



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40319/98
by Bartosz SANIEWSKI
against Poland

The European Court of Human Rights (Third Section), sitting on 26 June 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr J. MAKARCZYK,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Mrs H.S. GREVE,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 22 May 1997 and registered on 17 March 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Polish national, born in 1980 and living in Pionki.

A. The circumstances of the case

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

On 20 June 1997 the applicant obtained a school report for the school year 1996/97. He attended a State secondary school in Pionki. The report contained a list of courses that he had followed during this year, including “religion/ethics”, and marks obtained for his progress. The place reserved for “religion/ethics” contained no mark, but was left blank. Likewise, places reserved for certain other subjects such as “informatics”, “music” and “fine arts” were left blank.

B. Relevant domestic law and practice

1. Freedom of religion and conscience

Article 53 of the Constitution of Poland, adopted on 2 April 1997, provides that freedom of faith and religion shall be ensured to everyone. Pursuant to this Article, freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching. Freedom of religion shall also include the possession of sanctuaries and other places of worship as well as the right of individuals, wherever they may be, to benefit from religious services.

According to this Article, parents shall have the right to ensure their children’s moral and religious upbringing and teaching in accordance with their convictions.

The religion of a church or other legally recognised religious organisation may be taught in schools, but the freedom of religion and conscience of others shall not be infringed thereby.

The freedom to express publicly one’s religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the rights and freedoms of others.

No one shall be compelled to participate in religious practices or prevented from such participation. No one may be compelled by the organs of a public authority to disclose his philosophy of life, religious convictions or beliefs.

Other provisions on freedom of religion and conscience are laid down in the Freedom of Conscience and Religion Act of 17 May 1989, as amended, which reads as follows:

Article 1

"1. Poland (...) shall secure to its citizens freedom of conscience and religion.

2. Freedom of conscience and religion includes freedom to choose one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in private and in public. (...)"

Article 2

"In the exercise of their freedom of conscience and religion, citizens may in particular: (...)

2a) belong, or not belong, to churches or other religious communities;

3) express their religious opinions;

4) raise their children in conformity with their religious convictions;

5) remain silent as to their religion or convictions,"

2. *Legal basis for religious instruction in schools*

The majority of schoolchildren attend State schools. In August 1990 the Ministry of Education issued two Ordinances, introducing religious instruction in Roman Catholicism and other religions into public schools on a voluntary basis. A declaration was to be made by parents in primary schools, and pupils in secondary schools, to confirm whether the pupils wished to attend. Separate school reports were to be issued with marks for religious instruction.

The Ombudsman lodged a constitutional complaint with the Constitutional Court (*Trybunał Konstytucyjny*), challenging the conformity of certain provisions of those Ordinances with the law. The Ombudsman considered that they breached the statutory guarantee of the right to remain silent with regard to one's religion and convictions, as provided for in the Freedom of Conscience and Religion Act of 1989. He contended that the Ordinances disclosed a breach of this guarantee as their implementation would result in an obligation to reveal the religious convictions of parents and children.

In a decision of 30 January 1991, the Constitutional Court found that voluntary religious tuition at school was not in breach of the Freedom of Conscience and Religion Act. The court considered that by allowing a child to attend religious instruction a parent is not obliged to reveal his or her

beliefs, since a non-believer could agree to the child attending such classes whereas a believer could refuse. It further considered that the right to remain silent with regard to one's religion and convictions could not be interpreted as an obligation to remain silent. The Court stressed that neither declaring one's wish to attend religious instruction nor the instruction itself was mandatory.

On 15 April 1992 the Minister of Education enacted a new Ordinance on the organisation of religious instruction in public schools. The Ordinance replaced the 1990 Ordinance referred to above. It provides for participation in religious instruction on a voluntary basis, a course on ethics being organised on the same voluntary basis for those pupils who do not wish to attend such instruction. It further provided for marks for "religious instruction/ethics" to be included in the official school reports. Article 9 of the Ordinance provides that the school report should not contain any data which would disclose whether a pupil attended a course in any particular religion or in ethics "in order to eliminate any possible opportunities for intolerance" (*"w celu wyeliminowania ewentualnych przejawów nietolerancji"*).

In August 1992 the Ombudsman filed a constitutional complaint against this Ordinance with the Constitutional Court. The Ombudsman submitted that including marks for religious instruction in an official school report breaches the principle of the separation of churches and the State, and infringes the right to remain silent about one's beliefs and convictions, guaranteed by law.

In a decision given on 30 April 1993, the Constitutional Court found that including marks for "religion/ethics" in official school reports did not reveal whether a pupil had attended one course or the other. Therefore, the court found it unnecessary to examine the question whether the impugned Ordinance had infringed the right to remain silent regarding one's religion and convictions.

On 14 April 1997 Poland ratified the concordat with the Vatican. Article 12 (1) of the concordat reads as follows:

"The State, respecting the right of parents to ensure the religious education of their children and the principle of tolerance, shall guarantee that public primary and secondary schools and pre-school establishments, run by the State and local government administration, organise, if interested persons so wish, courses in religious education within the framework of school and pre-school curricula."

3. Constitutional complaints before the Constitutional Court

In accordance with Article 33a of the Constitution of 2 April 1997, the Constitutional Court rules on the conformity of statutes and other normative acts enacted by the main and central State organs with the Constitution, and establishes a universally binding interpretation of laws.

Pursuant to Article 79 of the Constitution, everyone whose constitutional rights or freedoms have been infringed shall have the right to request a ruling by the Constitutional Court as to the conformity with the Constitution of a statute or another normative act, on the basis of which a court or organ of public administration has given a final decision impinging upon the complainant's constitutional rights or freedoms.

Under Article 188 of the Constitution, the Constitutional Court shall give rulings concerning, *inter alia*, the conformity of statutes and international agreements with the Constitution, and also the conformity of provisions enacted by central State organs with the Constitution, as well as that of ratified international agreements and statutes.

Under the provisions of the Constitutional Court Act of 1 August 1987, a constitutional complaint should not be directed against an individual act of application of legal provisions, such as an administrative decision or a judicial decision. Its purpose and scope should be limited to challenge the compatibility with the Constitution of legal provisions which served as a legal basis for such an individual act.

The complaint shall indicate which constitutional rights or freedoms have been violated by a statute, ordinance, order, or other normative act complained of, and contain a description of the alleged violation.

It should be lodged with the court within three months after a final individual decision has been served on the complainant.

COMPLAINTS

The applicant complains about the contents of his school report for the 1996/97 school year. He asserts that his freedom of thought and conscience was breached since the absence of a mark for the course in religion reveals that he did not follow this course. He is obliged thereby to make a public statement as to his beliefs. He submits that he is an atheist and in Poland, which is a Catholic country where manifestations of religious intolerance are frequent, his chances of obtaining a place at university or a good job are seriously diminished thereby.

The applicant argues that the interference with his rights guaranteed by Article 9 of the Convention was not necessary in a democratic society and was not justified by any of legitimate aims listed in this provision.

He further complains on behalf of his parents, invoking Article 2 of Protocol No. 1 to the Convention, that the contents of the impugned school report breached their right to ensure his education and teaching in conformity with their religious and philosophical convictions.

THE LAW

1. The applicant complains under Article 9 of the Convention about the contents of his school report for the 1996/97 school year. He asserts that his freedom of thought and conscience was breached since the absence of a mark for the course in religion reveals that he did not follow this course. He is obliged thereby to make a public statement as to his beliefs.

Article 9 of the Convention reads:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The Court recalls that freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (the *Kokinnakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31; *Hasan and Chaush v. Bulgaria*, [GC], no. 30985/96, § 60, ECHR 2000 [26.10.00]).

The Court further recalls that, according to the case-law of the Convention organs, Article 9 of the Convention affords protection against religious indoctrination by the State. Article 9 primarily protects the sphere of personal beliefs and religious creeds, i.e. the area which is sometimes called the *forum internum*. However, it also recalls the case-law of the European Commission of Human Rights which found that there was no interference with the rights safeguarded by Article 9 of the Convention where voluntary religious education had been organised in State schools, or exemptions were possible from compulsory religious education, or when marks for attendance at such courses or alternative ethics courses were foreseen in school reports (Eur. Comm. HR., no. 23380/94, Decision 16.1.96, D.R. 84-A, p. 46; no. 10491/83, Decision 3.12.86, D.R. 51 p. 41).

As regards the facts of the present case, the Court first notes that, even assuming that the applicant may be said to have exhausted domestic remedies, he was not obliged to attend religious instruction, as it was organised on a voluntary basis. It is not alleged that he had to participate in

any school activities of a religious character which were incompatible with his views. Neither was he prevented from expressing his opinions in respect of religion.

Secondly, leaving open the question whether Article 9 of the Convention guarantees a right to remain silent as to one's religious beliefs, the Court notes that the applicant complains about the contents of his second year school report in a secondary school when he was sixteen years old. This report covered only one school year when he was young and the applicant does not contend that he would have to show it to any higher educational establishment in the framework of an admissions procedure, or to submit it to any future employer. He has thus not substantiated his claim that the report might prejudice his future educational or employment prospects. Consequently, the Court does not find it established that the impugned school report had, or would have, any material impact on the applicant's interests.

The Court also notes that on the impugned school report places reserved for marks for certain other subjects such as "informatics", "music" and "fine arts" were also left blank. Therefore, no conclusion can be drawn on the basis of the report as to whether the applicant refused to attend the courses for which there was no mark on the report, or whether these courses simply were not organised in his school in this school year.

Thirdly, the Court notes that discrimination on religious grounds is illegal in Poland, being prohibited by domestic law and the Conventions of the International Labour Organisation. The applicant would, therefore, have a remedy against the apparently minimal risk of any prejudice the school report might engender in the future in the context of private employment.

Moreover, the applicant has not contended that he suffered any specific problems as a result of the impugned school report. In particular, he did not refer to any hostile remarks being made to him, or other manifestations of intolerance. He does not allege that he has suffered discrimination on account of his atheism, either on the part of any public authority, or on the part of any private person or entity.

The Court concludes that the applicant has not shown that he has suffered such consequences from the school report which could be said to amount to an interference with his rights and freedoms guaranteed by Article 9 of the Convention.

It follows that this part of the application is to be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complains on behalf of his parents, invoking Article 2 of Protocol No. 1 to the Convention, that the contents of the impugned school report breached their right to ensure his education and teaching in conformity with their religious and philosophical convictions.

Article 2 of Protocol No. 1 to the Convention reads:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

The Court recalls that in individual proceedings under Article 34 of the Convention, a representative is required to submit a proper authority from the applicant authorising the former to submit an application (Eur. Comm. HR, No. 10031/82, Decision 3.10.84, D.R. 39 p. 158; No. 23366/94, Decision 6.7.94).

The Court notes that the applicant does not himself complain that he was a victim of a breach of Article 2 of Protocol No. 1, and he has not submitted any power of attorney from his parents to represent them in an application before the Court.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President