

Bączkowski and Others v. Poland (Application No. 1543/06)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 3 May 2007

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=816493&portal=bkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

2) Facts

The applicants claimed a violation of Articles 11 and Articles 13 and 14 taken in conjunction with Article 11, after they had been refused permission for demonstrations raising awareness of discrimination against homosexuals.

The applicants (the Foundation for Equality and a group of individuals active in NGOs representing homosexual rights) planned to hold a march and a number of stationary assemblies to increase public awareness of discrimination against minorities. The administrative authorities, acting on behalf of the Mayor of Warsaw, refused to grant the applicants permission for the march and for the assemblies. The authorities claimed the group had failed to submit a traffic organization plan as required for a march of this nature, and that the assemblies created a possibility of violent clashes, as other counter-demonstrations were occurring on the same day. Permission for these counter-demonstrations (i.e. anti-homosexual demonstrations) was granted on the same day as the permission for the applicants' demonstrations was refused. The traffic plan was not required of other minority groups requesting permission for demonstrations. All groups except those representing homosexuals were granted permission as requested for their demonstrations.

The march and assemblies were held, despite the decisions refusing permission. In appellate proceedings after the demonstrations had taken place, both refusals for the march and assemblies were found to be unlawful and quashed.

An interview with the Mayor of Warsaw was published in the *Gazeta Wyborcza* on May 20 (after the applications for permission were lodged but before the decisions were issued). When asked about the permission request of the applicants, the Mayor responded "I haven't read the request. But I will ban the demonstration regardless of what they have written. I am not for discrimination on the ground of sexual discrimination . . . But there will be no public propaganda of homosexuality."

3) Admissibility

By a decision dated 5 December 2006, the application was declared admissible.

4) Merits

The Court dismissed the Government's preliminary objections. These objections were that the applicants could not claim the status of victims, since the appellate proceedings had quashed the earlier decisions, and that there had not been an exhaustion of domestic remedies.

With respect to the Article 11 claim, the Court discussed the positive obligation of States to secure the effective enjoyment of freedom of association and assembly, particularly for minority groups as they are more vulnerable. While acknowledging that the assemblies were held on the planned dates, there was an official ban in force at that time. The presumption of legality is an important part of the effective exercise of freedom of assembly. The lack of such a presumption in this case negatively affected the applicants.

The applicants claimed a violation of Article 13, arguing that there had been no effective domestic remedy because there was no procedure available to them which would allow them a final decision prior to the planned demonstration date. The Court considered that an effective remedy in this case implied obtaining a final ruling before the planned event, particularly because the timing of such events is often crucial to the political and social weight of the events. The Court found there had been a violation of Article 13 in conjunction with Article 11 because domestic law did not provide a reasonable time-limit within which authorities should provide decisions.

With respect to the Article 14 discrimination claim, the Government argued that there was no link between the personal opinions expressed against "homosexual propaganda" by the Mayor in the interview in *Gazeta Wyborcza* and the decisions, given in his name, refusing permission to the applicants. The Court disagreed, however, finding that elected politicians in the executive branch have a particular responsibility with regard to their exercise of freedom of expression. Taking the case as a whole, the Court found the Mayor's opinions could easily have affected the decision-making process, and there had therefore been a violation of Article 14.

5) Decision

The Court unanimously dismissed the Government's preliminary objections and held that there had been violations of Article 11 and Articles 13 and 14 taken in conjunction with Article 11. The applicants did not claim any compensation.