

Press release issued by the Registrar

CHAMBER JUDGMENT
BĄCZKOWSKI AND OTHERS v. POLAND

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Bączkowski and Others v. Poland* (application no. 1543/06).

The Court held unanimously that there had been:

- a **violation of Article 11** (freedom of association and assembly) of the European Convention on Human Rights;
- a **violation of Article 13** (right to an effective remedy) of the Convention; and
- a **violation of Article 14** (prohibition of discrimination).

The applicants made no claim under Article 41 (just satisfaction). (The judgment is available only in English.)

1. Principal facts

The applicants are the Foundation for Equality (*Fundacja Równości*) and five of its members, namely Tomasz Bączkowski, Robert Biedroń, Krzysztof Kliszczyński, Inga Kostrzewa and Tomasz Szypuła, also members of non-governmental organisations who campaign on behalf of persons of homosexual orientation.

In the context of a campaign called Equality Days organised from 10 to 12 June 2005 by the Foundation, the applicants wished to organise a march to take place in the streets of Warsaw. The march was aimed at bringing public attention to discrimination against minorities, women and the disabled. The applicants also intended to hold rallies on 12 June in seven different squares in Warsaw some of which were intended to protest about discrimination against various minorities and others about discrimination against women.

The applicants submitted their request for permission to organise the march on 12 May 2005 and the rallies on 3 June 2005.

On 20 May 2005 the “*Gazeta Wyborcza*”, a national newspaper, published an interview with the Mayor of Warsaw who, in reply to questions about the applicants’ pending request to hold a demonstration, said that he would ban it in all circumstances and that, in his view,

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

“propaganda about homosexuality is not tantamount to exercising one’s freedom of assembly”.

On 3 June 2005 a representative of the Mayor of Warsaw refused permission for the march. The reason for that decision was based on the organisers' failure to submit a “traffic organisation plan” in accordance with Article 65 (a) of the Road Traffic Act. The applicants alleged that they had never been requested to submit such a document.

On 9 June 2005 the Mayor gave decisions banning the rallies organised by Mr Bączkowski, Mr Biedroń, Mr Kliszczyński, Ms Kostrzewa and Mr Szypuła. In his decision the Mayor relied on the argument that, under the provisions of the Assemblies Act of 1990, rallies had to be organised away from roads used for road traffic given that more stringent requirements applied when using roads so as to avoid disturbance. Permission was also refused on the ground that there had been a number of other requests to organise rallies with opposing ideas and intentions and that it could have resulted in clashes between the demonstrators.

On the same day the rallies concerning discrimination against women were given permission to take place. Permission was also granted to various other demonstrations with such themes as: “Against propaganda for partnerships”; “Christians who respect God's and nature's laws are citizens of the first rank” and “Against adoption of children by homosexual couples”.

Despite the decision of 3 June the march did take place on 11 June 2005. It was attended by approximately 3,000 people and was protected by the police. The rallies with permission to take place were held on the same day.

On 17 June and 22 August 2005 the appellate authorities quashed the decisions of 3 and 9 June on the ground that they had been poorly justified and in breach of the applicable laws. Those decisions of 17 June and 22 August 2005 were pronounced after the dates on which the applicants had planned to hold the demonstrations. The proceedings, henceforth devoid of purpose, were therefore discontinued.

On 18 January 2006 the Constitutional Court examined a request submitted to it by the Ombudsman to determine the compatibility with the Constitution of certain provisions of the Road Traffic Act. It gave a judgment in which it found that the provisions of the Road Traffic Act as applied in the applicants’ case had been incompatible with constitutional guarantees of freedom of assembly.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 December 2005 and declared admissible on 5 December 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Ján **Šikuta** (Slovak),

Päivi **Hirvelä** (Finnish), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained that their right to peaceful assembly had been breached by the way in which the domestic authorities had applied relevant domestic law to their case. They also complained that they had not had at their disposal any procedure which would have allowed them to obtain a final decision before the date of the planned demonstrations. They further alleged that they had been treated in a discriminatory manner in that they had been refused permission to organise certain demonstrations whereas other organisers had obtained permission. They relied on Article 11 and Articles 13 and 14 in conjunction with Article 11.

Decision of the Court

Article 11

The Court reiterated that it attached particular importance to pluralism, tolerance and broadmindedness. Pluralism was also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of people and groups with varied identities was essential for achieving social cohesion. It was only natural that, where a civil society functioned in a healthy manner, the participation of citizens in the democratic process was to a large extent achieved through belonging to associations in which they might integrate with each other and pursue common objectives collectively. 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.

The Court acknowledged that the demonstrations had eventually been held on the planned dates. However, the applicants had taken a risk given the official ban in force at that time. The Court observed that that could have discouraged the applicants and others from having participated in the demonstrations on the ground that, not having been given official authorisation, no official protection could be ensured by the authorities against potentially hostile demonstrators.

That situation could not have been rectified either by legal remedies available to the applicants since the relevant decisions had been given after the date on which the demonstrations had been held.

Therefore, the Court found that there had been an interference with the applicants' rights as guaranteed under Article 11. Furthermore, given the decisions of 17 June and 22 August whereby the first-instance decisions had been quashed, that interference had not been "prescribed by law".

¹ This summary by the Registry does not bind the Court.

That conclusion could only be reinforced by the Constitutional Court's judgment of 18 January 2006.

The Court therefore concluded that there had been a violation of Article 11.

Article 13 in conjunction with Article 11

The Court considered that it was in the nature of democratic debate that the timing of public meetings held in order to voice certain opinions might be crucial for its political and social weight. If a public assembly was organised after a given social issue lost its relevance or importance in a current social or political debate, the impact of the meeting might be seriously diminished. The freedom of assembly – if prevented from being exercised in good time – could even be rendered meaningless. Hence, in the circumstances, the notion of an effective remedy had implied the possibility to obtain a ruling before the time of the planned events.

The organisers had given sufficient forewarning of their plans to the authorities (12 May for the march and 3 June 2005 for the rallies): under Section 7 of the Assemblies Act a request to hold a demonstration had to be submitted to the municipality no earlier than 30 days and no later than three days before the event's date. A similar law did not exist, however, whereby the authorities had been obliged by a legally binding time-frame to give their final decision before the demonstrations were to take place.

The Court was not persuaded that the remedies available, all *post hoc*, could have provided adequate redress to the applicants and found that they had therefore been denied an effective domestic remedy in respect of their complaint. There had therefore been a violation of Article 13 in conjunction with Article 11.

Article 14 in conjunction with Article 11

The Court noted that there was no overt discrimination behind the first-instance decisions as they were focused on technical aspects of the organisation of the demonstrations and their compliance with certain requirements.

The refusal of the march had been based on the applicants' failure to submit a "traffic organisation plan" whereas, the Court observed, other organisers had not been subject to a similar requirement.

As concerned the rallies, they had been refused due, in particular, to the risk of violent clashes on 12 June between demonstrators. It was not, however, disputed that the authorities had given permission to other groups to hold their counter-demonstrations on that very same day.

The Court could not speculate on the existence of motives other than those expressly referred to in the administrative decisions. It could not though overlook the Mayor's interview of 20 May 2005 in which he had expressed strong personal opinions about freedom of assembly and "propaganda about homosexuality" and had stated that he would refuse permission to hold the demonstrations.

The Court reiterated that there was little room under Article 10 for restrictions on political speech or debate. That freedom, however, with respect to elected politicians who at the same

time held public offices at executive level of the government, entailed particular responsibility. They should therefore show restraint when exercising this freedom, especially having borne in mind that their views could be regarded as instructions by civil servants, whose employment and careers depended on their approval.

It observed that the decisions concerning the applicants' request for permission to hold the demonstrations had been given by the municipal authorities acting on the Mayor's behalf and after he had already made known to the public his opinion on the matter.

The Court concluded that it could be reasonably surmised that the Mayor's opinions affected the decision-making process and, as a result, infringed the applicants' right to freedom of assembly in a discriminatory manner.

Accordingly, the Court was of the view that there had been a violation of Article 14 in conjunction with Article 11.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.