CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30867/96
by Robert RUTKOWSKI
against Poland

The European Court of Human Rights, sitting on 16 April 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr J. MAKARCZYK,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 15 May 1995,

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 regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1967, is a civil servant residing in Pułtusk.

The circumstances of the case

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

a) As regards the "C." Hunting Circle

On 10 August 1992 the C. Hunting Circle in Pułtusk refused to accept the applicant as a candidate for ordinary membership, declaring that it already had a sufficient number of candidates.

b) As regards the "K." Hunting Circle

On 24 January 1994 the Board of the K. Hunting Circle in Pułtusk refused to admit the applicant as a candidate, as he did not reside within its hunting area. This decision was upheld by the Assembly of the Circle on 1 May 1994. On 16 May 1994 the applicant appealed to the Ciechanów Regional Board of the Polish Hunting Association, submitting that, if his appeal failed, he would be compelled to appeal to the Ciechanów Regional Hunting Council and the High Hunting Council in Warsaw. On 9 June 1994 the Ciechanów Regional Board upheld the decisions of 24 January and 1 May 1994.

The applicant's subsequent appeal to the Ciechanów Regional Hunting Council was dismissed on 29 June 1994.

On 16 August 1994 the applicant complained to the Minister of Environmental Protection, Natural Resources and Forestry of these decisions. The Ministry forwarded his complaint to the President of the Polish Hunting Association. In his reply of 18 October 1994, the President stated that the applicant's case was known to the National Board. It was suggested that the tone of the applicant's letters and submissions made to the organs of the Association had been controversial, and that it was likely that this had been a reason for a certain reticence as regards acceptance of the applicant's membership.

On 18 March 1995 the applicant filed a complaint with the same Ministry, seeking an annulment of all the decisions taken regarding his application for admission to the K. Circle. On 27 March 1995 the Under-Secretary of State refused to quash these decisions. It was noted that the Minister had powers to supervise the Association by way of quashing certain of its decisions. However, this power was limited to decisions running counter to State hunting policies, or in breach of the Association's Articles or of the Hunting Act 1959, which was not the case here. Furthermore, these decisions corresponded to the facts as established by the organs of the Association.

On 5 April 1995 the applicant lodged an appeal against the ministerial decision of 27 March 1995 with the Supreme Administrative Court. Subsequently, on 16 May 1995, the Under-Secretary of State, having

reconsidered the applicant's case, quashed his and the Association's decisions.

On 10 June 1995 the Board of the K. Circle informed the applicant and the Ciechanów Regional Board of the Association that on 8 June 1995 it had accepted the applicant as a candidate.

On 11 June 1995 the Ciechanów Regional Board of the Association informed the applicant and the Board of the Circle that on 11 June 1995 the applicant had been registered as a candidate. On 12 June 1995 the applicant sent a letter to the Board of the Circle and another to the Ciechanów Regional Board. In both letters he demanded a declaration that his apprenticeship had begun on 24 January 1994, the day of the first refusal to accept him as a candidate; a written guarantee of non-discrimination; just satisfaction for the alleged losses he had sustained during his efforts to become a candidate, and permission to undertake immediately examinations regarding the activities of the Association. In his letter to the Board of the Circle, the applicant also demanded to be informed in advance by registered mail of all the activities of the Circle and to be provided with the home addresses of all members of the Circle.

The Board of the Circle invited the applicant to attend its meeting on 16 June 1995 and attempted to persuade him to withdraw his demands, which it considered impossible to satisfy. The applicant refused. On the same day, after hearing the applicant, the Board of the K. Circle decided to strike him off the list of candidates. The Board recalled that, under the Association's and Circle's Articles, persons accepted as candidates should have certain ethical and moral qualifications guaranteeing the proper pursuit of hunting, but that the applicant did not satisfy these requirements. It was observed that the arrogance shown and blackmail exercised by the applicant disqualified him as a candidate.

On 22 June 1995 the applicant appealed against this decision to the Ciechanów Regional Board of the Association. In a letter of 27 June 1995 to the Board of the Circle, the applicant threatened to refer his case to the Criminal Division of the Pułtusk District Court as the statements in the contested decision amounted to libel. In reply, in a letter of 30 June 1995, the Board of the Circle confirmed its decision of 16 June 1995.

On 5 September 1995 the Supreme Administrative Court refused to entertain the applicant's appeals against the various decisions of the organs of the Association, for lack of competence. The court considered that, pursuant to Article 196 § 1 of the Code of Administrative Procedure, it could only consider appeals against final administrative decisions of the executive branch of government on grounds of lack of conformity with the law. A decision taken by the organs of the Polish Hunting Association concerning membership fell within the internal sphere of the Association, and did not constitute an administrative decision under the Code, against which an appeal to the court would lie.

On 29 September 1995 the Ciechanów Regional Board of the Association informed the applicant that it had quashed the decisions of 16 June 1995 and 30 June 1995, since they had relied on erroneous grounds, and remitted the case for examination. Subsequently, by a decision of 21 October 1995, the applicant was again refused admission to the K. Circle. On 25 October 1995 he appealed to the Ciechanów Regional Board of the Association. On 7 December 1995 the Regional Board decided that the applicant's case should be re-examined by the Board of the K. Circle.

On 31 January 1996 the Board of the Circle again refused to accept the applicant as a candidate. Subsequently, the Regional Board invited the Circle Board to attend a meeting in order to reach a settlement. The applicant refused to attend the meeting. Therefore, on 20 February 1996 the Ciechanów Regional Board of the Association upheld the decision of the Circle Board of 31 January 1996. This decision was subsequently upheld by the decision of Main Hunting Council of 17 April 1996. In its letter of 17 April 1996, the Main Board of the Polish Hunting Association informed the Ministry of Environmental Protection and the applicant that, despite the failure to settle the applicant's case as regards the K. Circle, the applicant was not prevented from applying for membership of other hunting circles.

On 6 November 1997 the Pułtus Regional Court convicted and fined three members of the Board of the K. Circle of libel on the basis of the statements contained in the decision of 16 June 1995.

c) As regards the "D.J." Hunting Circle

On 6 May 1994 the Board of the D.J. Military Hunting Circle refused to accept the applicant as a candidate, declaring that it had a sufficient number of members for the leased hunting areas, and that the tone of his application was highly inappropriate. On 16 May 1994 the applicant appealed to the Assembly of that Circle. However, the next meeting of the Assembly was not scheduled before April 1995. Having regard to the applicant's repeated requests for admission, the Main Board of the Hunting Association ordered the Warsaw Regional Board of the Association to resolve the applicant's case sooner. The Warsaw Regional Board, by a letter dated 2 February 1995, ordered the D.J. Circle to accept the applicant as a candidate.

However, in the meantime, on 14 January 1995 the applicant had sent a letter to one of the members of the D.J. Circle, a certain E.S., enclosing an application which indicated that member as one of the persons supporting his application. In his reply of 1 February 1995, E.S. informed the applicant that his application had been forwarded to the Board of the Circle, and that he refused to recommend him. He observed that he had never met the applicant in person, that the applicant had insulted other members of the circle, and that the applicant had never attempted to contact members of the Board in person. On 12 February 1995 another member of the Circle, a certain W.S., gave a similar refusal as he had never met the applicant.

On 14 February 1995 the Board of the D.J. Circle appealed against the order of the Warsaw Regional Hunting Council, submitting that the applicant had not exhausted available remedies, i.e. a decision of the Assembly of Members of the Circle was awaited after its meeting scheduled for April 1995. It had not been not established whether the applicant had the ethical and moral qualifications guaranteeing the proper pursuit of hunting. On 28 February 1995 the Board of the Circle supplemented their appeal, submitting that the applicant had never directly contacted any of the Circle's members, and had merely sent letters containing demands and insults.

On 19 April 1995 the Warsaw Regional Hunting Council informed the applicant that, by a decision of 12 April 1995, the Council had granted the appeal by the D.J. Board, and had quashed the order of 2 February 1995. The applicant was also informed that the decision was final. It did not prevent the applicant, however, from applying to other hunting circles.

On 28 April 1995 the applicant filed a complaint with the Supreme Administrative Court, requesting that the decision of 12 April 1995 be quashed. The court rejected this complaint in its decision of 5 September 1995 (referred to above).

On 29 April 1995 the Assembly of Members of the D.J. Circle upheld the decision of the Circle Board of 6 May 1994. The applicant again appealed to the Ministry of Environmental Protection. In view of the lack of any decision by the Ministry, the applicant complained to the Supreme Administrative Court. On 10 March 1997 his appeal was rejected. The court observed again that the decisions complained of were not decisions within the meaning of the Code of Administrative Procedure, against which an appeal to a court would be available. The court recalled its case-law to the effect that "... the provisions of the Code of Administrative Procedure concerning the issue of decisions and certificates are not applicable to the activities of non-governmental organisations, including associations. The decisions of these organisations concerning membership are not decisions within the meaning of the Code of Administrative Procedure, and thus they are not subject to review by the Supreme Administrative Court" (II SA 848/81 (ONSA of 1981 No. 2, Item 118).

d) As regards other hunting circles and proceedings

On 14 April 1994 the Board of the "M." Hunting Circle informed the applicant of its decision of 9 April 1994 refusing to accept him as a candidate for membership. The applicant appealed against that decision to the Assembly of Members. On 8 May 1994 the Assembly of Members dismissed his appeal. On 28 August 1996 the "H." Hunting Circle refused to admit the applicant.

On 13 May 1997 the applicant was accepted as a member of the "S." Hunting Circle and was subsequently accepted as a member of the Polish Hunting Association. After a probationary period as a candidate at the

S. Circle, and after he had passed the relevant examination before the panel of the Regional Board of the Polish Hunting Association, the applicant became a fully fledged member of the Association.

In 1997 he also obtained a permit to carry weapons, issued by the Ciechanów Police Headquarters, which made it possible for him to hunt.

COMPLAINTS

The applicant complains, invoking Article 11 of the Convention, that the refusals to accept him as a member of local branches of the Polish Hunting Association breached his freedom of association. He also complains in substance under Article 8 of the Convention that the authorities did not comply with their positive obligations under this provision, since the applicant could only hunt by becoming a member of a hunting association, and that the decisions of various branches of the Polish Hunting Association in respect of the applicant's membership were not subject to any review by the public authorities.

The applicant complains under Article 6 § 1 of the Conventions that the decisions of the Association concerning his membership applications, and those of the Polish authorities taken in this respect, breached his right to a fair hearing.

He also complains under Article 13 that he did not have an effective remedy to complain about the breaches of his Convention rights guaranteed by Articles 6 and 11.

He finally complains, relying on Article 14 of the Convention that he is discriminated against in the enjoyment of his freedom of association on the grounds of social class and a lack of financial means.

THE LAW

1. The applicant complains, invoking Article 11 of the Convention, that the refusals to accept him as a member of local branches of the Polish Hunting Association breached his freedom of association. He also complains in substance under Article 8 of the Convention that the authorities did not comply with their positive obligations under this provision as regards his efforts to be accepted as a member of that Association.

Article 11 reads insofar as relevant as follows:

> "1. Everyone has the right to ... freedom of association with others ...

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 ... 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. ...”

Article 8 of the Convention, in its relevant part, reads:

“1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety or the economic well-being of the country, 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.”

The Government contend, *inter alia*, that the situation complained of by the applicant was remedied on 11 June 1995 when he was accepted as a candidate for membership of the K. Circle. Therefore, the applicant cannot claim to be a victim of any breach of the Convention.

The applicant states that from August 1992 until May 1997 he was refused admission by five hunting circles, despite his persistent efforts and appeals. However, he acknowledges that in 1997, after a probationary period as a candidate at the S. Circle, and after passing the relevant examination before the panel of the Regional Board of the Polish Hunting Association, he became a fully fledged member of the Association. Moreover, he also obtained that year a permit to carry weapons, issued by the Ciechanów Police Headquarters, which made it possible for him to hunt.

In these circumstances, the Court considers that it is not necessary to examine the merits of this aspect of the applicant’s claims for, as matters stand, it is now open to the applicant to practice hunting within the legal framework provided by domestic law. Accordingly, even assuming that the applicant’s complaints fall within the ambit of Articles 8 or 11 of the Convention, the applicant may no longer claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged violation of his right to respect for his private life, or of his freedom of association. It follows that this part of the application is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant next complains that the decisions of the Hunting Association and the authorities breached his right to a fair hearing. The relevant part of Article 6 § 1 of the Convention provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

The Government submit that Article 6 § 1 of the Convention only applies to disputes which can be said, at least on arguable grounds, to be recognised under domestic law. However, under Polish law there is no right to become a candidate or member of a hunting circle, this being a matter falling exclusively within the discretion of the boards of those circles. Moreover,

decisions concerning admission to such private associations do not involve acts of State administration, within the meaning of the Code of Administrative Procedure, which acts alone are subject to review by the Supreme Administrative Court. The Government conclude that the guarantees of Article 6 § 1 are not therefore applicable to the proceedings in the present case.

The applicant contests this view.

The Court recalls that, according to the principles enunciated in its case-law, it has first to ascertain whether there was a dispute (*"contestation"* in the French text) over a right which can be said, at least on arguable grounds, to be recognised under domestic law (see, amongst other authorities *mutatis mutandis*, the Zander v. Sweden judgment of 25 November 1993, Series A no. 279-B, § 22; the Neigel v. France judgment of 18.02.1997, *Reports of Judgments and Decisions* 1997-II, § 38). The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; finally, the result of the proceedings must be directly decisive for the right in question.

In the present case, the proceedings in question exclusively concerned the applicant's admission to various local branches of the Polish Hunting Association, a private entity dealing with a private pastime or hobby, rather than, for example, a professional body exercising certain statutory obligations delegated by the State, to which members of that profession are obliged by law to belong in order to earn their livelihood. The Court notes that the applicant had no right or basic need to be a member of the Hunting Association. In these circumstances, the Court considers that the proceedings complained of did not relate to the determination of the applicant's "civil rights and obligations". Accordingly, Article 6 § 1 of the of Convention was not applicable to the proceedings concerned. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant complains under Article 13 of the Convention that he did not have an effective remedy to complain about the breaches of his Convention rights guaranteed by Articles 6 and 11.

The Government submit that the applicant had at his disposal various remedies under the Articles of the Association 1986, and under the Model Articles of Association for hunting circles.

The applicant maintains his claim.

The Court recalls that according to its case-law, Article 13 does not require a remedy in domestic law for all claims alleging a breach of the Convention; the claim must be an arguable one (the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, § 52). In the light of the above conclusions concerning the applicant's complaints under Articles 6, 8 and 11 of the Convention, the Court finds that the applicant

does not have any arguable claim of a breach of these provisions which warrants a remedy under Article 13.

This part of the application must therefore be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicant finally complains, relying on Article 14 of the Convention, that he is discriminated against in the enjoyment of his freedom of association on the grounds of social class and poverty.

Having regard to its above conclusion concerning the applicant's complaint under Article 11, the Court finds no separate issue to be examined under Article 14 of the Convention. The Court considers that this part of the application must therefore also be rejected as being manifestly ill-founded 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