



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

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FIRST SECTION

Application no. 10103/20
SIEĆ OBYWATELSKA WATCHDOG POLSKA
against Poland
lodged on 5 February 2020
communicated on 13 September 2021

STATEMENT OF FACTS

The applicant, Sieć Obywatelska Watchdog Polska, is a non-governmental organisation with its seat in Warsaw. It is represented before the Court by Mr A. Kuczyński, a lawyer practising in Warsaw.

A. The circumstances of the case

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

The applicant NGO was founded in 2003 with the aim of enhancing transparency in the public domain and raising awareness of good governance and accountability of power in Poland.

On 6 July 2017 the applicant NGO asked the Constitutional Court to disclose information concerning a list of professional meetings held by Judge J.P., the President of the Constitutional Court and Judge M.M., the Vice-president of the Constitutional Court, after 1 January 2017. The applicant NGO also asked for records of all people coming in and out of the Constitutional Court's building from 1 January 2017.

On 9 August 2017 the applicant NGO was informed by the Constitutional Court's press office that the meetings calendar was not an official document and did not constitute public information pursuant to the provisions of the act on Access to Public Information (*ustawa o dostępie do*

informacji publicznej). Moreover, the Constitutional Court did not keep records of people entering and leaving the building and therefore such information could not be provided.

On 7 September 2017 the applicant NGO lodged a complaint with the Warsaw Regional Administrative Court alleging inactivity on the part of the Constitutional Court. It further asked the court to oblige the President of the Constitutional Court to provide the requested public information.

On 23 January 2018 the Warsaw Regional Administrative Court dismissed the applicant's complaint. The court held that the calendar of meetings of the President and Vice-president of the Constitutional Court, in so far as it related to the performance of their professional duties, did not constitute public information. Such a calendar of meetings was not an official document: it was an internal, office document used to organise work and did not prescribe courses of action for the Constitutional Court. Moreover, according to the case-law of administrative courts, a visitors' logbook recording people entering and leaving the building did not relate to the operation of the Constitutional Court and as such did not include public information.

The applicant NGO lodged a cassation appeal relying, in particular, on the provisions of the Polish Constitution and on Article 10 of the Convention.

On 18 June 2019 the Supreme Administrative Court dismissed the cassation appeal. The court concurred with the legal assessment of the Regional Administrative Court. It noted that a calendar of meetings and a visitors' logbook were internal documents and did not contain public information relating to the operation of the Constitutional Court. The right of access to public information concerned only information on such activities of the constitutional organs which were directed towards the execution of specific public tasks.

The judgment was served on the applicant's lawyer on 6 August 2019.

B. Relevant domestic law and practice

The act of 6 September 2001 on Access to Public Information provides, in so far as relevant:

Section 1

“1. Any information about public matters shall constitute public information within the meaning of this Act and shall be made available in accordance with the rules and procedures specified by this Act. (...)”

COMPLAINT

The applicant NGO complains, under Article 10 of the Convention, that the domestic authorities' refusal to disclose the requested information amounted to a breach of its right to access information of public interest and that the domestic courts failed to scrutinise properly the refusal in the light of the Convention criteria. In particular, the applicant NGO submits that: (i) the information concerning the calendar of meetings of Judge J.P. was necessary for its exercise of freedom of expression in view of the public interest surrounding the matter of an alleged meeting between Judge J.P. and a certain M.K., the Government's plenipotentiary for secret services in relation to criminal charges against the latter; (ii) the judgment of the Supreme Administrative Court was relevant for the public debate relating to the role and functioning of the Constitutional Court in Poland in view of media reports that the President of that court had participated in meetings with the leaders of the ruling party; (iii) the administrative courts had not examined whether the information requested by the applicant NGO had been of public interest and relevant for public debate.

QUESTION TO THE PARTIES

Has there been an interference with the applicant NGO's freedom of expression, in particular its right to receive and impart information, within the meaning of Article 10 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2 (cf. *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016)?