



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

COURT (CHAMBER)

CASE OF PLATTFORM "ÄRZTE FÜR DAS LEBEN" v. AUSTRIA

(Application no. 10126/82)

JUDGMENT

STRASBOURG

21 June 1988

In the case of Plattform "Ärzte für das Leben"*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. R. MACDONALD,
Mr. A. SPIELMANN,
Mr. J. A. CARRILLO SALCEDO,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 March and 25 May 1988,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 May 1987, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10126/82) against Austria lodged with the Commission under Article 25 (art. 25) by an association called Plattform "Ärzte für das Leben" ("Doctors for the right to life" Campaign, "Plattform") on 13 September 1982.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to Austria's declaration recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 13 (art. 13) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant association stated that it wished to take

* Note by the registrar: The case is numbered 5/1987/128/179. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

part in the proceedings pending before the Court and designated the lawyer who would represent it (Rule 30).

3. The Chamber of seven judges to be constituted included ex officio Mr. F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 23 May 1987, in the presence of the Registrar, the President of the Court drew by lot the names of the other five members, namely Mr. J. Pinheiro Farinha, Mr. R. Macdonald, Mr. J. Gersing, Mr. A. Spielmann and Mr. A.M. Donner (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr. F. Gölcüklü and Mr. J.A. Carrillo Salcedo, substitute judges, replaced Mr. Donner and Mr. Gersing, who were unable to attend (Rules 22 § 1 and 24 § 1).

4. On 20 June 1987, the President gave the applicant association's counsel leave to use the German language (Rule 27 § 3).

5. Having assumed the office of President of the Chamber (Rule 21 § 5) and, after consulting - through the Registrar - the Agent of the Austrian Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant association, Mr. Ryssdal

(a) decided on 8 July 1987 that there was no need at that stage to arrange for written pleadings to be filed (Rule 37 § 1);

(b) directed on 3 November 1987 that the oral proceedings should commence on 21 March 1988 (Rule 38).

6. On 16 September 1987, the Registrar received the applicant association's claims under Article 50 (art. 50) of the Convention.

7. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. H. TÜRK, Legal Adviser,

Ministry of Foreign Affairs,

Agent,

Mr. W. OKRESEK, Federal Chancellery,

Mr. A. HOLZHAMMER, Federal Ministry of the Interior,

Counsel;

- for the Commission

Mr. G. BATLINER,

Delegate,

- for the applicant association

Mr. A. ADAM, Rechtsanwalt,

Counsel.

The Court heard addresses by Mr. Türk and Mr. Okresek for the Government, by Mr. Batliner for the Commission and by Mr. Adam for the applicant association, as well as their replies to its questions.

AS TO THE FACTS

8. Plattform "Ärzte für das Leben" is an association of doctors who are campaigning against abortion and are seeking to bring about reform of the Austrian legislation on the matter. In 1980 and 1982 it held two demonstrations which were disrupted by counter-demonstrators despite the presence of a large contingent of police.

I. THE DEMONSTRATION AT STADL-PAURA

A. Planning of the demonstration

9. The applicant association decided to hold a religious service at Stadl-Paura Church (Upper Austria) on 28 December 1980, after which there would be a march to the surgery of a doctor who carried out abortions. As required under section 2 of the Assembly Act of 1953 (see paragraph 40 of the Commission's report), it gave notice, on 30 November, to the police authority for the district of Wels-Land. The police made no objection and gave the participants permission to use the public highway. The police did, however, have to ban two other planned demonstrations, which were announced subsequently by supporters of abortion, as these demonstrations were to be held at the same time and in the same place as the Plattform demonstration.

10. As the organisers feared that incidents might occur nonetheless, they sought - shortly before the beginning of the march - to change their plans, in consultation with the local authorities. They gave up the idea of demonstrating outside the doctor's surgery and decided instead to march to an altar erected on a hillside quite a distance away from the church and hold a religious ceremony there.

11. The police representatives pointed out to them that the main body of the police officers had already been deployed along the route originally planned and that because of the lie of the land the new route was not suited to crowd control. They did not refuse to provide protection but stated that - irrespective of the route chosen or to be chosen - it would be impossible to prevent counter-demonstrators from throwing eggs and disrupting both the march and the religious service.

B. The incidents

12. During the mass, a large number of counter-demonstrators - who, it seems, had not given the notice required under the Assembly Act - assembled outside the church and were not dispersed by the police. They

disrupted the march to the hillside by mingling with the marchers and shouting down their recitation of the rosary. The same thing happened at the service celebrated in the open air: some five hundred people attempted to interrupt it using loudspeakers and threw eggs and clumps of grass at the congregation.

13. At the end of the ceremony, when tempers had risen to the point where physical violence nearly broke out, special riot-control units - which had until then been standing by without intervening - formed a cordon between the opposing groups, and this enabled the procession to return to the church.

14. In a letter to the Upper Austrian Safety Authority, the chairman of the association described the counter-demonstrators' behaviour as "relatively peaceful": on other occasions, the opponents of Plattform had attacked the association's members and had assaulted policemen.

C. Remedies pursued after the demonstration

1. Remedies sought by the association itself

(a) Disciplinary complaint

15. On 21 January 1981, the applicant association lodged a disciplinary complaint (Dienstaufsichtsbeschwerde - see paragraphs 47-50 of the Commission's report) alleging that the local police had failed to provide sufficient protection for the demonstration.

The Upper Austrian Safety Authority considered that the behaviour of the police had been irreproachable and it decided not to take any disciplinary measures against them. It referred to the difficulty of completely protecting an open-air demonstration from verbal abuse and from missiles which were not likely to cause the participants any physical harm. The Authority added that, in not intervening, the police had been prompted by the concern to avoid more serious trouble.

(b) Constitutional appeal

16. Plattform subsequently lodged an appeal with the Constitutional Court (Verfassungsbeschwerde - see paragraphs 41-43 of the Commission's report); in the association's submission the local authorities' failure to act had in the instant case allowed an infringement of the freedoms of assembly and religious observance, both of which were guaranteed by the Austrian Constitution.

On 11 December 1981, the Constitutional Court heard evidence from several witnesses with a view to establishing the facts sufficiently clearly. In a judgment on 1 March 1982, it held that it had no jurisdiction and

consequently declared the appeal inadmissible. It noted that the applicant association's complaint was clearly not directed against a "decision" or acts of direct administrative coercion within the meaning of Article 144 of the Constitution (see Official Collection of the Judgments of the Constitutional Court, no. 9334/1982).

2. Proceedings taken officially

(a) Ordinary criminal proceedings

17. Plattform did not take any ordinary criminal proceedings by lodging a complaint or by bringing a subsidiary private prosecution ("Subsidiaranklage" - see paragraphs 58-64 of the Commission's report).

The Upper Austrian Safety Authority and the local police, however, opened investigation proceedings against a person or persons unknown for disruption of a meeting. For its part, a private organisation, the "Österreichische Bürgerinitiative zum Schutz der Menschenwürde", lodged a complaint against one of the counter-demonstrators, a member of parliament, alleging obstruction of a religious ceremony and incitement to hatred under Articles 188, 189 and 283 of the Criminal Code as well as an offence against section 2 of the 1953 Assembly Act. Complaints were also lodged against two other people.

The Wels public prosecutor discontinued the proceedings on 1 April 1981, however, under Article 90 of the Code of Criminal Procedure.

(b) Administrative criminal proceedings

18. One person caught in the act of throwing eggs was fined 1,000 Austrian schillings under section IX of the law enacting the Administrative Proceedings Acts (see paragraph 66 of the Commission's report).

II. THE SALZBURG DEMONSTRATION

19. The competent police authority gave permission for a second demonstration against abortion to be held in the cathedral square in Salzburg on 1 May 1982. An anniversary meeting was due to be held in the square by the Socialist Party on the same day, but it had to be cancelled because notice of it had been given after the applicant association had given notice of its own meeting.

The demonstration began at 2.15 p.m. and ended with an hour of prayers inside the cathedral.

At about 1.30 p.m. some three hundred and fifty people angrily shouting their opposition had passed through the three archways which provide access to the square and gathered outside the cathedral. A hundred policemen formed a cordon around the Plattform demonstrators to protect

them from direct attack. Other trouble was caused by sympathisers of an extreme right-wing party, the NDP, who voiced their support for Plattform. The police asked the association's chairman to order these people to disperse, but without success.

In order to prevent the religious ceremony being disrupted, the police cleared the square.

20. No proceedings were taken after these incidents, and in view of the Constitutional Court's decision of 1 March 1982 the applicant association considered that a second appeal would have served no purpose.

PROCEEDINGS BEFORE THE COMMISSION

21. The Plattform "Ärzte für das Leben" association applied to the Commission on 13 September 1982 (application no. 10126/82). It claimed that it had not had sufficient police protection during the demonstrations it had held on 28 December 1980 at Stadl-Paura and on 1 May 1982 at Salzburg; it submitted that there had been a violation of Articles 9, 10 and 11 (art. 9, art. 10, art. 11) of the Convention. It also relied on Article 13 (art. 13), claiming that the Austrian legal system did not provide an "effective remedy before a national authority" to ensure the effective exercise of the rights in question.

22. On 17 October 1985, the Commission declared inadmissible, as being manifestly ill-founded, the complaints under Articles 9, 10, and 11 (art. 9, art. 10, art. 11); on the other hand, it declared admissible the complaint under Article 13 (art. 13). In its report of 12 March 1987 (Article 31) (art. 31), it unanimously held that there had been no violation of this Article (art. 13).

The full text of the Commission's opinion, together with a summary made by the Commission of the relevant domestic law and practice, is reproduced as an annex to this judgment.

FINAL SUBMISSIONS MADE TO THE COURT

23. At the hearing on 21 March 1988, the Government requested the Court to hold that "the provisions of Article 13 (art. 13) of the European Convention on Human Rights [had] not been infringed and that the facts which gave rise to the dispute accordingly disclose[d] no violation of the Convention".

AS TO THE LAW

24. The applicant association stated that no effective remedy was available to it in Austria for its complaint under Article 11 (art. 11); it relied on Article 13 (art. 13), which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

25. The Government's main submission was that Article 13 (art. 13) applied only where a substantive provision of the Convention had been infringed. As evidence of this, they cited the French text, containing the words "ont été violés", which in their view were clearer than the corresponding English terms ("are violated").

The Court does not accept this submission. Under its case-law, Article 13 (art. 13) secures an effective remedy before a national "authority" to anyone claiming on arguable grounds to be the victim of a violation of his rights and freedoms as protected in the Convention; any other interpretation would render it meaningless (see, as the most recent authority, the Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

26. Although it declared the complaint under Article 11 (art. 11) inadmissible as being manifestly ill-founded, the Commission considered it arguable for the purposes of Article 13 (art. 13). The Government thought it contradictory to declare one and the same complaint to be manifestly ill-founded under a substantive provision and yet arguable under Article 13 (art. 13).

27. The Court does not propose to give an abstract definition of the notion of "arguability". In order to ascertain whether Article 13 (art. 13) was applicable in the instant case, it is sufficient that it should determine, in the light of the facts of the case and the nature of the legal issue or issues raised, whether the claim that the requirements of Article 11 (art. 11) had not been complied with was arguable notwithstanding that the Commission dismissed it as manifestly ill-founded. The latter's decision on admissibility may provide the Court with useful pointers as to the arguability of the relevant claim (see the Boyle and Rice judgment previously cited, Series A no. 131, pp. 23-24, §§ 54-55).

28. Before the Commission, Plattform complained that the Austrian authorities had disregarded the true meaning of freedom of assembly by having failed to take practical steps to ensure that its demonstrations passed off without any trouble.

29. In the Government's submission, Article 11 (art. 11) did not create any positive obligation to protect demonstrations. Freedom of peaceful assembly - enshrined in Article 12 of the Austrian Basic Law of 1867 - was mainly designed to protect the individual from direct interference by the State. Unlike some other provisions in the Convention and the Austrian

Constitution, Article 11 (art. 11) did not apply to relations between individuals. At all events, the choice of the means to be used in a given situation was a matter for the State's discretion.

30. In its decision of 17 October 1985 on admissibility, the Commission dealt at length with the question whether Article 11 (art. 11) impliedly required the State to protect demonstrations from those wishing to interfere with or disrupt them. It answered this question in the affirmative.

31. The Court does not have to develop a general theory of the positive obligations which may flow from the Convention, but before ruling on the arguability of the applicant association's claim it has to give an interpretation of Article 11 (art. 11).

32. A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.

Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be (see, *mutatis mutandis*, the *X and Y v. the Netherlands* judgment of 26 March 1985, Series A no. 91, p. 11, § 23).

33. Concurring with the Government and the Commission, the Court finds that Austrian law is concerned to protect demonstrations by such positive action. For example, Articles 284 and 285 of the Criminal Code make it an offence for any person to disperse, prevent or disrupt a meeting that has not been prohibited, and sections 6, 13 and 14(2) of the Assembly Act, which empower the authorities in certain cases to prohibit, bring to an end or disperse by force an assembly, also apply to counter-demonstrations (see paragraphs 54 and 40 of the Commission's report).

34. While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see, *mutatis mutandis*, the *Abdulaziz, Cabales and Balkandali* judgment of 28 May 1985, Series A no. 94, pp. 33-34, § 67, and the *Rees* judgment of 17 October 1986, Series A no. 106, pp. 14-15, §§ 35-37). In this area the obligation they enter into under Article 11 (art. 11) of the Convention is an obligation as to measures to be taken and not as to results to be achieved.

35. In the applicant association's submission, the police remained entirely passive at each of the two demonstrations in issue. The Government and the Commission disagreed; in their view, immediate intervention was not justified in the absence of any serious assaults and would inevitably have provoked physical violence.

36. The Court does not have to assess the expediency or effectiveness of the tactics adopted by the police on these occasions but only to determine whether there is an arguable claim that the appropriate authorities failed to take the necessary measures.

37. As regards the incidents at Stadl-Paura on 28 December 1980 (see paragraphs 9-13 above), it must first be noted that the two demonstrations planned by supporters of abortion, which were due to be held at the same time and place as Plattform's demonstration (of which notice had been given on 30 November) had been prohibited. Furthermore, a large number of uniformed and plain-clothes policemen had been deployed along the route originally planned, and the police representatives did not refuse the applicant association their protection even after it decided to change the route despite their objections. Lastly, no damage was done nor were there any serious clashes; the counter-demonstrators chanted slogans, waved banners and threw eggs or clumps of grass, which did not prevent the procession and the open-air religious service from proceeding to their conclusion; special riot-control units placed themselves between the opposing groups when tempers had risen to the point where violence threatened to break out.

38. For the 1982 demonstration in Salzburg (see paragraph 19 above) the organisers had chosen the date of 1 May, the day of the traditional Socialist march which had to be cancelled - as regards the cathedral square - because the applicant association had given notice of its demonstration earlier. Furthermore, a hundred policemen were sent to the scene to separate the participants from their opponents and avert the danger of direct attacks; they cleared the square so as to prevent any disturbance of the religious service.

39. It thus clearly appears that the Austrian authorities did not fail to take reasonable and appropriate measures.

No arguable claim that Article 11 (art. 11) was violated has thus been made out; Article 13 (art. 13) therefore does not apply in the instant case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 13 (art. 13).

10 PLATTFORM "ÄRZTE FÜR DAS LEBEN" v. AUSTRIA JUGDMENT

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 June 1988.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar