



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42264/98
by W.P. AND OTHERS
against Poland

The European Court of Human Rights (Third Section), sitting on
2 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEŒ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 13 August 1996,

Having deliberated, decides as follows:

THE FACTS

The applicants, W.P., K.K., M.M., H.M., J.F. and D.F., are Polish nationals who were born in 1966, 1959, 1955, 1957, 1941 and 1952 respectively. Their occupations are respectively as follows: a police officer, a farmer, a police officer, a tailor, a teacher and a pensioner. M.M. and H.M. are married to each other, as are J.F. and D.F. The respondent Government were represented by Ms S. Jaczewska, Acting Government Agent, and subsequently by Mr J. Wołosiewicz, Agent.

A. The circumstances of the case

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

1. The Association of Persecuted Functionaries of the Ministry of Internal Affairs

On 22 February 1995 W.P., M.M. and H.M. informed the Kalisz Regional Office (*Urząd Wojewódzki*) that they had decided to form an ordinary association (*stowarzyszenie zwykłe*) called the Association of Persecuted Functionaries of the Ministry of Internal Affairs (*Stowarzyszenie Represjonowanych Funkcjonariuszy Resortu Spraw Wewnętrznych*). They submitted a copy of the memorandum of association, which listed the following objectives:

- “1. Allowing association of former and present functionaries of the Ministry of Internal Affairs and members of their families who are victims of different forms of repression, persecution, harassment and discrimination.
2. Identification of a phenomenon of persecution, repression, harassment and discrimination in the Ministry of Internal Affairs.
3. Taking action aimed at improving the conditions of service and social conditions of the functionaries of the Ministry of Internal Affairs.
4. Responding to all apparent instances of lawbreaking, abusing authority, harassing, repressing, persecuting and discriminating.
5. Taking action aimed at redressing damage caused to victims.
6. Taking action aimed at obtaining the prosecution of persons responsible for persecution, repression, harassment and discrimination.
7. Co-operating with the public authorities, organs of state administration, national and patriotic organisations, Christian unions and associations.
8. Spreading national and patriotic values.

9. Expressing opinions on public matters.”

On 17 March 1995 the Kalisz Governor (*Wojewoda Kaliski*) applied to the Kalisz Regional Court (*Sąd Wojewódzki*) for a decision prohibiting the formation of the association. He submitted that its name was misleading as it suggested that persecution was taking place in the Ministry of Internal Affairs. Poland was governed by the rule of law and since 1989 numerous regulations had been introduced to protect the rights of police officers. Finally, the Governor agreed with the opinion of the Kalisz Regional Police Commissioner (*Komendant Wojewódzki Policji*) that the association’s name defamed the Ministry of Internal Affairs.

On 19 September 1995 the Kalisz Regional Court allowed the application and prohibited the formation of the association. It considered that the applicants had not complied with section 45 of the Associations Act 1989, which required them to agree with the Minister of Internal Affairs the association’s objectives concerning the protection of public order.

The applicants appealed to the Łódź Court of Appeal (*Sąd Apelacyjny*) but on 20 February 1997 it dismissed their appeal. The appellate court agreed with the Regional Court’s conclusion that the applicants had breached section 45 of the Associations Act since they had not agreed with the Minister of Internal Affairs the association’s objectives concerning the protection of public order. In addition, the association’s name suggested the existence of persecution in the Ministry of Internal Affairs and therefore defamed a public institution.

2. The National and Patriotic Association of Persecuted Police Officers and Teachers

On 25 June 1996 W.P., M.M., H.M., J.F. and D.F. informed the Kalisz Regional Office that they had decided to form an ordinary association called the National and Patriotic Association of Persecuted Police Officers and Teachers (*Stowarzyszenie Narodowo-Patriotyczne Represjonowanych Policjantów i Nauczycieli*).

On 10 July 1996 the Kalisz Governor applied to the Kalisz Regional Court for a decision prohibiting the formation of the association.

On 9 October 1996 the applicants requested that the proceedings be conducted by a judge who had in the past been persecuted by the authorities.

On 15 October 1996 the Kalisz Regional Court held a hearing. The applicants failed to attend it despite the fact that they had been served with summonses. The court asked the applicants to clarify whether their request of 9 October 1996 had been filed in order to challenge the presiding judge for bias.

On 20 October 1996 the applicants repeated their request of 9 October 1996.

On 14 April 1997 the Regional Court dismissed the requests lodged on 9 and 20 October 1997.

The court scheduled a hearing for 25 April 1997. The applicants submitted that as a result of “Jewish and Bolshevik reforms” they could not afford to attend the hearing.

On 29 April 1997 the applicants asked the Regional Court “to serve them with a reasoned decision taken by the court on 25 April 1997”.

On 30 April 1997 the Kalisz Regional Court gave a decision prohibiting the formation of the association.

On 30 March 1998 the Regional Court dismissed the applicants’ request of 29 April 1997. It pointed out that they had requested a copy of a non-existent decision, as the court had prohibited the formation of the association by a decision taken on 30 April 1997. Moreover, the applicants had failed to lodge a request for a reasoned decision within one week after that date, i.e. within the time allowed by the Code of Civil Procedure.

On 20 April 1998 the applicants received a copy of the Regional Court’s decision of 30 April 1997 prohibiting the formation of the association.

On 27 April 1998 the applicants challenged the decision of 30 March 1998 and on 4 May 1998 they appealed against the decision of 30 April 1997. However, their application of 27 April 1998 was dismissed on 3 September 1998.

3. The National and Patriotic Association of Polish Victims of Bolshevism and Zionism

On 20 January 1998 W.P., K.K., M.M., H.M., J.F. and D.F. informed the Kalisz Regional Office that they had decided to form an ordinary association called the National and Patriotic Association of Polish Victims of Bolshevism and Zionism (*Stowarzyszenie Narodowo-Patriotyczne Polaków Poszkodowanych przez Bolszewizm i Syjonizm*). They submitted a copy of the memorandum of association, which listed the following objectives:

- “1. Allowing association of Polish victims of Bolshevism/Bolsheviks and Zionism/Zionists.
2. Identification of a phenomenon of persecution, repression, harassment and discrimination in Poland.
3. Identification of a phenomenon of violation of human and civic rights in Poland.
4. Identification of a phenomenon of the holocaust of the Polish nation and the scope thereof.
5. Responding to all apparent instances of lawbreaking, abusing authority, harassing, repressing, persecuting and discriminating.

6. Taking action aimed at equality between ethnic Poles and citizens of Jewish origin by striving to abolish the privileges of ethnic Jews and by striving to end the persecution of ethnic Poles.

7. Taking action aimed at prosecuting and making financially liable tormentors and criminals responsible for the holocaust of the Polish nation.

8. Taking action aimed at prosecuting and making financially liable tormentors and criminals (including tormentors and criminals sitting behind official desks and tormentors and criminals wearing the gown of a judge or prosecutor) responsible for persecution, repression, harassment and discrimination.

9. Taking action aimed at prosecuting and making financially liable tormentors and criminals responsible for violating human and civic rights.

10. Revealing and fighting threats directed against the most important interests of the Polish nation.

11. Taking action aimed at redressing damage caused to victims.

12. Taking action aimed at improving the living conditions of Polish victims of Bolshevism/Bolsheviks and Zionism/Zionists.

13. Taking actions aimed at determined opposition to the psychological and physical murder of the Polish nation.

14. Spreading national and patriotic values.

15. Claiming veteran benefits for Polish victims of Bolshevism/Bolsheviks and Zionism/Zionists.

16. Co-operating with institutions, national and patriotic organisations, Christian, unions and associations conducting real (not feigned) activities for the good of the Polish nation.

17. Expressing opinions on public matters.”

On 22 January 1998 the Kalisz Governor applied to the Kalisz Regional Court for a decision prohibiting the formation of the association.

On 6 March 1998 the Kalisz Regional Court allowed the application and prohibited the formation of the association. The court considered that the memorandum of association did not comply with the law. The applicants intended to form an ordinary association which did not have legal personality. Only point 1 of the memorandum setting out the association’s objectives could be approved. The remaining objectives were either unlawful or unrealistic and could not be pursued by an ordinary association. In particular, points 2, 3, and 4 referred to objectives already realised by other institutions. Point 6 introduced a notion of inequality between citizens which did not exist. Moreover, point 8 amounted to defamation of judges and prosecutors.

The applicants appealed to the Łódź Court of Appeal but on 24 July 1998 it dismissed their appeal.

B. Relevant domestic law

1. The Constitution of 1997

Article 12 of the Constitution, which was adopted by the National Assembly on 2 April 1997 and entered into force on 17 October 1997, states:

“The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational farmers’ organisations, societies, citizens’ movements, other voluntary associations and foundations.”

Article 13 reads:

“Political parties and other organisations whose programmes are based upon totalitarian methods or the models of nazism, fascism or communism, or whose programmes or activities foster racial or national hatred, recourse to violence for the purposes of obtaining power or to influence State policy, or which provide for their structure or membership to be secret, shall be forbidden.”

2. The Associations Act 1989

Section 1 of the Associations Act, in so far as relevant, reads:

“1. Polish citizens shall exercise the right of association in accordance with the Constitution ... and the legal order as specified by statute.

2. The [exercise of the] right of association may be subject only to such limitations as are prescribed by law and are necessary for ensuring the interests of national security or public order and for the protection of health and morals or for the protection of the rights and freedoms of others.

3. Associations shall have the right to express their opinion on public matters.”

Section 2, in so far as relevant, provides:

“1. An association is a voluntary, self-governing, durable union pursuing non-profit-making aims.

2. An association shall freely determine its objectives, its programmes of activity and organisational structures, and shall adopt internal resolutions concerning its activity.”

Section 45 provides:

“Persons intending to form an association whose activity will be directly related to defence or State security or the protection of public order shall agree the scope of such activity with the Minister of Defence or the Minister of Internal Affairs, respectively (...).”

Chapter 6 of the Act concerns ordinary associations. It provides that they do not have legal personality and are exempt from registration. Persons intending to form an ordinary association must adopt a memorandum of association and submit it to a supervisory authority, which can request a court to prohibit the formation of the association. The court can prohibit the formation of the association if its memorandum is not compatible with the law or if its founders do not fulfil the legal requirements.

3. The 1964 Code of Civil Procedure

Article 369 provides:

“§ 1 An appeal shall be lodged with the court which gave the impugned judgment within two weeks after the date on which a party was served with the reasoned judgment.

§ 2 If a party has not requested the reasoned judgment within a week after the delivery of its operative part, the time allowed for lodging an appeal shall run from the date on which the time allowed for requesting the reasoned judgment expired.”

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention that the Kalisz Regional Court had for a year hidden from them the information about the delivery of a decision in their case on 30 April 1997.

They also complained of a breach of Article 11 of the Convention.

The applicants further complained under Article 14 of the Convention taken together with Article 11 that “the judiciary of the so-called Third Republic of Poland controlled by Jewish interests” prohibited the formation of associations by ethnic Poles.

THE LAW

1. The applicants complained under Article 6 § 1 of the Convention (the right to a fair hearing) that the Kalisz Regional Court had for a year hidden from them the information about the delivery of a decision in their case on 30 April 1997.

The Government submitted that in view of the facts of the case the complaint was manifestly ill-founded.

The Court finds that the applicants’ assertions about a violation of Article 6 are wholly unsubstantiated. It follows that this complaint is inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicants further complained of a breach of Article 11 of the Convention, which provides:

“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.”

(a) Submissions of the parties

The applicants submitted that the decisions prohibiting the formation of the associations had infringed their right to freedom of association. The reasons given by the courts for their decisions had amounted to criminal collusion.

The Government first submitted that the impugned interferences with the applicants’ right to freedom of association were prescribed by law. Moreover, they were necessary in a democratic society in the interests of “national security or public safety”, “prevention of disorder” and protection of “the rights and freedoms of others”.

With respect to the proceedings concerning the formation of the Association of Persecuted Functionaries of the Ministry of Internal Affairs they pointed out that the formation had been prohibited because the applicants had not complied with requirements of domestic law.

As to the applicants’ complaint concerning the refusal to allow the formation of the National and Patriotic Association of Persecuted Police Officers and Teachers, the Government considered that the applicants had failed to exhaust domestic remedies since they had not appealed against the decision of the Kalisz Regional Court’s decision of 30 April 1997 within the three-week period allowed by Article 369 of the Code of Civil Procedure.

Lastly, the Government submitted that the decision to prohibit the formation of the National and Patriotic Association of Polish Victims of Bolshevism and Zionism resulted from the applicants’ failure to comply with domestic law. In particular, they had introduced in point 6 of the memorandum of association a notion of inequality between ethnic Poles and citizens of Jewish origin. The objectives of the association had been insulting and discriminating against members of the ethnic minority and therefore should not enjoy the protection of Article 11 of the Convention. What is more, the ideas advocated by the applicants could be seen as reviving anti-Semitic sentiments. The interference with their freedom of

association had therefore been justified under Article 11 § 2. As the applicants were trying to use the freedom of association contrary to the text and spirit of the Convention, their application should be regarded as an abuse of rights within the meaning of Article 17 of the Convention and declared inadmissible.

(b) The Court's assessment

i. The Association of Persecuted Functionaries of the Ministry of Internal Affairs

The Court considers that the impugned interference with the applicants' right to freedom of association, which was based on Chapter 6 of the Associations Act, was "prescribed by law". Moreover, it pursued the legitimate aim of the protection of "national security" and "the rights and freedoms of others".

As to whether the measure was necessary in a democratic society, the Court reiterates that this implies the existence of a "pressing social need" and that the States have a certain margin of appreciation in this field (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, p. 22, § 48).

In that connection, the Court notes that certain provisions of the memorandum of association were held to be contrary to the law. In particular, the Kalisz Regional Court considered that the applicants' failure to agree with the Minister of Internal Affairs the association's objectives listed in the memorandum and concerning the protection of public order was in breach of section 45 of the Associations Act. That decision was upheld by the Łódź Court of Appeal. Admittedly, the applicants appeared to dispute those findings but that is a question of interpretation of domestic law and the Court cannot substitute its judgment in this field for that of the domestic courts. Its exclusive task is to examine whether the disputed measures were compatible with the requirements of the Convention and, in particular, whether the grounds on which the domestic courts took those decisions were relevant and sufficient in relation to the criteria set out in Article 11 of the Convention (see, *mutatis mutandis*, *A.C.R.E.P. v. Portugal*, no. 23892/94, Commission decision of 16 October 1995, Decisions and Reports 83-B, p. 57).

Taking into consideration the grounds on which the domestic courts based their decision, and in view of the association's objectives defined in its memorandum, the Court considers that the impugned decision to prohibit the formation of the association can be considered necessary in a democratic society, taking into account the margin of appreciation which States have in this field.

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

ii. The National and Patriotic Association of Persecuted Police Officers and Teachers

The Court notes that the applicants did not appeal within the time allowed by domestic law against the Kalisz Regional Court's decision of 30 April 1997 prohibiting the formation of the National and Patriotic Association of Persecuted Police Officers and Teachers.

It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

iii. The National and Patriotic Association of Polish Victims of Bolshevism and Zionism

Article 17 of the Convention provides:

"Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

The Court observes that the general purpose of Article 17 is to prevent totalitarian groups from exploiting in their own interests the principles enunciated by the Convention. To achieve that purpose, it is not necessary to take away every one of the rights and freedoms guaranteed from persons found to be engaged in activities aimed at the destruction of any of those rights and freedoms. Article 17 covers essentially those rights which, if invoked, will facilitate the attempt to derive therefrom a right to engage personally in activities aimed at the destruction of any of the rights and freedoms set forth in the Convention (see *J. Glimmerveen and J. Hagenbeek v. the Netherlands*, nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, Decisions and Reports 18, p. 187; *Roger Garaudy v. France* (dec.), no. 65831/01, 24 June 2003).

Turning to the facts of the present case, the Court notes that the memorandum of association of the National and Patriotic Association of Polish Victims of Bolshevism and Zionism included in points 6, 12 and 15 statements alleging the persecution of Poles by the Jewish minority and the existence of inequality between them. The Court agrees with the Government that these ideas can be seen as reviving anti-Semitism. The applicants' racist attitudes also transpire from the anti-Semitic tenor of some of their submissions made before the Court. It is therefore satisfied that the evidence in the present case justifies the need to bring Article 17 into play (*cf. United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, Reports of Judgments and Decisions 1998-I, § 60).

The applicants essentially seek to employ Article 11 as a basis under the Convention for a right to engage in activities which are contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms set forth in the Convention.

Consequently, the Court finds that, by reason of the provisions of Article 17 of the Convention, the applicants cannot rely on Article 11 of the Convention to challenge the prohibition of the formation of the National and Patriotic Association of Polish Victims of Bolshevism and Zionism.

3. The applicants further complained under Article 14 of the Convention taken together with Article 11 that “the judiciary of the so-called Third Republic of Poland controlled by Jewish interests” prohibited the formation of associations by ethnic Poles.

The Government submitted that the facts of the case did not disclose discrimination against the applicants.

The Court again notes that by making the above complaint, whose wording is anti-Semitic and offensive, the applicants essentially seek to use Article 14 taken together with Article 11 to provide a basis under the Convention for a right to engage in activities which are contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms set forth in the Convention.

Consequently, the Court finds that, by reason of the provisions of Article 17 of the Convention, the applicants cannot rely on Article 14 taken together with Article 11 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER
Deputy Registrar

Georg RESS
President