



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

FIRST SECTION

DECISION

Application no. 4471/06
Martin BALLUCH
against Austria

The European Court of Human Rights (First Section), sitting on 25 September 2012 as a Chamber composed of:

Nina Vajić, *President*,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, judges,

and Søren Nielsen, Section Registrar,

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

1. The applicant, Mr Martin Balluch, is an Austrian national who was born in 1964 and lives in Vienna. He is represented before the Court by Mr S. Traxler, a lawyer practising in Mödling. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

A. The circumstances of the case

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

3. The applicant is the chairperson of the Association Against Animal Factories (*Verein gegen Tierfabriken* – “the Association”), an association for the protection of animals.

4. On 10 December 2003 the applicant, as chairperson of the Association, notified, in accordance with Article 2 of the Assembly Act, the Graz Federal Police Authority (*Bundespolizeidirektion*) that the Association intended to hold an assembly, namely to set up a public information booth in the pedestrian zone in Graz on 12 December 2003 between 12 p.m. and 9 p.m. and on 13 December 2003 between 8.30 a.m. and 9 p.m. in order to inform people of the suffering of fur-bearing animals. He indicated that he expected that five people would man the booth and added that the following material would be used: a display of posters, banners, leaflets, tables, an electricity generator, a petition on which signatures would be gathered, a video projector, a projection screen and a car (*Plakatständer, Transparente, Flugblätter, Tische, Stromgenerator, Unterschriftenlisten, Videobeamer, Leinwand, Fahrzeug*).

5. On 13 December 2003 the Association set up its information booth in the city of Graz. It set up a table with a television screen and a video projector fed by an electric generator and showed a documentary on the suffering of fur-bearing animals used for scientific experiments and for the production of fur, while two or three people belonging to the Association distributed leaflets. Several people held banners and chanted slogans. Passers-by were able to sign a petition in support of the Association’s stance and some of them entered into discussions with the animal rights activists.

6. Subsequently, on 10 February 2004, the Graz Municipal Authority issued a penal order against the applicant in the amount of 200 euros (EUR), finding that the Association had not requested prior authorisation by the competent authority under section 54 of the Styrian Regional Roads Administration Act (*Landesstraßenverwaltungsgesetz* – hereinafter “the Roads Act”). As no such permit had been obtained from the Roads Authority, the applicant as the person responsible for the Association had committed an administrative offence.

7. On 31 August 2004 the Styria Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) dismissed an appeal lodged by the applicant, holding that pursuant to section 54 of the Roads Act the use of streets for any other purpose than their prescribed and intended one required permission, irrespective of whether setting up the information booth had itself been permitted under the Assembly Act. It further held that setting up the information booth could not be considered as an “assembly” within the

ordinary meaning of the Assembly Act, as its main purpose had been to inform people rather than getting people together for a common purpose.

8. Thereupon the applicant lodged a complaint with the Constitutional Court on 18 October 2007, complaining of a violation of the right to peaceful assembly under Article 11 of the Convention. In his opinion, section 54 of the Roads Act did not apply to setting up an information booth.

9. On 23 June 2005 the Constitutional Court dismissed the applicant's complaint. The Constitutional Court found that setting up the information booth qualified as an event protected by Article 11 of the Convention and Article 12 of the Basic Law of the State (*Staatsgrundgesetz*) concerning freedom of assembly and association. The right to peaceful assembly was guaranteed by the Austrian Constitution and specified by the Assembly Act (*Versammlungsgesetz*) and any breach of that Act therefore constituted a violation of the underlying fundamental right. It found that the act of setting up the information booth in question fell within the scope of the Assembly Act.

10. The Assembly Act provided that an assembly only had to be notified to the authorities and did not require prior authorisation. Therefore, any system requiring prior authorisation of an assembly was in principle inconsistent with the right to peaceful assembly and unconstitutional. The question was therefore whether the requirements of section 54 of the Roads Act, which required permission for the special use of a road, were in accordance with these provisions of constitutional law. In the Constitutional Court's view, the Roads Authority had been bound to interpret the Roads Act in conformity with the Constitution (*verfassungskonforme Interpretation*) and had therefore been obliged to issue the relevant permission. This meant that section 54 of the Roads Act was constitutional.

11. As regards whether fining the applicant for having failed to ask for a permit under section 54 of the Roads Act had violated the applicant's rights under Article 11 of the Convention, the Constitutional Court found that there had been no such breach given that section 54 of the Roads Act was in conformity with the Federal Constitution; the Roads Authority had been obliged by constitutional law to deliver the relevant permission; and the fine imposed on the applicant had been moderate.

B. Relevant domestic law

12. Section 54 of the Roads Act reads, insofar as relevant, as follows:

“(1) Any use of the road ... for any other purpose than it was intended for requires the explicit permission of the Roads Authority. ...”

13. Section 56 of the Roads Act reads, insofar as relevant, as follows:

“(1) A breach of section ... 54 ... is an administrative offence liable to be punished by the DAA with a fine of up to EUR 2,180 or with imprisonment in default [of payment] of up to 6 weeks. Fines levied shall be passed on to the Roads Authority and used for road maintenance purposes.”

14. Article 2 of the Assembly Act reads as follows:

“(1) Whoever wants to hold a public assembly where access is not restricted to invited guests only shall notify the [relevant] authority in writing at least 24 hours before the intended event specifying its purpose, the place and the time of the assembly. The notification must reach the authority at latest 24 hours before the time of the assembly.

(2) Upon request the authority must immediately issue a certificate [attesting to] the notification of the assembly. Notification is not subject to any fee.”

COMPLAINT

15. The applicant complained under Article 11 of the Convention that his right to peaceful assembly had been infringed because he had been fined, even though he had held an assembly within the meaning of the Assembly Act and had properly informed the relevant authority in advance.

THE LAW

16. The applicant complained that his right to peaceful assembly had been infringed because he had been fined, even though he had held an assembly within the meaning of the Assembly Act and had properly informed the relevant authority in advance. He relied on Article 11 of the Convention, which reads 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.”

17. The Government contested that argument. They submitted that the provisions of sections 54(1) and 56(1) of the Roads Act had been a

sufficient and justifiable legal basis for the measure at issue for the purposes of Article 11 of the Convention.

18. They pointed out that the regulation of any matter by several legal provisions was not unusual, particularly in a federal state where competences had to be distributed between the federal government and the states. In the present case, this had been the case as regards section 2(1) of the Assembly Act, a federal law regulating the notification of assemblies to the competent authority, and section 54(1) of the Roads Act, a state law regulating the use of roads for purposes other than traffic. Both provisions had therefore regulated very different matters, the exercise of the freedom of assembly on the one hand and the use of local roads, in this case a pedestrian zone, for the likes of festivals or commercial activities. As a result of the different purposes of the federal and state laws, each provision had not operated to the exclusion of the other and both laws had therefore required to be complied with. The necessity of obtaining a permit under section 54(1) of the Roads Act had served the protection of the road maintenance authority's property, which had been an interest protected by Article 1 of Protocol No. 1 to the Convention.

19. They further emphasised that the applicant had failed to apply for a permit under section 54(1) of the Roads Act and that a modest fine had been imposed on him for this failure. The Association had not been stopped from setting up its information booth and the authorities had not had any intention of doing so. The interference with the applicant's rights under Article 11 of the Convention, if any, had therefore been justified and proportionate.

20. The applicant did not submit observations in response in compliance with the Rules of Court.

21. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus it should not be interpreted restrictively. This right covers both private meetings and meetings in public thoroughfares, as well as static meetings and public processions. In addition, it can be exercised by individuals and by those organising an assembly. States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III with further references).

22. The Court has first to examine whether there was an interference with the applicant's rights under Article 11 of the Convention in the present case.

23. In this respect the Court observes that the applicant, as chairperson of the Association, organised an assembly, namely the setting up of an information booth in order to inform people of the suffering of fur-bearing animals. He informed the Federal Police Authority that the booth would be

set up in Graz on 12 and 13 December 2003. The Federal Authority did not raise any objection to the Association setting up an information booth or prohibit them from doing so. Indeed, as subsequently pointed out by the Constitutional Court, any such objection would have been contrary to the applicant's constitutional right to assemble. However, on 10 February 2004 the applicant, as chairperson of the Association, was fined by the Graz Municipal Authority, a State authority, for not having obtained permission from the competent authority under section 54 of the Roads Act for the use of a road for a different purpose than it had been intended for.

24. Thus, the Court finds it established that there was no interference with the applicant's right to assemble as such, but it must nevertheless examine whether the fine imposed on the applicant for non-compliance with Section 54 of the Roads Act may be viewed as a hidden obstacle to the freedom of peaceful assembly protected by the Convention. In this regard, the Court notes that the Constitutional Court in its decision of 23 June 2005 found that, whereas Section 54 of the Roads Act was constitutional, in circumstances prevailing in the present case, the Roads Authority had been obliged by constitutional law to give the permission had the applicant asked for one.

25. The Court therefore finds that the present case must be distinguished from the case of *Skiba v. Poland*, where the Court found that a fine imposed by a criminal court on the applicant for his failure to inform the public authorities of an assembly constituted an interference with his rights under Article 11 (see *Skiba v. Poland* (dec.), no. 10659/03, 7 July 2009). In the present case, the applicant had duly notified the federal authorities of the assembly which the association intended to hold and the fine imposed on him did not relate to any such failure. Rather it related to an additional obligation under regional law, the Roads Act, to inform the State authority, the Graz Municipal Authority, as the body responsible for the administration of public roads in the city of Graz, of the use of a road for a purpose it was not intended for. The Court does not consider that such an obligation, as interpreted by the constitutional Court, encroached upon the essence of the right to freedom of assembly. The obligation had no, and could not have any, effect on the right to assemble but served other purposes, as pointed out by the Government. Nor does the Court find that paying a fine for non-compliance with the Roads Act provisions could lead to any other result. Thus, the Court cannot find that there had been an interference with the applicant's rights under Article 11 of the Convention in the present case. Accordingly there is no appearance of a breach of this provision in the present case.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President