CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1543/06
by Tomasz BĄCZKOWSKI and Others
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 December 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges,*

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 December 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Tomasz Bączkowski, Mr Robert Biedroń, Mr Krzysztof Kliszczyński, Ms Inga Kostrzewa and Mr Tomasz Szypuła are Polish nationals who were born in 1972, 1976, 1968, 1973 and 1980 respectively and live in Słubice, Warszawa and Tarnobrzeg. The sixth applicant is the Foundation for Equality (*Fundacja Równości*) whose registered office is in Warsaw.

They are represented before the Court by Professor Z. Hołda, a lawyer practising in Warszawa. The respondent Government are represented by Mr Jakub Wołąsiewicz, the Agent of the Government.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Preparation of the assemblies

The applicants, a group of individuals and the Foundation for Equality (of whose executive committee the first applicant is also a member empowered to act on its behalf in the present case), wished to hold, within the framework of Equality Days organised by the Foundation and planned for 10-12 June 2005, an assembly (a march) in Warsaw with a view to alerting public opinion to the issue of discrimination against minorities - sexual, national, ethnic and religious - and also against women and disabled persons.

On 10 May 2005 the organisers held a meeting with the Director of the Safety and Crisis Management Unit of Warsaw City Council. During this meeting an initial agreement was reached as to the itinerary of the planned march.

On 11 May 2005 Mr Bączkowski obtained an instruction of the Warsaw Mayor's Office on "requirements which organisers of public assemblies have to comply with under the Road Traffic Act" if the assembly was to be regarded as an "event" (*impreza*) within the meaning of Article 65 of that Act.

On 12 May 2005 the organisers requested the City Council Road Traffic Office for permission to organise the march, the itinerary of which would lead from the buildings of Parliament (*Sejm*) to the Assembly Place (*Plac Defilad*) in the centre of Warsaw.

On 3 June 2005 the Traffic Officer, acting on behalf of the Mayor of Warsaw, refused permission for the march, relying on the organisers' failure to submit a "traffic organisation plan" (*"projekt organizacji ruchu"*) within the meaning of Article 65 (a) of the Road Traffic Act, which they had allegedly been ordered to submit.

On the same day the applicants informed the Mayor of Warsaw about stationary assemblies they intended to hold on 12 June 2005 in seven different squares of Warsaw. Four of these assemblies were intended to protest about discrimination against various minorities and to support actions of groups and organisations combating discrimination. The other three planned assemblies were to protest about discrimination against women.

On 9 June 2005 the Mayor gave decisions banning the stationary assemblies to be organised by Mr Bączkowski, Mr Biedroń, Mr Kliszczyński, Ms Kostrzewa, Mr Szypula, and another person, Mr N. (who is not an applicant), who are active in various non-governmental organisations acting for the benefit of persons of homosexual orientation. In his decision the Mayor relied on the argument that assemblies held under the provisions of the Assemblies Act of 1990 (*Ustawa o zgromadzeniach*) had to be organised away from roads used for road traffic. If they were to use roads, more stringent requirements applied. The organisers wished to use cars carrying loudspeakers. They had failed to indicate where and how these cars would park during the assemblies so as not to disturb the traffic and how the movement of persons and these cars between the sites of the assemblies would be organised.

Moreover, as there had been a number of requests submitted to organise other assemblies on the same day, the tenor of which ran counter to the ideas and intentions of the applicants, permission had to be refused in order to avoid any possible violent clashes between the participants of various demonstrations.

On the same day the Mayor allowed the three planned assemblies concerning discrimination against women to be held as requested by the applicants.

On the same day the Mayor permitted six other demonstrations to be organised on 12 June 2005. The themes of these assemblies were as follows: "For more stringent measures against persons convicted of paedophilia", "Against any legislative work on the law on partnerships", "Against propaganda for partnerships", "Education in Christian values, a guarantee of a moral society", "Christians respecting God's laws and nature's laws are citizens of the first rank", "Against adoption of children by homosexual couples".

2. Meetings held on 11 June 2005

On 11 June 2005, despite the decision given on 3 June 2005, the march took place. It followed the itinerary as planned in the original request of 12 May 2006. The march, attended by approximately 3,000 people, was protected by the police.

Apart from the march, nine stationary assemblies were held on the same day under permissions given by the Mayor on 9 June 2005.

3. Appellate proceedings

a) The march

On 28 June 2005 the applicant Federation appealed to the Local Government Appellate Board against the decision of 3 June 2005, refusing permission for the march. It was argued that the requirement to submit "a

traffic organisation plan" lacked any legal basis and that the applicants had never been requested to submit such a document prior to the refusal. It was also argued that the decision amounted to an unwarranted restriction of freedom of assembly and that it had been dictated by ideological reasons, incompatible with the tenets of democracy.

On 22 August 2005 the Board quashed the contested decision. The Board observed that under the applicable provisions of administrative procedure the authorities were obliged to ensure that parties to administrative proceedings had an opportunity of effectively participating in them. In the applicant's case this obligation had not been respected in that the case file did not contain any evidence to show that the applicant Federation had been informed of its procedural right to have access to the case file.

The Board's decision further read, *inter alia*:

> "In the written grounds of the decision complained of, the first-instance authority refer to the fact that the traffic organisation project is not to be found in the case file. Under section 65 (a) item 3 (9), an organiser of a demonstration is obliged to develop, in co-operation with the police, such a project, if he or she was obliged to do so by the authority. However, in the case file there is not as much as a mention that the organisers were obliged to submit such a project. (...) The document on the procedure for obtaining permission to organise an event which was served on the organisers did not contain information on such an obligation either.
>
> Having regard to the fact that the organisers' request concerned a march to be held on 11 June 2005 and having also taken into account the fact that the appeal was received by the Board's Office [together with the case-file] on 28 June 2005, the proceedings had already become on that latter date devoid of purpose. "

b) The assemblies

On 10 June 2005 the applicants appealed to the Mazowsze Governor against the Mayor's refusals of 9 June 2005 of permission to hold six out of the eight planned assemblies. They argued that the ban on the assemblies breached their freedom of assembly guaranteed by the Constitution and that the assemblies were to be entirely peaceful. They submitted that the assemblies did not pose any threat to either public order or to morals. They contested the argument relied on in the decision that they were obliged to submit a document on the planned itinerary between the places where assemblies were to be held, arguing that they only intended to organise stationary assemblies, not any movement of persons between them and that they should not be responsible for any organisation or supervision of such movement.

On 17 June 2005 the Mazowsze Governor gave six identical decisions by which he quashed the contested refusals to hold the assemblies given on 9 June 2005.

It was first observed that these decisions breached the law in that the parties had been served only with copies of the decisions, not with originals as required by law on administrative procedure. It was further noted that the

Mayor had informed the media of his decisions before they had been served on the applicants, which was manifestly in breach of principles of administrative procedure.

It was further observed that the 1990 Act of Assemblies was a guarantee of freedom of assembly both in respect of organisation of assemblies and participation therein. The Constitution clearly guaranteed the freedom of assembly, not a right. It was not for the State to create a right to assembly; its obligation was limited to securing that assemblies be held peacefully. This way the applicable law did not provide for any permit for an assembly to be held.

The Governor noted that the requirement to submit a permit to occupy a part of the road, based on the provisions of the Road Traffic Act, lacked any legal basis in the provisions of the Assemblies Act. The Mayor had assumed that the demonstration would occupy a part of the road, but had failed to take any steps to clarify whether this had really been the organisers' intention, while he was obliged to do so by the law.

It was further observed that a decision banning an assembly had to be regarded as a method of last resort because it radically restricted freedom of expression. The principle of proportionality required that any restriction of constitutionally protected freedoms be permitted only insofar as it was dictated by the concrete circumstances of a particular case.

The Governor noted in this connection that the Mayor's reliance on the threat of violence between the demonstrations organised by the applicants and the counter-demonstrations planned by other persons and organisations for the same day could not be accepted. Had such an argument been accepted, it would have been tantamount to accepting that the administration endorsed the intentions of organisations which clearly and deliberately intended to breach public order, whereas the protection of freedom of expression guaranteed by the Assemblies Act should be an essential task of the public powers.

He further discontinued the proceedings as they had become devoid of purpose, the assemblies having taken place on 11 June 2005.

4. Translation of an interview with the Mayor of Warsaw published in "Gazeta Wyborcza" of 20 May 2005

"E. Siedlecka: The Assemblies Act says that the freedom of assembly can only be restricted if a demonstration might entail a danger to life or limb, or a major danger to property. Did the organisers of the march write anything in their registration request that would show that there is such a danger?

Lech Kaczyński: I don't know, 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, for example by

ruining people's professional careers. But there will be no public propaganda of homosexuality.

E. S. What you do in this case is exactly discrimination: you make it impossible for people to use their freedom only because they have a specific sexual orientation.

L. K.: I do not forbid them to demonstrate, if they want to demonstrate as citizens, not as homosexuals.

E. S.: Everything seems to suggest that – like last year – the Governor will set your prohibition aside. And if the organisers make an appeal to the administrative court, they will win, because preventive restrictions on freedom of assembly are unlawful. But the appellate proceedings will last some time and the date for which the march is planned will pass. Is this what you want?

L. K.: We will see whether they win or lose. I will not let myself be persuaded to give my permission for such a demonstration.

E. S.: Is this correct that the exercise of people's constitutional rights depended on the views of powers that be?

L. K.: In my view, propaganda of homosexuality is not tantamount to exercising one's freedom of assembly".

B. Relevant domestic law and practice

1. Provisions of the Constitution

Article 57 of the Constitution reads:

> The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute.

2. The Assemblies Act

Pursuant to section 1 of the 1990 Assemblies Act, everyone has the right to freedom of peaceful assembly. A gathering of at least fifteen persons, called in order to participate in a public debate or to express an opinion on a given issue is to be regarded as an assembly within the meaning of the Act.

Under section 2, freedom of assembly can only be restricted by statutes and where it is necessary for the protection of national security or public safety, for the protection of health or morals or for the protection of the rights and freedoms of others.

All decisions concerning the exercise of freedom of assembly must be taken by the local municipalities where the assembly is to be held. These decisions can be appealed against to the Governor.

Under section 3 of the Act, the municipality must be informed by the organisers of the intention to hold a public gathering organised in the open air for an indeterminate number of persons. Under section 7, such information must be submitted to the municipality not earlier than thirty

days before the planned date of the demonstration and not later than three days before it.

Such information must contain the names and addresses of the organisers, the aim and programme of the demonstration, its place, date and time as well as information about the itinerary if the demonstration is intended to proceed from one place to another.

Pursuant to section 8, the municipality shall refuse permission for the demonstration if its purpose is in breach of the Act itself or of provisions of the Criminal Code, or if the demonstration might entail a danger to life or limb, or a major danger to property.

A first-instance refusal of permission to hold a demonstration must be served on the organisers within three days of the date on which a relevant request has been submitted and not later than three days before the planned date of the demonstration.

An appeal against such a refusal must be lodged within three days of the date of its service.

The lodging of such an appeal does not have a suspensive effect on the refusal of permission to hold the demonstration.

A decision given by the appellate authority must be served on the organisers within three days of the date on which the appeal was submitted.

3. The Road Traffic Act

Under section 65 of the Road Traffic Act of 1997, as amended in 2003, the organisers of sporting events, contests, assemblies and other events which may obstruct road traffic are obliged to obtain permission for the organisation of such assemblies.

Under section 65 read together with section 65 (a) of the Act, organisers of such events are obliged to comply with various administrative obligations specified in a list contained in this provision and numbering nineteen items, including the obligation to submit a traffic organisation plan to the authorities.

These provisions were repealed as a result of the judgment of the Constitutional Court, referred to below.

4. Judgment of the Constitutional Court of 18 January 2006

In its judgment of 18 January 2006 the Constitutional Court examined the request submitted to it by the Ombudsman to determine the compatibility with the Constitution of the requirements imposed on organisers of public events by the provisions of the Road Traffic Act in so far as they impinged on freedom of assembly, arguing that they amounted to an excessive limitation of that freedom.

The Constitutional Court observed that the gist of the constitutional problem was whether the requirements imposed by section 65 of the Act

were compatible with freedom of expression as formulated by the Constitution and developed by the Assemblies Act. It noted that the 1990 Assemblies Act was based on the premise that the exercise of this freedom did not require any authorisations or licences issued by the State. As it was a freedom, the State was obliged to refrain from hindering its exercise and to ensure that it was enjoyed by various groups despite the fact that their views might not be shared by the majority.

Accordingly, the Assemblies Act provided for a system based on nothing more than the registration of an assembly to be held.

The Court observed that subsequently the legislature, when it enacted the Road Traffic Act, had incorporated various administrative requirements which were difficult to comply with into the procedure created for the organisation of sporting events, contests and assemblies, thus replacing the registration system by a system based on permission. In doing so, it placed assemblies within the meaning of the Assemblies Act on a par with events of a commercial character or organised for entertainment purposes. This was incompatible with the special position that freedom of expression occupied in a democratic society and rendered nugatory the special place that assemblies had in the legal system under the Constitution and the Assemblies Act. The Court also had regard to the fact that the list of requirements imposed by the Road Traffic Act contained as many as nineteen various administrative obligations. The restrictions on freedom of assembly imposed by that Act were in breach of the requirement of proportionality applicable to all restrictions imposed on the rights guaranteed by the Constitution.

The Court concluded that section 65 of the Road Traffic Act was incompatible with the Constitution in so far as it applied to assemblies.

COMPLAINTS

1. Article 11 of the Convention

The applicants complained invoking Article 11 of the Convention that their right to peaceful assembly had been breached by the way in which the domestic authorities had applied the relevant domestic law to their case.

It followed from the very character of the freedom of assembly that the requirements which laws imposed on organisers of public meetings should be restricted to a reasonable minimum and to those of a technical character. The obligation to furnish the authorities with this information made it possible for them to take steps, if necessary, to ensure that the assembly would be orderly.

Under the 1990 Assemblies Act the authorities could ban the organisation of an assembly only when its purpose ran counter to provisions

of criminal law or when it might entail danger to life or limb or a major danger to property. On the other hand, the requirements that could be imposed on organisers of assemblies once the authorities classified the assembly to be held as an "event" under the Road Traffic Act went much further. They lacked precision, leaving the decision as to whether the organisers satisfied them entirely to the discretion of the authorities.

The applicants emphasised that the decisions concerned had been given for purely ideological reasons. The Mayor had presented his views on homosexuality and on the plans to organise the Equality March prior to his decisions given in the present case. He had been of the view that sexual orientation should not be manifested in public. He had also repeatedly stated that he would, in any event, stop the organisation of the equality assemblies regardless of whether there were sound legal reasons for doing so, because he had disapproved of their purposes.

The Mayor's refusals lacked proper justification. The stationary assemblies to be held were of a peaceful character, their aim being to draw the society's attention to the situation of various groups of persons discriminated against, in particular persons of homosexual orientation. The relevant requests had complied with the very limited requirements laid down by the Assemblies Act. As to the Equality March, the refusal had been motivated by the alleged failure of the applicants to submit the project of traffic organisation which the authorities had never required to be submitted prior to this refusal. These assemblies had lawful aims and there had been no special grounds, such as a major danger to property or danger to life or limb, which could justify the refusals.

2. Article 11 read together with Article 13 of the Convention

The applicants complained that these provisions had been breached in their case because 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 demonstration when the first-instance decisions had banned its organisation.

This was so because if such a refusal was issued, the second-instance authority could only quash this decision. This meant that the organisers had to start the procedure all over again. In any event, that was how the relevant procedural provisions had been applied in the applicants' case.

Pursuant to Section 7 of the Assemblies Act, a request for an assembly to be organised could be submitted thirty days before the planned date at the earliest. That meant that it was impossible to submit such a request earlier.

Under Polish law, if the authorities considered that the planned assembly was to be regarded as an "event" covered by the provisions of the Road Traffic Act, it was altogether impossible to comply with the thirty-day time-limit, given the unreasonably onerous requirements to submit numerous

documents relating to the traffic organisation aspects of such an assembly which could be imposed on the organisers under that Act.

In any event, the State should create such procedure, a special one if need be, which would make it possible for organisers of public meetings to have the whole procedure completed within the time-frame set out in the Act, i.e. from 30 to 3 days prior to the planned date, and, essentially, before the day on which the assembly was planned to be held.

3. Article 14 read together with Article 11 of the Convention

The applicants argued that they had been treated in a discriminatory manner firstly in that organisers of other public events in Warsaw organised in 2005 had not been required to submit a "traffic organisation plan", and also in that they had been refused permission to organise the march and some of the assemblies. This difference of treatment had not pursued a legitimate aim, the more so as the Mayor and his collaborators had made it plain to the public that they would ban the demonstrations because of the homosexual orientation of the organisers, regardless of any legal grounds.

THE LAW

1. The applicants complained invoking Article 11 of the Convention that their right to peaceful assembly had been breached by the way in which the domestic authorities had applied the relevant domestic law to their case.

The applicants further complained that Article 11 read together with Article 13 of the Convention had been breached in their case because 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.

The applicants complained, invoking Article 11 read together with Article 14 of the Convention, that they had been treated in a discriminatory manner in that they had been refused permission to organise the march and some of the assemblies. This difference of treatment had not pursued a legitimate aim, the more so as the Mayor and his collaborators had made it plain to the public that they would ban the demonstrations because of the homosexual orientation of the organisers.

Article 11 of the Convention reads:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of

others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Article 13 of the Convention 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."

Article 14 of the Convention reads:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

2. The Government contended by way of a preliminary submission that the applicants could not claim to be victims of a violation of the Convention within the meaning of Article 34.

They submitted that it transpired from the written grounds of the second-instance administrative decisions that the appellate authorities had fully shared the applicants' arguments and had quashed the contested decisions in their entirety. The Governor, in his decision of 17 June 2005, had gone even further in that he had stressed that prohibiting an assembly on the ground of a threat of violence between the demonstrators and counter-demonstrators would have been tantamount to accepting that the authorities endorsed intentions of organisations which deliberately intended to breach the public order. When quashing the contested decisions, the appellate authorities had stated that their assessment had been made bearing in mind the applicants' freedom of assembly. As these decisions had eventually been found unjustified, the applicants could not claim to have a victim status.

The Government were of the view that as the applicants had not claimed to have sustained any pecuniary or non-pecuniary damage, the domestic authorities had not been under an obligation to offer them any redress. The Government relied on the principle that a decision or measure favourable to the applicant was not in principle sufficient to deprive him of his status as a "victim" unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (*Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66).

The applicants submitted that the authority relied on by the Government, the *Eckle v. Germany* case, was of little relevance to the case at hand. They reiterated that only when those two conditions were cumulatively satisfied the subsidiary nature of the protective mechanism of the Convention precluded examination of an application (see *Scordino v. Italy*, no. 36813/97, decision of 27 March 2003). In their case it could not be said that those two conditions had been satisfied. No redress had ever been afforded at domestic level for any of the breaches of the Convention alleged in their application.

The Court considers that the Government's argument alleging that the applicants could not claim that they had been victims of a breach of their rights raises questions which are closely linked to the merits of the application. The Court consequently considers that they should be examined under the substantive provisions of the Convention relied on by the applicant (*Gnahoré v. France*, no. 40031/98, § 26, ECHR 2000-IX).

3. The Government submitted that the applicants had had at their disposal procedures capable of remedying the alleged breach of their freedom of assembly.

The Government first observed in this connection that section 7 of the Assemblies Act provided for time-limits which should be respected by persons wishing to organise an assembly under the provisions of this Act. A request for a decision about an assembly to be held had to be submitted to the municipality not earlier than thirty days before the planned date of the demonstration and no later than three days before it.

If the applicants had considered that the provisions on the basis of which the domestic decisions in their cases had been given had been incompatible with the Constitution, it had been open to them to challenge these provisions by lodging a constitutional complaint provided for by Article 79 of the Constitution. Thus, the applicants could have obtained the aim they sought to attain before the European Court of Human Rights, namely an assessment of whether the contested regulations as applied to their case infringed their rights guaranteed by the Convention.

The Government referred to the Court's decision by which it had held that individual constitutional complaint was an effective remedy which should be used before bringing an individual application under Article 34 of the Convention. It recalled that the Court, having analysed the limitations of the Polish constitutional complaint, had held that it could be recognised as an effective remedy only where the individual decision, which allegedly violated the Convention, had been adopted in a direct application of an unconstitutional provision of national legislation and where a possibility existed to apply for the re-opening of the original proceedings or the quashing of the decision (*Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003).

The Government concluded that the applicants should have had recourse to this remedy.

The applicants disagreed. They submitted that because of the specific nature of their case, a remedy that had not been capable of providing them with a judicial or administrative review of the ban on holding their assemblies before 11 June 2005 could not be regarded as effective. Clearly, any subsequent review by the Constitutional Court would not have served any practical purpose.

In any event, even if it were to be accepted that an *ex post facto* review could be contemplated as a remedy to be used in their case, the applicants were of the view that it would have been ineffective also for other reasons. A constitutional complaint under Polish law was a remedy available only when a possibility existed to apply for the re-opening of the original proceedings in the light of a favourable ruling of the Constitutional Court. This condition alone would have rendered this remedy ineffective since, in view of the specific and concrete nature of the redress sought by the applicants, the reopening of their case would have been an entirely impracticable solution. Furthermore, the quashing of the final decisions would have been futile as the decisions of 3 and 9 June 2005 had already been quashed by the Self-Government Board of Appeal and the Governor of Mazowsze Province on 22 August and 17 June 2005, respectively.

The Court first considers that the question of whether the applicants could effectively challenge the set of legal rules governing the exercise of their freedom of assembly is linked to the Court's assessment of Poland's compliance with the requirements of Article 11 of the Convention in the present case. That being so, these matters are more appropriately examined at the same time as the substance of the applicant's complaint under this provision.

The Court accordingly joins the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies to the merits of the case.

4. As to the substance of the application, the Government were of the view that there had been no interference with the applicants' rights guaranteed by Article 11 of the Convention. They referred in this respect to their submissions concerning the applicants' victim status.

The Government did not contest the fact that the second-instance decisions of the domestic authorities had been given after the date for which the assemblies had been planned. However, the applicants had been aware of the time-limits provided by the applicable laws for the submission of requests for permission to hold an assembly.

As for the applicants' complaint under Article 13 of the Convention, the Government reiterated their submissions concerning the question of exhaustion of domestic remedies.

As regards the complaint under Article 11 read together with Article 14 of the Convention, the Government further submitted that the applicants had challenged the administrative decisions given in their cases on 3 and 9 June 2005. In the former, the Traffic Officer, acting on behalf of the Mayor of Warsaw, had refused permission for the march, relying on the organisers' failure to submit a "traffic organisation plan" within the meaning of section 65 (a) of the Road Traffic Act. In the latter, the Mayor had relied on the argument that the applicants had failed to comply with more stringent

requirements imposed by the law on organisers of assemblies held on roads used for road traffic.

The Government were of the view that these decisions had been sufficiently reasoned and that their reasoning had been based on section 65 of the Road Traffic Act. It could not, in their opinion, be assumed that the decisions banning the assemblies had been because of personal opinions held by the Mayor of Warsaw as presented in an interview published in "Gazeta Wyborcza" of 20 May 2005. The facts of the case had not indicated that any link existed between the Mayor's views expressed in the press and the official decisions given in the applicants' case.

The Government reiterated that under the Court's case-law Article 14 of the Convention could be relied upon when the circumstances of the case fell within the ambit of one or more of other Convention rights (*Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 36). In the instant case no provisions, acts or omissions of the public authorities had exposed the applicants to treatment less favourable than that to which other persons in an analogous situation would have been subjected. Nor had there been any indication that this treatment had been based on any prohibited ground. The interview published in "Gazeta Wyborcza" could not be said to have constituted a form of discriminatory treatment without a reasonable and objective justification. Consequently, the applicants had not suffered discrimination in the enjoyment of their freedom of assembly contrary to Article 14 of the Convention.

The applicants reiterated their position on this matter as submitted in their original complaints. They first emphasised that they were refused permission to organise the demonstrations on 11 June 2005, while other organisations and persons had received relevant permissions. They stressed that they had been required to submit the "traffic organisation plan", while other organisations had not been requested to do so. In the absence of particularly serious reasons by way of justification (*L. and V. v. Austria*, nos. 39392/98 and 39829/98, 9 January 2003, § 45, and *Karner v. Austria*, no. 40016/98, 24 July 2003, § 37) and in the absence of any reasons provided by the Government for such differences in treatment, the selective application of the requirement to submit such a plan had sufficiently demonstrated that they had been discriminated against.

The applicants further argued that the decisions of 3 and 9 June 2005 had been formally issued in the name of the Mayor of Warsaw. They referred to the interview given by the Mayor in May 2005 in which he had stated that he would ban the assemblies irrespective of what the organisers had submitted in their requests for permission. They submitted that it could not be reasonably concluded that there had been no link between the statements of such a nature made by the Mayor at the time when the proceedings concerning the assemblies had already been pending before the municipal

authorities and the decisions subsequently given in his name. They emphasised that the practical outcome of the proceedings in their case had been consistent with the tenor of the Mayor's statements.

The applicants observed that the Government's argument about the lack of a causal link between the opinions publicly expressed by the Mayor and the administrative decisions given in his name amounted to implying that at the relevant time decisions had been issued in the Mayor's office with no regard to his opinions expressed publicly in his capacity as head of the municipal administration. The applicants reaffirmed their position that in fact the contested link had existed.

The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Joins to the merits the Government's preliminary objections;

Declares the application admissible, without prejudging the merits of the case.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President