, the Court finds that the complaint under Article 3 of Protocol No. 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### C. The complaint under Article 14 taken in conjunction with Article 3 of Protocol No. 1

49. The applicants alleged a breach of Article 14 in conjunction with Article 3 of Protocol No. 1 in that they, in comparison with prosecutors in service, did not have a statutory right to return to their status of prosecutor in inactive service after having served as a deputy.

50. The Court recalls that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Rasmussen v. Denmark*, 28 November 1984, § 29, Series A no. 87). The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention or its Protocols, which the State has voluntarily decided to provide (see *Case* "*relating to certain aspects of the laws on the use of languages in education in Belgium*" (merits), 23 July 1968, pp. 33-34, § 9, Series A no. 6 ("the '*Belgian linguistic*' case"); *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, §§ 39 and 40, ECHR 2005-X; *E.B. v. France* [GC], no. 43546/02, § 48, 22 January 2008; *Andrejeva v. Latvia* [GC], no. 55707/00, § 74, ECHR 2009; and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 39, ECHR 2009).

51. It must therefore be determined whether the applicants' situation fell within the scope of Article 3 of Protocol No. 1. As noted above, the latter provision implies the subjective right to vote and to stand for election. The

Court notes that both prosecutors in active service and prosecutors in inactive service, like the applicants, enjoyed the right to stand for election to parliament and both, once elected, had to resign if they wanted to hold a parliamentary seat. The applicants' complaint relates to the statutory right of the prosecutors in service who could return to their post provided that the period of sitting as an MP did not exceed nine years, while a prosecutor in inactive service did not have that possibility. However, the Court considers that this statutory right to return to a previous post does not come within the scope of the right to stand for election. Accordingly, the precise complaint raised by the applicants does not fall within the ambit of Article 3 of Protocol No. 1.

52. The applicants further alleged that judges and prosecutors were treated differently from other categories of civil servants referred to in Article 103 § 2 of the Constitution. They referred to the example of the retired officer of the service of the State protection, Mr

T. Kaczmarek, who had been elected member of the Sejm in the same election but had not had his mandate forfeited. The Court notes that this complaint does not seem to have been raised in the proceedings before the Supreme Court. In any event, it recalls that Article 3 of Protocol No. 1 does not prevent the Contracting Parties from imposing particular obligations on judges and prosecutors who decide to stand for election to parliament. The Court does not find that a retired officer of the State security service is in relevantly similar situation to that of a prosecutor or a judge in inactive service who has a particular and, in principle, life-long duty of political neutrality.

53. The applicants also claimed that prosecutors in inactive service could be elected a local councillor or a mayor or serve as a minister. However, Article 3 of Protocol No. 1 is not applicable to local elections (*Mółka v. Poland* (dec.), no. 56550/00, ECHR 2006-IV) or to appointment to a post of a minister.

54. The applicants lastly asserted that prosecutors in inactive service could be elected Members of the European Parliament. However, pursuant to section 334 § 2 of the Electoral Code members of the European Parliament cannot hold jointly that office with the offices and posts which cannot be held jointly with the office of a deputy to the Sejm. This provision refers then to the ban prescribed in Article 103 § 2 of the Constitution which has been analysed above.

55. Having regard to the foregoing considerations, the Court finds that the complaint under Article 14 taken in conjunction with Article 3 of Protocol No. 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## D. The complaint under Article 6 § 1

56. The applicants also complained under Article 6 § 1 that the procedure in their case had not conformed to the requirements of “a fair and public hearing”.

57. The Court notes that the proceedings in question concerned the exercise of the applicants’ political rights, notably the right to stand for election and retain one’s seat. The dispute at issue therefore had no bearing on their “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention, notwithstanding the alleged financial consequences for the applicants had they decided to renounce their status of prosecutors in inactive service (see *Pierre-Bloch v. France*, 21 October 1997, §§ 50-51, *Reports* 1997-VI; *Briķe v. Latvia* (dec.), no. 47135/99, 29 June 2000; *Ždanoka v. Latvia* (dec.), no. 52278/00, 6 March 2003; and *Karimov v. Azerbaijan*, no. 12535/06, § 54, 25 September 2014). Accordingly, Article 6 § 1 does not apply to the proceedings complained of.

58. It follows that the complaint under Article 6 § 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 25 February 2016.

Françoise Elens-Passos
Registrar

András Sajó
President