



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

FIRST SECTION

CASE OF ASSOCIATION OF PEOPLE OF SILESIAN NATIONALITY (IN LIQUIDATION) v. POLAND

(Application no. 26821/17)

JUDGMENT

Art 11 • Freedom of association • Dissolution and ordering of liquidation of applicant association not based on relevant and sufficient reasons • Failure to demonstrate impugned measure pursued “pressing social need”

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 March 2024

FINAL

14/06/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

**In the case of Association of People of Silesian Nationality
(in liquidation) v. Poland,**

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Lətif Hüseyinov,

Ivana Jelić,

Gilberto Felici, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 26821/17) 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 a Polish association, Stowarzyszenie Osób Narodowości Śląskiej w likwidacji (“the applicant association”), on 29 March 2017;

the decision to give notice to the Polish Government (“the Government”) of the complaint concerning Article 11 of the Convention;

the parties’ observations;

Having deliberated in private on 7 March 2023 and 13 February 2024,

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

INTRODUCTION

1. The applicant, Stowarzyszenie Osób Narodowości Śląskiej w likwidacji, is a Polish association, registered in 2011, which went into liquidation in 2016 and was represented before the Court by Mr W. Murek, a lawyer practising in Katowice.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

THE FACTS

3. The facts of the case may be summarised as follows.

4. The Polish courts ordered dissolution of the applicant association. The applicant association alleged, in particular, a breach of Article 11 of the Convention.

I. GENERAL BACKGROUND

5. Silesia (*Śląsk*) is a historic region that is now in south-western Poland. It was originally a Polish province that became a possession of the Bohemian Crown in 1335. It passed with that Crown to the House of Habsburg in 1526, and was taken over by Prussia in 1742 under the Treaty of Berlin.

After the First World War, the 1919 Treaty of Versailles provided for a plebiscite to be held to determine if Upper Silesia should remain German or pass over to Poland. The results of the plebiscite in 1921 were favourable to Germany except in the easternmost part of Upper Silesia. After an armed uprising of the Poles in 1922, the League of Nations agreed to a partition of the territory; the larger part of the industrial area, including Katowice, passed over to Poland.

In the aftermath of the Munich Pact of 1938, most of Czech Silesia was divided between Germany and Poland. After the German conquest of Poland in 1939, the whole of Polish Silesia was annexed by Germany.

After the Second World War, the pre-1938 boundary between Poland and Czechoslovakia was restored. The western boundary of Poland was moved to the Oder and Lusatian Neisse rivers. In effect, all of former German Silesia east of the Lusatian Neisse was incorporated into Poland, while only a small sector of Lower Silesia west of the Neisse remained within the former East German Land of Saxony (see *Gorzeliak and Others v. Poland* [GC], no. 44158/98, § 13, ECHR 2004-I).

6. In 2011 a census – the National Population and Housing Census (*Spis Powszechny*) – was carried out in Poland. According to the census report, 36,522,200 people declared themselves Polish nationals, 430,798 people declared that they had both Polish and “Silesian” nationality, and 375,635 declared that they had only “Silesian” nationality.

II. PROCEEDINGS FOR REGISTRATION OF THE APPLICANT ASSOCIATION

7. On 21 December 2011 the Opole District Court registered the applicant association as the Association of People of Silesian Nationality (*Stowarzyszenie Osób Narodowości Śląskiej*). The court noted that registration was possible, since the association’s memorandum of association did not include the terms “Silesian nation” or “Silesian national minority”, and only referred to “Silesian nationality”. Moreover, the memorandum also contained a phrase confirming that the applicant association was not going to register electoral lists (*listy wyborcze*).

8. On the same date the applicant association was registered in the National Court Register and acquired legal personality.

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9. The relevant provisions of the applicant association's memorandum, as amended by the general assembly of its members (*Walne Zgromadzenie Członków*) on 27 April 2013, read as follows:

“1. The present association shall be called ‘the Association of People of Silesian Nationality’ (hereafter referred to as ‘the Association’).

2. (1) The Association shall conduct its activity within the territory of the Republic of Poland.

...

5. The Association shall not register an electoral committee in the parliamentary elections.

...

8. The aims of the Association are:

- (1) to awaken and strengthen the national consciousness of Silesians;
- (2) to restore Silesian culture;
- (3) to promote knowledge of Silesia;
- (4) to create and develop an active attitude amongst Silesians ... ;
- (5) to participate in the contemporary integration of all groups living in Silesia;
- (6) to support cultural contact between Silesians, notwithstanding their places of residence, and to facilitate the return of economic emigrants;
- (7) to promote and create a positive image of Silesia and Silesians;
- (8) to preserve the material and spiritual heritage of Silesia.

9. The Association shall accomplish its aims by the following means:

- (1) organising lectures, seminars, training courses and meetings, establishing libraries and clubs, and carrying out scientific research;
- (2) organising cultural and educational activities for members of the Association and other persons;
- (3) carrying out promotional and publishing activities;
- (4) promoting the emblems and colours of Silesia and Upper Silesia;
- (5) organising demonstrations and protest actions;
- (6) organising sporting events ... and other forms of leisure activities;
- (7) setting up schools and other educational establishments;
- (8) cooperating with other organisations;
- (9) conducting business activities for the purpose of financing the aims of the Association – this may include establishing commercial entities and cooperating with other [commercial] entities.

...

11. Each person who feels affiliation to Silesian nationality who makes a correctly filled in and signed declaration on joining the association may become an ordinary member of the Association.

...

43. The Association is an organisation of persons declaring their affiliation to Silesian nationality.

...”

III. PROCEEDINGS FOR DISSOLUTION OF THE APPLICANT ASSOCIATION

10. On an unknown date the Opole regional prosecutor lodged an appeal with the Opole Regional Court against the decision of 21 December 2011. The prosecutor submitted that the applicant association had been registered despite the fact that its memorandum of association was contrary to the law. In particular, it was in breach of section 2 of the Act on National and Ethnic Minorities and Regional Language (*Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym* – hereinafter “the 2005 Act”), as it referred to “Silesian nationality” and made membership of the association contingent upon declaration of a nationality which did not exist in the Polish legal system.

11. On 7 September 2012 the Opole Regional Court dismissed the prosecutor’s appeal and upheld the first-instance decision. It noted that the decision to register the applicant association had not created a “Silesian nationality” or a national minority which did not exist under domestic law. Moreover, registration of the applicant association would not allow Silesians to benefit from privileges conferred on the electoral committees of registered national minorities. Firstly, the applicant association’s memorandum contained an explicit statement saying that the association would not register electoral committees. Secondly, in the view of the Regional Court, an association of people declaring an affiliation to a nationality not listed in the 2005 Act would not be an association of “a national minority” as provided for by Article 197 of the Electoral Code (*Kodeks Wyborczy*).

12. The Opole regional prosecutor appealed to the Supreme Court, relying on Article 32 of the Constitution and Article 197 of the Electoral Code.

13. On 5 December 2013 the Supreme Court quashed the decision of 7 September 2012 and remitted the case to the Opole Regional Court. It noted that a court registering an association was obliged to examine the conformity of that association’s memorandum with the law, and also whether certain formal requirements had been met.

14. The Supreme Court further agreed that the founders of the association could choose its name. At the same time, the court stressed that this name should not be misleading and should not interfere with other people’s rights. In the present case, following the registration of the applicant association, articles in the media had appeared implying that the existence of a “Silesian nation” had been judicially confirmed. Therefore, the applicant association’s name was misleading and certain inferences could be drawn from that name.

In particular, the recognition of Silesian nationality might lead to the Polish State's unity and integrity being weakened. The association might also take advantage of the privileges granted to national minorities by the Electoral Code, such as the exemption from the requirement that a party or other organisation standing in elections obtain at least 5% of the votes in order to gain seats in Parliament.

15. The court further referred to its previous case-law and stressed that freedom of choice of nationality could be exercised only in respect of nations which existed objectively and which had been created in a historical process. It relied on the Court's judgment given in the case of *Gorzelik and Others* (cited above) and its previous judgments given in respect of that association (the Union of People of Silesian Nationality).

16. The Supreme Court held that the conclusion that a "Silesian nation" existed could not be drawn from the results of the 2011 census or from any other legal document. In particular, the 2005 Act had not listed Silesians as a national or ethnic minority.

17. On 7 March 2014 the Opole Regional Court quashed the decision of 21 December 2011 and remitted the case to the Opole District Court.

18. On 9 January 2015 the Opole District Court dissolved the applicant association and ordered its liquidation. It based its decision on section 29.1(3) of the Law on Associations, ruling that dissolution of an association was possible if its activities had demonstrated a flagrant and repeated failure to comply with the law or with the provisions of the memorandum of association, and if there was no prospect of the association reforming its activities so as to comply with the law and the provisions of the memorandum.

19. The applicant association had been asked to amend the memorandum of association in order to comply with the law. In particular, it had been asked to change the misleading name and modify provisions which referred to "people of Silesian nationality". However, those changes had not been made. Delegates at an extraordinary general meeting held on 25 October 2014 had amended sub-paragraphs 1 and 4 of paragraph 8, but had objected to the amendment of paragraphs 1, 11 and 43, which referred to "Silesian nationality". The court referred to the Supreme Court's judgment of 5 December 2013, noting that the name of the applicant association and certain provisions of the memorandum of association suggested that a Silesian national minority legally existed, which had not been confirmed by any legal provision.

20. The district court further relied on the Court's judgment in the case of *Gorzelik and Others* (cited above) and found that the Court's reasoning was also valid in respect of the applicant association. In particular, even though Silesians had not been recognised as an ethnic minority by any domestic legal provision, the applicant association referred to "Silesian nationality" in its

memorandum of association. For that reason, the applicant association's activity was in breach of the 2005 Act and the Electoral Code.

21. On 18 June 2015 the Opole Regional Court dismissed an appeal by the applicant association. It held that the legal and factual situation had not changed and that the applicant association had refused to make changes to its memorandum of association.

22. On 12 October 2016 the Supreme Court refused to entertain a cassation appeal by the applicant association.

RELEVANT LEGAL FRAMEWORK

23. The relevant domestic law and practice are summarised in the Court's judgment in *Gorzelik and Others* (cited above, §§ 37-44).

24. Following that judgment, on 6 January 2005 the 2005 Act (see paragraph 10 above) was passed. It entered into force on 1 May 2005. National and ethnic minorities were defined and listed in section 1 of that Act. However, "Silesian nationality" was not among them.

25. On 5 January 2011 the Electoral Code was enacted.

26. Article 196 § 1 of the 2011 Electoral Code provides as follows, in so far as relevant:

"In the distribution of seats among regional electoral lists, account shall be taken only of those lists of electoral committees which have obtained at least 5% of the valid votes cast in the whole [of Poland]."

27. Article 197 § 1 provides as follows, in so far as relevant:

"Electoral committees of registered organisations of national minorities may be exempted from the condition referred to in Article 196 § 1, provided that they submit a declaration to that effect to the State Electoral College no later than the fifth day before the date of the election ..."

THE LAW

I. PRELIMINARY REMARKS

28. The applicant association complained under Articles 9, 11 and 14 of the Convention about the allegedly arbitrary decision to dissolve the Association of People of Silesian Nationality.

29. The Court considers that the essence of the complaint concerns the dissolution of the applicant association; it therefore finds it appropriate to examine that complaint only from the standpoint of Article 11 of the Convention, which provides as follows:

"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.”

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

A. Admissibility

30. The Government considered that the application should be rejected on account of its manifestly ill-founded character.

31. The applicant submitted that the application was admissible and that there was a violation of Article 11 of the Convention.

32. The Court considers, in the light of the parties’ submissions, that the application raises complex issues of fact and law which require examination on the merits; accordingly, it cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As no other ground for declaring it inadmissible has been established, the Court declares the application admissible.

B. Merits

1. The parties’ submissions

33. The Government noted that the interference with the applicant’s right of association had been prescribed by law, namely section 29 of the Law on Associations, which allowed a court to dissolve an association. They pointed out that the provisions setting out the conditions for the registration of associations and their dissolution were sufficiently clear and precise to allow a person to determine his or her conduct, and consequently met the criterion of the “foreseeability” of the law for the purposes of the Convention. They further referred to the 2005 Act, which did not list “Silesian nationality” among recognised national minorities, and to the jurisprudence of the Supreme Court, which was consistent in refusing to register associations that referred to “Silesian nationality”.

34. The Government also maintained that the interference in question had served a legitimate aim, namely the prevention of disorder and the protection of the rights and freedoms of others as well as the legal order and integrity of the Polish state. In this regard, they noted that allowing an association which referred to “Silesian nationality” to operate might create an impression that the Polish authorities recognised the existence of a Silesian nation, which might encourage other ethnic groups to take similar steps and consequently undermine the integrity of the Polish State. This would also have adverse

consequences for other ethnic groups, which would lead to discrimination against them.

35. The Government further submitted that the interference complained of had been necessary in a democratic society, particularly in order to prevent the applicant association from possibly attempting to take advantage of electoral privileges granted to national minorities by the domestic law. In this regard, they submitted that despite the statutory changes adopted after *Gorzelik and Others* (cited above), and the entry into force of the 2005 Act, there was still a risk that the applicant association might register an electoral committee. They also considered that the interference had been proportionate to the aim pursued and in particular had not been unconditional or absolute; the applicant association had been given an opportunity to amend its memorandum of association to make it conform with Polish law. Had the applicant association complied with the domestic court's order, it would not have been dissolved. The dissolution of the applicant association had not been aimed at preventing Silesians from cultivating their traditions and customs, but rather at protecting public order and the rights of other persons. Lastly, the Government claimed that there was nothing that prevented the members of the applicant association from establishing a new association to cultivate Silesian values in Poland without referring to "Silesian nationality".

36. The applicant association submitted that its right of association had been violated. It considered that the dissolution order had not been justified, in particular because it had been clearly stated that the applicant association would not take advantage of the provisions granting national minorities electoral privileges. In this regard, it referred to legislative changes in Polish law after the case of *Gorzelik and Others* (cited above). Firstly, the 1997 Electoral Code granted certain privileges to committees established by voters which were associated with registered national minorities. Secondly, the 2005 Act explicitly enumerated existing national and ethnic minorities, and Silesian nationality was not among them. According to the applicant association, only national minorities listed in the 2005 Act could benefit from electoral privileges, therefore there was no danger that the applicant association, if registered, would try to benefit from such privileges.

2. The Court's assessment

37. The relevant principles and the Court's case-law have been set out in the Court's judgment in *Gorzelik and Others* (cited above, §§ 64-65 and 88-96) and further developed in *Ouranio Toxo and Others v. Greece*, no. 74989/01, §§ 34-37, ECHR 2005-X (extracts), *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, §§ 43-46, 27 March 2008 and *Association of Citizens "Radko" and Paunkovski v. the former Yugoslav Republic of Macedonia*, no. 74651/01, §§ 64-77, ECHR 2009 (extracts).

38. Freedom of association is not absolute, and it must be accepted that where an association, through its activities or the intentions it has expressly

or implicitly declared in its programme, jeopardises the State's institutions or the rights and freedoms of others, Article 11 does not deprive the State of the power to protect those institutions and persons. Moreover, an association's statute and programme cannot be taken into account as the sole criterion for determining its objectives and intentions. An association's programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the association's members and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of an association, provided that as a whole they disclose its aims and intentions (see *Gorzelik and Others*, cited above, § 94, and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 101, ECHR 2003-II).

39. The Court reiterates its case-law, under which a State cannot be required to wait, before intervening, until an association has begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others*, cited above, § 102). However, sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. One of the principal characteristics of democracy is the possibility it offers of resolving problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate certain issues in public and to find solutions in accordance with democratic rules (see *Çetinkaya v. Turkey*, no. 75569/01, § 29, 27 June 2006; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 88 and 97, ECHR 2001-IX; and *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 57, *Reports of Judgments and Decisions* 1998-I).

40. The Court has also held that mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to 'democratic society', even though it may provoke tensions (*Ouranio Toxo and Others*, cited above, § 40).

41. Turning to the circumstances of the present case, there is no dispute that the decision of the Opole District Court of 9 January 2015 dissolving the applicant association and ordering its liquidation amounted to an interference with its freedom of association.

42. Such an interference will contravene Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims under paragraph 2 of that Article, and was “necessary in a democratic society” for achieving them.

43. The parties did not contest the fact that the interference complained of had been prescribed by law. Indeed, the Opole District Court based its decision dissolving the applicant association on section 29.1(3) of the Law on Associations (see paragraph 18 above).

44. As regards the issue whether the impugned interference pursued a “legitimate aim”, the Court observes that in its decision of 5 December 2013 the Supreme Court held that allowing the applicant association to be registered would be contrary to the law, especially as the name of the association, which in its view was linked to a non-existent nation, would be misleading to the public. The Supreme Court also considered that registering the applicant association as an organisation of a national minority would entail serious consequences for the unity and integrity of the Polish State (see paragraph 14 above).

45. The Court is ready to accept that the contested measure was taken in furtherance of “the prevention of disorder” and “the protection of the rights of others”, which are legitimate aims for the purposes of Article 11 of the Convention.

46. The Court notes at the outset that the applicant association was formally registered on 21 December 2011 and acquired legal personality (see paragraphs 7 and 8 above).

47. On 9 January 2015 the Opole District Court decided to dissolve the applicant association, following proceedings which had lasted over two years (see paragraph 18 above).

48. Even though the domestic courts relied on the judgment *Gorzeliak and Others* (cited above), they failed to engage more extensively with the issue of compatibility of the impugned measure with the Convention in the light of the Court’s rich case-law on freedom of association.

49. The Court notes that although the domestic courts noted the applicant association’s repeated failure to comply with the law (see paragraphs 14 and 18 above), neither the Supreme Court, which on 5 December 2013 quashed the decision dismissing the prosecutor’s appeal, nor the Opole District Court, which dissolved the applicant association on 9 January 2015 (more than three years after its registration), referred to any, purported or performed, illegal or anti-democratic actions of the applicant association or its members.

50. In their observations, the Government further submitted that the interference complained of had been necessary in a democratic society, particularly in order to prevent the applicant association from possibly attempting to take advantage of electoral privileges granted to national minorities by the domestic law (see paragraph 35 above). However, as regards the alleged possibility that the applicant association would make use

of some electoral privileges, the association expressly stated in its memorandum of association that it would not register an electoral committee in parliamentary elections (see paragraph 9 above). The domestic courts did not make any reference to that statement, and it is unclear from the reasoning of their decisions whether the applicant association's registration alone would automatically have given it the right to register an electoral committee or to gain any electoral benefits (see paragraph 14 above).

51. The main argument relied on by the Supreme Court which referred to any actual consequences of the applicant association's registration was the publication on the Internet, after the registration, of articles suggesting that the "Silesian nationality" had been recognised by the courts. This, in the Supreme Court's view, amounted to evidence that the applicant association's name was misleading and might have other connotations in respect of the use of the notions of "nation", "nationality" and "national minority" (see paragraph 14 above).

52. Against this background, in the Court's view, the domestic courts did not provide sufficient arguments for the dissolution of the applicant association. The Government noted subsequently that allowing an association which made reference to "Silesian nationality" to operate might create an impression that the Polish authorities recognised the existence of a Silesian nation which might encourage other ethnic groups to take similar steps and, consequently, undermine the integrity of the Polish State.

53. It appears that the crucial issue in the dissolution of the applicant association was the name of the association and the wording of two provisions of its memorandum of association which referred to the same notion used in the name, that is, "Silesian nationality". This was expressly confirmed in the decisions of the domestic courts (see paragraph 19 above).

54. The Court considers that it has not been demonstrated by the domestic authorities that the name of the applicant association and the wording of the two provisions of its memorandum of association which referred to "Silesian nationality" could constitute a threat to public order. In the absence of any concrete evidence to demonstrate that in choosing to call itself "the Association of People of Silesian Nationality", the applicant association opted for a policy that represented a real threat to public order or to a democratic society, the Court considers that the submission based on the association's name and the wording of two provisions of its memorandum of association cannot, by itself, justify the dissolution of the association (see, *mutatis mutandis*, *Ouranio Toxo and Others*, cited above, § 41, and *United Communist Party of Turkey and Others v. Turkey*, cited above, § 54 and *Association of Citizens "Radko" and Paunkovski*, cited above, § 72).

55. In view of the foregoing, the Court considers that the reasons relied on by the authorities for dissolving the applicant association were not relevant and sufficient. Accordingly, it has not been demonstrated that the restrictions applied in the present case, namely the dissolution of the applicant

association, pursued a “pressing social need”. It follows that the measure infringed Article 11 of the Convention.

56. There has accordingly been a violation of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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.”

58. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award the applicant association any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;

Done in English, and notified in writing on 14 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President