

A v Austria
App. No. 9905/82
Before the European Commission of Human Rights
(1985) 7 E.H.R.R. CD137

The Facts:

The applicant association is a (right wing) political party recognised under Austrian law. The second applicant, an Austrian citizen born in 1951 and resident in Vienna, is its chairman. On 5 June 1978 the applicant association, in accordance with S.2 of the Assembly Act (Versammlungsgesetz, Fed. Law Gazette No. 98/1953), gave notice to the Vienna police authority (Bundespolizeidirektion) of a public meeting to be held in a Viennese inn on the evening of 17 June. Included with the notification was a leaflet proposing to advertise the meeting. From this it appeared that the meeting was to commemorate the Day of German Unification (*Tag der deutschen Einheit*), which is a national holiday in the Federal Republic of Germany in remembrance of the East Berlin revolt of 17 June 1953 in favour of German reunification. The leaflet also contained a map depicting the territories of Austria, the Federal Republic of Germany, and the German Democratic Republic (with frontiers) in white, whereas other areas such as Alsace-Lorraine, the South Tyrol, the Sudetenland and East and West Prussia were shown with hatchmarks. On 15 June 1978 the police authority decided to prohibit the meeting under S.6 of the Assembly Act which reads as follows: "Assemblies the purpose of which is contrary to the criminal laws or the holding of which presents a danger for the public security or for the public well-being must be prohibited by the authority." In the instant case the prohibition was based on a potential danger to the public well-being.

In the reasons reference was made in particular to Art. 4(2) of the State Treaty of 1955 (Fed. Law Gazette No. 152/1955). Insofar as it is relevant, this provision reads as follows: "Austria shall not ... take any measures likely, directly or indirectly, to promote political or economic union with Germany ... Austria further undertakes to prevent within its territory any act likely, directly or indirectly, to promote such union and shall prevent the existence, resurgence and activities of any organisations having as their aim political or economic union with Germany, and pan-German propaganda in favour of union with Germany." It was stated that the above leaflet, by its text taken together with the map, could only be understood as pan-German propaganda. The holding of a meeting under the title "17 June—Day of German Unification" was objectively an activity likely to promote at least indirectly political or economic union with Germany. As Austria was obliged under the provisions of the State Treaty to prevent any activities of this kind, the meeting had to be considered as presenting a danger to the public well-being, and accordingly had to be prohibited under the Assembly Act. The applicant's appeals from this decision, including an appeal to the Constitutional Court, were unsuccessful.

The Law:

1. The applicants claim that their right to **freedom of assembly**, as guaranteed by Art. 11 of the Convention, has been unjustifiedly interfered with by the prohibition of a meeting by which they intended to commemorate the Day of German Unification. They consider that this restriction of their **freedom of assembly** was not covered by Art. 11(2) of the Convention, and that it was in fact abusive and contrary to Arts. 17 and 18 of the Convention. They further claim to have been discriminated against, in the exercise of their above Convention right, on account of their German race or national origin, and that this was contrary to Art. 14 of the Convention.
2. The first applicant is a political party which proposed to organise the above meeting, and the second applicant is this party's chairman and legal representative who would have participated in the meeting. *138 Although only the first applicant was a party to the domestic proceedings, the second applicant was equally affected by the ban. As the right invoked by the applicants, namely the **freedom of assembly** under Art. 11 of the Convention, can be exercised both by the organiser of a meeting, even if it should be a legal person as in the present case, and by the individual participants, the Commission accepts that both applicants are entitled to claim to be victims (in the sense of Art. 25 of the Convention) of a violation of their rights under

Art. 11 (*cf.* App. No. 8440/78, *Christians against Racism and Fascism v. United Kingdom*, 21 D. & R. 138).

3. It is true that only the first applicant has exhausted the domestic remedies in accordance with Art. 26 of the Convention. However, in view of the particular circumstances, the second applicant can be absolved from doing the same as his complaint, although presented from a different angle, is virtually the same as that of the first applicant. The Commission is therefore required to deal with the substance of the complaints in respect of both applicants.

4. The meeting in question has been banned, and this clearly constituted an interference with the applicants' right to freedom of peaceful assembly as guaranteed by Art. 11(1) of the Convention. This interference therefore needs to be justified under Art. 11(2).

5. In order to be compatible with this provision, any interference with the exercise of the above right must (a) be prescribed by law, (b) pursue one of the legitimate purposes enumerated there, and (c) be necessary in a democratic society in order to achieve this purpose.

6. The restriction of the applicants' **freedom of assembly** was based on S.6 of the Assembly Act, read in conjunction with Art. 4(2) of the State Treaty. As regards the last-mentioned provision, the applicants' suggestion that it has been abrogated by subsequent legislation or international instruments is clearly unfounded, as stated by the Constitutional Court. There is furthermore no indication that these provisions have been applied in an arbitrary or unreasonable manner to the facts at issue. In particular the authorities' assumption that the proposed meeting was likely to be used for pan-German propaganda in favour of union with Germany is clearly supported by the facts. This is shown not only by the declared purpose of the meeting to celebrate the Day of German Unification and the map illustrating what the applicants considered to be the territorial basis of German unification, but also by the ANR party program which the authorities could reasonably take into consideration as additional evidence relevant to their decisions. The negation of the concept of an Austrian nation in this programme and the emphasis laid on the German character of Austria justified the authorities' fear that the proposed meeting might be used as a platform to activate a policy against Austrian independence and separation from Germany. This is also confirmed by the applicants' subsequent invocation of the principle of self-determination, as confirmed by the Helsinki Conference. The invocation of this principle in relation to the applicants' activities as a political party in Austria can only mean that they do not accept that the Austrian people have already exercised their right to free self-determination by proclaiming an independent Austrian State and by accepting through international undertakings freely entered into its permanent separation from Germany. To prohibit activities aimed at changing this situation is both an international obligation of Austria and a requirement of her domestic legislation. The restriction complained of was therefore "prescribed by law" within the meaning of Art. 11(2) of the Convention. *139

7. According to the final domestic decision in this case, i.e. the decision of the Constitutional Court of 15 December 1981, the ban of the meeting was justified because it presented a danger to the public security and the public well-being. In view of this finding, the Commission considers that the measure was taken "in the interest of national security" as permitted by Art. 11(2) of the Convention.

8. The Commission further finds that the ban of the meeting in question can also be considered as being "necessary in a democratic society". In the particular case, this necessity arose from the obligation of the Austrian authorities to implement the provisions of Art. 4(2) of the State Treaty, which constitute binding international obligations for Austria, and which require the prevention of any activities aimed at union with Germany, including pan-German propaganda to this end. Although other avenues might have been open to the authorities to prevent the occurrence of pan-German propaganda at the meeting, the Commission finds that even the total ban of this meeting was not disproportionate in the circumstances. The Commission therefore concludes that there is no appearance of a violation of Art. 11 in this case and the applicants' complaint in this respect must accordingly be rejected as being manifestly ill-founded within the meaning of Art. 27(2) of the Convention.

9. The applicants have further invoked Art. 14 of the Convention, claiming that they have been discriminated against in the exercise of their **freedom of assembly** on account of their race or national origin. However, there is no basis for finding a discrimination on these grounds as the applicants themselves do not claim that they or their members are of a different race or national origin than other Austrians. At most it could be said that there was differential treatment based on the applicants' political opinion, in particular their views concerning the Austrian and German nations. Insofar as there was such differential treatment, the Commission finds that it was based on objective and legitimate reasons of State security, and therefore did not amount to discrimination within the meaning of Art. 14 of the Convention. The Commission would note in this context that the applicants' activities were interfered with only insofar as pan-German propaganda in favour of union with Germany is concerned, but not in any other respect. This part of the application is therefore also manifestly ill-founded.

10. The applicants finally submit that in reality the ban on their meeting pursued other purposes than those permitted by Art. 11(2), namely to destroy the rights of "the German people in Austria", or of "German Austrians", in particular their right to confess their national identity and to promote their right of self-determination. The applicants have invoked Arts. 17 and 18 of the Convention in this respect. However, the Commission finds that the applicants' claim to adopt and confess a particular status of "German Austrians" distinct from that of other Austrian citizens is no more than an outflow of their own pan-German propaganda which the measure complained of precisely aimed at preventing. The national security of Austria can in fact be endangered by pan-German propaganda in favour of union with Germany, such as it was likely to occur in the present case, and as it is indeed illustrated by the applicants' above arguments. The prevention of such propaganda serves the protection of the national security of Austria which is even under an international obligation, arising from Art. 4(2) of the State Treaty, not to admit such propaganda. In these circumstances there can be no question of an abuse of the restriction clause of Art. 11(2) contrary to Arts. 17 and ***140** 18 of the Convention. The applicants' complaint under these Articles is therefore again manifestly ill-founded.
Held, Arts. 11, 14, 17 and 18: complaints manifestly ill-founded.