



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

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FIRST SECTION

Applications nos. 8520/22 and 10335/22
Marek Tadeusz EPLER against Poland
and Marcin Wojciech SKUBISZEWSKI against Poland
lodged on 31 January 2022
communicated on 15 February 2023

SUBJECT MATTER OF THE CASES

The applications concern the interdiction to hold an assembly in the closed zone in the vicinity of Polish-Belarussian border, in which a state of emergency had been announced.

In 2021 hundreds of illegal migrants tried to cross the border and get from Belarus to Poland, apparently with the support of Belarussian authorities. In response to that crisis, on 2 September 2021 the President announced, for a period of 30 days, a state of emergency in several communes along the Polish-Belarussian border. With some exceptions listed in the Ordinance of the Council of Ministers of 2 September 2021, it was forbidden to enter the whole territory encompassed by the state of emergency. It was likewise forbidden, among other things, to organise or hold assemblies or meetings.

As regards application no. 8520/22

The applicant wished to organise an assembly on 17 September 2021 in Usnarz Górny, among other things, to commemorate the victims of the aggression of the Soviet Union on Poland on 17 September 1939, to remind the Polish people that they had been refugees themselves and to stress that the Polish people had a moral obligation to help those in danger of their lives, allowing refugees enter the territory of Poland. It was estimated that some ten persons would participate in the planned assembly. On 14 September 2021 the Mayor of Szudziłowo forbade the assembly reminding the applicant that

a state of emergency had been announced and that the right to organise and hold assemblies had been suspended on the whole territory of the state of emergency.

The applicant's appeal was dismissed by the Białystok Regional Court on 16 September 2021. His further interlocutory appeal was dismissed by the Białystok Court of Appeal on 17 September 2021.

As regards application no. 10335/22

On 9 September 2021 the applicant, a national of Poland and France, declared to the mayor of Terespol that he wished to hold an assembly on 17 September 2021 “to protest against the actions by State authorities that are unlawful and exacerbate the migration crisis”. The expected number of participants, as declared by the applicant, was ten persons. On 13 September 2021 the mayor issued a decision prohibiting the planned assembly. The decision was based on the state of emergency that had been announced along the Polish-Belarusian border. On 15 September 2021 the Lublin Regional Court dismissed the applicant's appeal. The decision was issued by a judge appointed to the court by the President of Poland pursuant to the recommendation of the National Council of the Judiciary (*Krajowa Rada Sądownictwa*, “the NCJ”) as established under the Amending Act on the NCJ and certain other statutes of 8 December 2017 (*ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*; “the 2017 Act”). On 17 September 2021 the Lublin Court of Appeal dismissed the applicant's further appeal.

The applicants complain that the state of emergency was introduced without a legal basis and that their rights under Article 11 of the Convention were violated. In no. 10335/22, the applicant additionally complains that his case was examined by a judicial formation of the ordinary court with newly appointed judge which gave rise to a violation of his right to an “independent and impartial tribunal established by law”, in breach of Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants' freedom of assembly within the meaning of Article 11 § 1 of the Convention?
2. If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

**ADDITIONAL QUESTION IN
no. 10335/22 SKUBISZEWSKI**

3. Was the Lublin Regional Court which dealt with the applicant’s case at first instance on 15 September 2021 (case no. IX GNs 3/21) an “independent and impartial tribunal established by law” as required by Article 6 § 1 of the Convention?

Reference is made to the fact that the applicant’s case was examined at first instance by a judge appointed in the procedure established by the Law of 8 December 2017 Amending the Act on the National Council of the Judiciary. In their replies, the parties are invited to refer to the Court’s judgments in *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022, and *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 205-290, 1 December 2020.