

June 2010

Grzelak v. Poland - 7710/02

Judgment 15.6.2010 [Section IV]

Article 14

Discrimination

Failure to provide a pupil excused from religious instruction with ethics classes and associated marks: *violation*

Facts – The first two applicants, who are declared agnostics, are parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level (1998-2009) because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".

Law – Article 14 in conjunction with Article 9:

(a) *Admissibility*: The complaint was incompatible *ratione personae* with respect to the first and second applicants.

(b) *Merits*: The absence of a mark for "religion/ethics" on the third applicant's school reports fell within the ambit of the negative aspect of freedom of thought, conscience and religion as it might be read as showing his lack of religious affiliation. Article 14 taken in conjunction with Article 9 was therefore applicable. The third applicant had complained of the discriminatory nature of the non-provision of courses in ethics and resultant absence of a mark for "religion/ethics" in his school reports. The Court considered it appropriate to limit its examination of the alleged difference in treatment between the third applicant, a non-believer who was willing but unable to attend ethics classes, and those pupils who attended religious-education classes to the latter aspect of the complaint, namely the absence of a mark. Domestic law providing for a mark to be given for "religion/ethics" on school reports could not, as such, be considered to infringe Article 14, taken in conjunction with Article 9, as long as the mark constituted neutral information on the fact that a pupil had followed one of the optional courses offered at a school. However, a regulation of this kind had also to respect the right of pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack thereof. When reviewing the issue of a mark for "religion/ethics" on school reports, the Constitutional Court had proceeded on the assumption that any interested pupil would be able to follow a class in either of the two subjects concerned and held that an outside observer would thus not be in a position to determine whether a pupil had followed a class in religion or in ethics. However, that analysis, while unquestionable in substance, appeared to overlook other situations which might arise in practice, like that of the third applicant. The absence of a mark for "religion/ethics" would be understood by any reasonable person as an indication that the third applicant had not followed religious-education classes, which were widely available, and that he was thus likely to be regarded as a person without religious beliefs. This finding took on particular

significance in respect of a country like Poland where the great majority of the population owed allegiance to one particular religion. Moreover, from September 2007 onwards, in accordance with the new rule, marks obtained for religious education or ethics were to be included in the calculation of the "average mark" obtained by a pupil in a given school year and at the end of a given level of schooling. The rule might have a real adverse impact on the situation of pupils who, despite their wishes, were not provided with a course in ethics. Such pupils would either find it more difficult to increase their average mark or might feel pressurised – against their conscience – to attend a religious-education class in order to improve their average mark. In sum, the absence of a mark for "religion/ethics" on the third applicant's school certificates throughout the entire period of his schooling had amounted to a form of unwarranted stigmatisation. In those circumstances, the Court was not satisfied that the difference in treatment between non-believers who wished to follow ethics classes and pupils who followed religious classes had been objectively and reasonably justified and that there had existed a reasonable relationship of proportionality between the means used and the aim pursued. The State's margin of appreciation had been exceeded in this matter as the very essence of the third applicant's right not to manifest his religion or convictions under Article 9 had been infringed.

Conclusion: violation (six votes to one).

Article 2 of Protocol No. 1: In Poland religious education and ethics were organised on a parallel basis. Both subjects were optional and the choice depended on the wishes of parents or pupils, subject to the proviso that a certain minimum number of pupils were interested in following any of the two subjects. The system of teaching religion and ethics as provided for by Polish law – as typically applied – fell within the margin of appreciation accorded to States in the planning and setting of the curriculum. Accordingly, the alleged failure to provide ethics classes did not disclose any appearance of a violation of the rights of the first and second applicants under Article 2 of Protocol No. 1.

Conclusion: inadmissible (manifestly ill-founded).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

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