



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

Information Note on the Court's case-law 97

April 2007

Bączkowski and Others v. Poland - 1543/06

Judgment 3.5.2007 [Section IV]

Article 11

Article 11-1

Freedom of peaceful assembly

Unlawful refusal to grant permission for a march and meetings to protest against homophobia: *violation*

Article 13

Effective remedy

Belated quashing of an unlawful refusal to grant permission for a march and meetings to protest against homophobia: *violation*

Article 14

Discrimination

Possibility that a municipal authority's refusal to grant permission to protest against homophobia was influenced by the mayor's publicly expressed views: *violation*

Facts: The applicants – a group of individuals and an association – sought permission from the Warsaw municipal authorities to stage a march through the city and hold a series of meetings to alert public opinion to the issue of discrimination against various minority groups (including homosexuals) and women. Citing road traffic regulations and the risk of violent clashes with other demonstrators, the authorities refused permission for the march and some of the meetings. Shortly before the date scheduled for the demonstrations the Mayor of Warsaw said in an interview with a Polish national newspaper that he would refuse the applicants' request in all circumstances and that, in his view, "propaganda about homosexuality is not tantamount to exercising one's freedom of assembly". This, the applicants alleged, indicated that the real reason permission was refused was homophobia on the part of the municipal authorities. The applicants went ahead with their planned march despite the refusal and demonstrations and meetings organised by various other groups were allowed to proceed. Although the municipal authorities' decisions were subsequently quashed on appeal, the applicants argued that the remedy had come too late as the dates planned for the demonstrations had already passed. Parts of the legislation on which the municipal authorities had relied were ruled unconstitutional by the Constitutional Court.

Law: Article 11 – The positive obligation of a State to secure genuine and effective respect for freedom of association and assembly was of particular importance to those

with unpopular views or belonging to minorities, because they were more vulnerable to victimisation. Although the assemblies had eventually been held on the planned dates, the applicants had taken a risk in holding them, given the official ban. The refusal of permission could have had a chilling effect on both the applicants and other participants and discouraged other persons from taking part as, without official authorisation, there was no guarantee of protection by the authorities against potentially hostile counter-demonstrators. There had therefore been interference with the applicants' rights under Article 11. Since the decisions to refuse the applicants permission to take part in the demonstrations or to hold assemblies had subsequently been quashed on appeal, that interference was not "prescribed by law", a conclusion that could only be reinforced by the Constitutional Court's ruling that the road-traffic legislation was unconstitutional.

Conclusion: violation (unanimously).

Article 13 in conjunction with Article 11 – Timing could be of crucial importance to the political and social impact of a public assembly. If the assembly was organised after a given social issue had lost its relevance or importance to a current social or political debate, the impact of the meeting might be seriously diminished. Freedom of assembly – if prevented from being exercised in good time – could even be rendered meaningless. Implicit in the notion of an effective remedy, therefore, was the ability to obtain a ruling before the planned events were held. The relevant legislation required requests to hold a demonstration to be submitted to the municipality at least three days beforehand and the applicants had complied with that deadline. However, there was no requirement for the authorities to give a final decision before the demonstrations were due to take place. The Court was not persuaded that the *ex post facto* remedies available could have provided adequate redress to the applicants. They had therefore been denied an effective domestic remedy.

Conclusion: violation (unanimously).

Article 14 in conjunction with Article 11 – There was no overt discrimination behind the decisions to refuse permission, as they were focused on technical aspects of the organisation of the demonstrations, and the Court could not speculate on the existence of motives other than those expressly referred to in the administrative decisions. However, it could not overlook the newspaper interview in which the Mayor had expressed strong personal opinions about freedom of assembly and "propaganda about homosexuality" and stated that he would refuse permission to hold the demonstrations. There was little room under Article 10 for restrictions on political speech or debate. However, with respect to elected politicians who at the same time held public office at the executive level of government, that freedom entailed particular responsibility. Restraint had to be shown when exercising it, especially when civil servants, whose employment and careers depended on the approval of the politicians concerned, might regard the views expressed as instructions. In the case before the Court, the decisions concerning the applicants' request for permission to hold the demonstrations had been given by the municipal authorities on the Mayor's behalf after he had already made public his opinion on the matter. It could therefore reasonably be surmised that his opinions may have affected the decision-making process and consequently infringed in a discriminatory manner the applicants' right to freedom of assembly.

Conclusion: violation (unanimously).