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

FIRST SECTION

DECISION

Application no. 38813/17
NOWOCZESNA
against Poland

The European Court of Human Rights (First Section), sitting on 14 March 2023 as a Committee composed of:

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 38813/17) 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") on 15 May 2017 by a political party, Nowoczesna ("the applicant party"), with its headquarters in Warsaw, which was represented by Ms A. Jędrzejewska, a lawyer practising in Warsaw;

the decision to give notice of the complaint concerning Article 11 of the Convention to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present application concerns the applicant party's financial report following the 2015 parliamentary elections and the financial consequences it had to face when the report was rejected by the National Electoral Commission (*Państwowa Komisja Wyborcza* – "the Commission").

A. Background information

2. The applicant party is an opposition party founded in May 2015. It was initially registered under the name *Partia Nowoczesna Ryszarda Petru* (Ryszard Petru's Modern Party) and subsequently, in 2017, was renamed *Nowoczesna* (Modern). In the parliamentary elections held on 25 October 2015 the applicant party obtained 7.6% of votes cast, which resulted in its winning twenty-eight seats in the lower house of Parliament (the *Sejm*).

3. Before the 2015 parliamentary elections, as required by the relevant regulations, the applicant party set up an Electoral Fund (*Fundusz Wyborczy Nowoczesnej Ryszarda Petru*) as well as an Electoral Committee (*Komitet Wyborczy Nowoczesna Ryszarda Petru*). A separate bank account was opened for each entity.

B. Financial report of the Electoral Committee

4. On 23 October 2015 the applicant party transferred 1,971,500 Polish zlotys (PLN - approximately 500,000 euros (EUR)) from the party's bank account directly to the bank account of the Electoral Committee. The transfer request indicated "FW NOWOCZESNA RP". The party obtained that sum by taking out a loan from the PKO BP bank.

5. Following the parliamentary elections, the Electoral Committee submitted its financial report, relating to the period between 26 August 2015 and 18 January 2016, to the Commission.

6. In a resolution of 18 July 2016, the Commission rejected the report on the ground that the Electoral Committee had accepted funding from a source other than the Electoral Fund. The Commission noted that the sum of PLN 1,971,500 had been transferred directly from the applicant party's bank account to the Electoral Committee, with the omission of a necessary intermediary step: the bank account of the Electoral Fund. This fact amounted to a breach of Article 132 § 1 of the Electoral Code (*Kodeks Wyborczy*), ("the Code") which provided that an electoral committee could obtain financial resources only from an electoral fund. Consequently, pursuant to Article 144 § 1 (3) (c) of the Code, when an electoral committee accepted funds from a source other than the electoral fund, its financial report could not be accepted.

7. The applicant party lodged a complaint with the Supreme Court (*Sąd Najwyższy*). It stressed that the bank transfer directly from the party's account to the account of the Electoral Committee had resulted from a purely technical mistake made by a tired employee. The transfer had been executed electronically and the person in charge had erroneously indicated the bank account number of the Electoral Committee instead of the account number of the Electoral Fund.

8. On 22 September 2016 the Supreme Court, sitting in a composition of seven judges, dismissed the complaint. It examined three aspects of the case (a) whether there was a breach of Article 132 § 1 of the Code, (b) whether Article 144 § 1 (2) of the Code allowing to accept the financial report with indication to shortcomings (*ze wskazaniem na uchybienia*) was applicable to the circumstances of the case, and (c) whether the principle of proportionality had been provided in the relevant provisions and whether it could be applied in the applicant's case.

9. It noted that it was indisputable that the Electoral Committee had accepted funds from a source other than the Electoral Fund. This amounted to a clear breach of Article 132 § 1 of the Code. The financial report had certified untrue information, specifically that the revenue of the Electoral Committee stemmed from the Electoral Fund. This fact could not be viewed as a "technical" mistake. Hence, the financial report had to be rejected under Article 144 § 1 (3) (c) of the Code. That provision was clear and identical for all political parties, which constituted a guarantee of equal treatment for all of them and ensured a consistent approach by the courts. The provisions governing the granting of public funds to political parties, the way in which those funds were collected and spent, and the sanctions for possible irregularities were aimed at ensuring transparency in the financing of parties, fair competition and a guarantee that public funds would indeed be spent on fulfilling parties' statutory role.

10. As regards the possibility to accept the financial report with indication to shortcomings, the Court held that Article 144 § 1 (2) of the Code was not applicable, since it did not encompass the circumstances referred to in Article 144 § 1 (3) (c) of the Code.

11. Finally, the Supreme Court examined the constitutional principle of proportionality and stressed that a political party whose financial report is rejected still maintains its right to public funding although its scope is reduced. The decision to reject a report of a political party results in a partial reduction of public funding, proportional to the amount acquired or spent in contravention of the relevant provisions. In this way the legislation introduced a guarantee of funding for a political party even in case of a breach of the Code. Turning to the circumstances of the applicant party the Supreme Court held that, even if, as had been alleged by the applicant party, the bank transfer had resulted from a "technical" mistake, such an error should have been spotted and corrected immediately. The Supreme Court did not exclude the application of the proportionality principle in similar cases but did not identify grounds for applying it in the applicant party's case; it noted that all that was required of the applicant party was knowledge of a clear legal provision and how it was normally applied in practice.

12. As a consequence of that decision, the applicant party had to reimburse PLN 1,971,500 to the State Treasury. In addition, on 1 August 2016 the Minister of Finance informed the applicant party that

under Article 148 § 2 of the Code, the annual public funding (to which the party was entitled on the basis of its election results) had been reduced by 75% – from PLN 6,207,895.14 (approximately EUR 1,552,000) to PLN 1,551,973.78 (approximately EUR 388,000).

C. Financial report of the applicant party

13. On 31 March 2016 the applicant party submitted its annual financial report for 2015 to the Commission.

14. On 3 October 2016 the Commission rejected the report relying on the same factual grounds as in its resolution of 18 July 2016 (see paragraph 6 above) in accordance with section 38(a) 1 of the Political Parties Act. The Commission added that the improperly transferred amount of PLN 1,971,500 had not been returned by the Committee to the applicant party. The applicant party likewise had not undertaken any steps in order to regain the amount from the Committee.

15. The applicant party could lodge a complaint with the Supreme Court against the Commission's decision. In accordance with section 38 (d) of the Political Parties Act, a party whose annual financial report was rejected or, whose complaint with the Supreme Court had been lodged and dismissed, is deprived of State funding (based on its election results) for the following three years. The applicant party did not lodge a complaint with the Supreme Court following the rejection of its annual financial report for the year 2015.

D. Complaint

16. The applicant party complained under Article 11 of the Convention that it had been deprived of State funding.

THE COURT'S ASSESSMENT

17. The Government argued that the application should be rejected as an abuse of the right to individual petition since the applicant had submitted that the subject matter of this case had raised an issue before the Supreme Court which had asked legal questions to the Constitutional Court. The applicant party submitted documents unrelated to the proceedings complained of. This, in the Government's view, amounted to a suggestion that the applicant party had appealed against the resolution of 3 October 2016 to the Supreme Court whereas in fact no such appeal had been lodged. In this respect the Government also submitted that the applicant party had failed to exhaust the available domestic remedies.

18. The applicant party submitted that it had informed the Court about the proceedings before the Supreme Court and the Constitutional Court to present the context of the case.

19. The Court notes that, indeed the applicant party submitted documents irrelevant for the proceedings complained of, without any further explanation, which could have led to a misleading assessment of the present case. However, the Court does not find it necessary to rule on the Government's preliminary objections, since it considers that the application is in any event inadmissible on the grounds set out below.

20. The Court has confirmed on a number of occasions the essential role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 of the Convention. Political parties are a form of association essential to the proper functioning of democracy. In view of the role played by political parties, any measure taken against them affects both freedom of association and, consequently, democracy in the State concerned (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 87, ECHR 2003-II, and *Republican Party of Russia v. Russia*, no. 12976/07, § 78, 12 April 2011). The Court will therefore examine whether the rejection of the applicant party's financial report constituted an interference with its right to freedom of association, and if so, whether that interference was justified.

21. As a consequence of the rejection of the Committee's financial report, the applicant party had to reimburse PLN 1,971,500 to the State Treasury. In addition, its annual public funding was reduced by 75% and, ultimately, it was deprived of public funding for the following three years (see paragraph 15 above). These financial consequences must inevitably have deprived it of the means to perform some of its political activities. Accordingly, the sanctions in question constituted an interference with the applicant party's political activities and thus its freedom of association under Article 11 of the Convention (see *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, § 72, 26 April 2016).

22. Such interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims (see *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, § 39, ECHR 2007-II).

23. The interference had a basis in domestic law, namely the relevant provisions of the Electoral Code and the Political Parties Act, and pursued a legitimate aim, that is, the assurance of equal treatment of all political parties and the protection of public funds. It remains to be established whether it was proportionate to the legitimate aim pursued.

24. The applicant party argued that the transfer in question had been made by mistake and that the rejection of the financial report constituted a disproportionate reaction by the domestic authorities.

25. In a similar case concerning the public funding of a political party the Court found a violation of Article 11 of the Convention on account of the quality of the relevant domestic provisions and the party's inability to foresee

whether and when unlawful expenditure would be punished by a warning or a confiscation order (see *Cumhuriyet Halk Partisi*, cited above, § 105). In the present case, however, the applicant party did not complain that the domestic provisions were imprecise or ambiguous. It argued rather that the authorities had taken too strict an approach and failed to apply the constitutional principle of proportionality when assessing its case.

26. The Court notes that the Supreme Court, in its well-reasoned decision of 22 September 2016, analysed the applicant party's arguments and held that the relevant provisions were indeed sufficiently precise and did not leave space for interpretation which might have allowed the Commission to accept the applicant's financial report. That precision served to ensure equal treatment of all political parties in similar circumstances and to provide a guarantee of consistent approach by the courts. Indeed, clear and precise principles of financing of political parties from public funds aimed at ensuring transparency in the financing of parties and fair competition (see paragraph 9 above).

27. The Supreme Court also considered that the principle of proportionality had been observed; the irregularities in the financial report had resulted only in a partial reduction of the public funding received by the party, which was proportional to the amount that had been transferred in contravention of the relevant provisions. All that was required from the applicant party was to know the relevant provision, which was sufficiently clear, and to apply it in practice or to immediately remedy the mistake once it had been spotted (see paragraph 11 above).

28. The Court would agree with the findings made by the Supreme Court. It is true that the applicant party had to bear severe consequences which seriously affected its activities. However, the scope of the financial consequences was due to the considerable amount improperly transferred by the applicant party to the Committee. Moreover, the applicant party was not completely deprived of public funding even though its financial report had to be rejected.

29. Furthermore, as noted by the Supreme Court the mistake made by the applicant party had not been corrected. The applicant party did not try to regain the money from the Committee either. Instead, the financial report certified an untrue information and therefore, it could not be approved by the Commission.

30. The Court considers that the expectation to fulfil these requirements did not constitute an excessive burden for the applicant party which should have been aware of the consequences, including financial ones, of its mistakes made in the transferring of financial means for the participation of the applicant party in the elections, as well as the omission to correct the mistakes as soon as discovered.

31. The Court holds that the Supreme Court in its analysis gave sufficient and convincing reasons for the Committee's refusal to accept the applicant

party's financial statement. Thus, the interference complained of was proportionate to the legitimate aim pursued.

32. As regards further reduction of the State funding for the following three years, and as a side note, the Court notes that the applicant party could have lodged a complaint against the Commission's decision rejecting the party's financial report (see paragraph 15 above) and requested the Supreme Court to ask the Constitutional Court legal questions concerning the constitutionality of the relevant provisions, which the applicant party failed to do.

It follows that this application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 April 2023.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President