



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

FIRST SECTION

DECISION

Application no. 62360/13
Sławomir SIWY
against Poland

The European Court of Human Rights (First Section), sitting on 9 July 2026 as a Committee composed of:

Raffaele Sabato, *President*,

Frédéric Krenc,

Anna Adamska-Gallant, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 62360/13) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 30 August 2013 by a Polish national, Mr Sławomir Siwy (“the applicant”), who was born in 1971 and lives in Nysa, and who was represented by Mr R. Szymczykiwicz, a lawyer practising in Warsaw;

the decision to give notice of the application to the Polish Government (“the Government”), represented by their Agent, Mr P. Wierdak of the Ministry of Foreign Affairs;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a disciplinary sanction that the applicant, who was a customs officer and head of the customs officers’ trade union (*Związek Zawodowy Celnicy PL*), received for publicly criticising the adoption of a regulation limiting the import quota of duty-free cigarettes.

2. Effective on 1 December 2008, the import quota of duty-free cigarettes that could be taken daily through the State border was limited to 40 cigarettes per person.

3. This limit was set out in an ordinance by the Minister of Finance of 27 November 2008 amending the ordinance on exemptions from excise tax. This ordinance, in turn, had been adopted on the basis of the Act of 23 January 2004 on excise duty (as amended on 7 November 2008), amending the Act on taxes on goods and services and certain other acts (“the 2008 Act”). In particular, section 25(1) of the 2008 Act provided that an exemption from excise duty could follow from provisions of the European Union (EU). Section 25(5) of the same Act authorised the Minister of Finance to determine, by means of an ordinance, the detailed scope of excise duty exemptions.

4. People whose main economic activity and source of income consisted in carrying lawful amounts of duty-free cigarettes through the border organised a protest against this regulation and blocked the Medyka border crossing during the night of 30 November 2008. Stones, bricks and bottles were thrown at the customs buildings. The police were called and they tried to disperse the gathering. The protesters, behaving aggressively, made it difficult for the customs officers to carry out their work.

5. On 2 December 2008 the applicant, in his capacity of head of the trade union, contacted and gave an interview to a local radio station *Radio Rzeszów*.

6. On the same day the first part of the interview was broadcast, wherein the applicant stated that reference to the EU as a source of the restriction was wrong; the EU had left considerable leeway to member States as to the actual number of cigarettes to be allowed to be taken daily through the border. He further stated:

“The Ministry introduced this regulation, so it is now for the Ministry to see to it in some way that the officers report to work. Being in their shoes, I would not have come.”

7. On 3 December 2008 another part of the interview was broadcast. The relevant part of the transcript of the interview reads as follows:

“Applicant (A): I would like to appeal to persons crossing the border ... [and state] that customs officers bear no responsibility whatsoever for the new regulations, they are only carrying out their legal duties, which were not always introduced in a lawful way; I will not make any statement as to the well-foundedness of the new provisions.

Journalist (J): But still you are in favour of the cigarette-carriers.

A: I only challenge the manner in which these provisions were introduced. Article 217 of the Constitution says expressly that all taxes should be introduced by way of a statute. ... [I]t is not my only point. The public should not be misled that it was ordered by the European Union. ... [The directive] ... gives an alternative: 200 [cigarettes] or 40; it is the State’s choice. ...

J: If you say that these regulations were introduced in an unlawful manner, it means, whatever you say, that you support the carriers.

A: I support the principles of the democratic State [and the] rule of law, realising social justice principles; I have just quoted the Constitution.”

8. On the same day the same station broadcast an official statement prepared by the customs officers' trade union stating that the union did not support the carriers' protest, but reiterated the argument that the restrictions had not been introduced using an appropriate legislative procedure.

9. As certain press publications had suggested that the customs officers supported the protest, the applicant sent an email to the radio station, asking that such suggestions not be made and that a rectification be broadcast.

10. In April 2009 the disciplinary spokesperson (*Rzecznik dyscyplinarny*) instituted an inquiry into whether the applicant had committed the disciplinary offence of neglecting his duties and improper behaviour as a public officer.

11. The disciplinary spokesperson subsequently requested the discontinuation of those proceedings, considering that it had not been demonstrated that the applicant had breached his professional duties.

12. On 12 May 2009 the head of Opole customs office (*Naczelnik*) disagreed with that assessment and instituted disciplinary proceedings against the applicant for public incitement of the customs officers not to report to work and for publicly challenging the Polish legal system and the lawfulness of the regulations concerned. This conduct was qualified as a breach of the customs officer's obligations set out in subsections (1) and (5) of section 32(1) of the 1999 Customs Service Act, as in force at the material time, to act in compliance with the professional oath and to behave with dignity in and out of service.

13. During the proceedings before the head of the customs service (*Szef służby celnej*; hereafter "the authority"), the content of the applicant's statements was established on the basis of the transcript of the radio broadcast and the audio recording of the applicant's interview as aired. The disciplinary spokesperson, the applicant (represented by a lawyer of his choice) and the deputy head of the customs officers' trade union (who was temporarily acting in the applicant's defence) were also heard. The authority read out the relevant submissions of the journalist who was the author of the radio programme in question, obtained for the purposes of separate proceedings. The spokesperson and the applicant asked that no fault should be found.

14. On 16 February 2010 the authority found that the applicant was at fault for breaching his duties to conduct his professional tasks in a diligent manner and to preserve the reputation of the customs service. The applicant received a reprimand with an admonishment (*nagana z ostrzeżeniem*). The authority established that the applicant had actively sought to communicate his statements to the media and that he had authorised the excerpts emitted by the radio programme. Thus, the applicant had challenged the lawfulness of the amendments regarding the import quota of duty-free cigarettes, thereby disseminating (and never rectifying) false information, as it was well-known that the amendments in question had been adopted on the basis of a ministerial ordinance authorised by the 2008 Act. The authority observed that the

applicant had thus undermined the lawfulness of the new regulation, the validity of the customs authorities' actions and the good image of the customs service. Moreover, his statements on the radio might have escalated the already tense situation at the border crossing. The authority stressed that while the applicant was head of the customs officers' trade union, he was still an active customs officer bound by the restrictions to publicly manifest political views to which he had agreed on taking up his job with the customs service. To assess the severity of the sanctions to be imposed on the applicant, the authority took into consideration, among other things, that the applicant had made his statements in a tense situation and that he had not received any prior disciplinary sanction.

15. The applicant appealed, arguing, among other things, that he had made the impugned statements solely as the head of a trade union and, thus, outside of his service as a customs officer. This is why he could not be considered at fault for breaching his professional duties. He also stressed that he had not challenged the legal system itself, but had only commented on the procedure in which the regulation had been adopted.

16. On 18 March 2011 the authority upheld the contested decision. It observed, among other things, that the applicant had the status of both head of a trade union and active customs service officer. He had questioned the lawfulness of the applicable law provisions and, thus, the foundations of the functioning of the customs service. In doing so, he had breached his professional duty – which existed whether he was in or out of service – to act in a manner that protected the good image and reputation of the service and the honour and dignity of the officer. His statements did not concern the workers' employment, economic or social affairs that would fall within the mandate of a trade union. The authority considered that the applicant, in any event, was a public figure, owing to his public activity as the head of the trade union. Moreover, the disciplinary proceedings were not aimed at paralysing his work within the trade union, but rather at clarifying where the line was between, on the one hand, the diligent monitoring and constructive criticism of the service and, on the other hand, its reputation. Lastly, it observed that the applicant's statements had in fact supported the protesters who were against the new regulation. Contrary to what the applicant argued, such conduct might have aggravated and not mitigated the situation. Given that the applicant had experience in speaking to the media, he should have thus known that, despite his intention to protect the customs officers, his statements might have had a negative effect on the situation at the border crossing.

17. The applicant appealed.

18. On 8 December 2011 the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) dismissed the applicant's appeal. The court reiterated that customs officers had professional duties under the Customs Service Act. Specific regulations concerning the activity of the customs service, the importance of the customs officers' tasks and their

professional responsibility thus justified the institution of disciplinary proceedings where they failed to abide by their duties. The court observed that the applicant had had no mandate to present in public his views on the alleged unlawfulness of the applicable provisions or of acts of public powers. He could have addressed those concerns to his superiors through official channels, which was required also by the principle of loyalty. Moreover, the legislature had restricted customs officers' rights, such as the rights to strike and to publicly manifest their political views, having regard to their role. A public challenge of the legal basis of acts related to the customs services could negatively affect the image of that service. The situation of an aggressive protest at the border crossing, while possibly very difficult, had not justified an agent of public services' making a negative public statement. The sanction imposed on the applicant was therefore considered fully justified.

19. The applicant appealed, relying on, *inter alia*, Article 10 of the Convention and on Article 54 of the Constitution, which guaranteed freedom of expression.

20. On 15 March 2013 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) dismissed the applicant's appeal, upholding the findings of the lower court.

21. The court stressed that the essential legal issue was whether the applicant's public statement fell within the notion of the exercise of rights conferred on a trade union. As the head of a trade union, when exercising his right to criticise, he had to remain within the limits laid down by law. Under the applicable laws, trade unions had a right to publicly express opinions on bills concerning the tasks of trade unions, but no legal provision conferred on trade union officials a right to comment on tax legislation concerning all citizens or on issues of public interest. Furthermore, the applicant should have realised that the interview would have a big impact, as it was to be broadcast to the general public. Freedom of expression was a fundamental value to the rule of law, but not an absolute value. The criticism expressed by the applicant had no legal basis and could not therefore be accepted.

22. Before the Court, the applicant complained under Article 10 of the Convention that his disciplinary sanction had breached his right to freedom of expression.

DOMESTIC LEGAL FRAMEWORK

23. The professional duties of customs officers were set out in section 32 of the 1999 Customs Service Act (*Ustawa o Służbie Celnej*), as in force at the material time. A customs officer was obliged, in particular, to comply with the obligations associated with the oath taken and behave with dignity in and out of service.

24. The rules on the disciplinary liability of customs officers breaching their official duties were laid out in sections 62 and 63 of the same Act. The

possible disciplinary sanctions were admonishment; reprimand; reprimand with admonishment; demotion to a lower position or downgrading of a service rank; a ban on increasing the rank for two years or on holding managerial positions for two years; and expulsion from the customs service.

25. Under section 19(4) of the Act of 23 May 1991 on trade unions (*Ustawa o związkach zawodowych*), as in force both at the relevant time and at present, trade unions have the right to express their opinions publicly on the underlying principles and the drafts of certain types of legal acts in the mass media, including radio and television.

THE COURT’S ASSESSMENT

26. The general principles for balancing the necessity of an interference with the exercise of freedom of expression were summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) and, more recently, in *Halet v. Luxembourg* ([GC], no. 21884/18, § 110, 14 February 2023). The general principles specific to the exercise of freedom of expression by the members of law enforcement who are also trade union members were set out in *Szima v. Hungary* (no. 29723/11, §§ 25-30, 9 October 2012).

27. In the present case, it is undisputed that the disciplinary decision finding the applicant at fault and sanctioning him for unethical conduct constituted an interference with his rights guaranteed by Article 10 of the Convention.

28. In the light of the legal framework described above (see paragraphs 23 and 24 above), the Court finds that the interference was prescribed by law and pursued legitimate aims of maintaining public trust in the State and preventing disorder by avoiding escalation of the protest at the border crossing.

29. As to whether the interference was proportionate to the legitimate aim pursued and whether the grounds given by the disciplinary authorities and courts were relevant and sufficient, the Court observes the following.

30. The applicant received punishment for his public criticism of the regulation limiting the import quota of duty-free cigarettes and for relying on inaccurate, or at least imprecise information as to the related legislative process, while having two roles, that of active customs officer and leader of the customs officers’ trade union.

31. The domestic authorities and courts assessed, on the basis of comprehensive evidence, the content of the applicant’s radio interview (see paragraph 13 above) and the context in which it had been aired, specifically the on-going violent protests at the border crossing (see paragraphs 14, 16 and 18 above).

32. They extensively examined the case within the context of the trade union (contrast, *mutatis mutandis*, *Straume v. Latvia*, no. 59402/14, § 105, 2 June 2022), although they ultimately concluded that the applicant’s

statements did not fall within the legitimate scope of trade union-related activities (see paragraphs 16 and 21 above; compare *Szima*, cited above, § 31). They thus gave due consideration to, but ultimately rejected, the applicant's arguments that he had been acting out of service, solely as head of the trade union, and that he had only been defending the customs officers threatened by the protesters (see paragraph 15 above). The disciplinary decisions, which were unanimous in all instances, were based on the premise that the applicant had had a duty of loyalty and restraint and a heightened level of responsibility for his statements, given that he had been at the same time an active customs officer and a public figure, being a trade union leader with experience in talking to the media (see paragraphs 14, 16, 18 and 21 above).

33. In this connection, the Court reiterates that the exercise by members of a State's uniformed services or administration of the rights protected by both Articles 10 and 11 may be subject to the possible imposition of lawful restrictions (see *Szima*, cited above, §§ 31 and 32, and *Rekvényi v. Hungary* [GC], no. 25390/94, § 43 *in fine*, ECHR 1999-III). The right to freedom of expression certainly pertains to all, including customs officers (see, *mutatis mutandis*, *Szima*, cited above, § 31 *in fine*). The "duties and responsibilities" referred to in Article 10 § 2 of the Convention assume, however, a special significance which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim (see *Rekvényi*, § 43 *in fine*, and *Szima*, § 26, both cited above).

34. The Court accepts the assessment made by the domestic authorities and courts to the effect that the applicant could have voiced any concerns about the safety of the customs officers through official internal channels (compare, *mutatis mutandis*, *Straume*, cited above, § 109). He should have also refrained from making or should have restrained his public statements, because, in addition to the professional and ethical obligations of loyalty and discretion that the applicant had accepted when he had entered the service, there was a real risk of escalation of the already tense situation at the border crossing (see paragraphs 14 and 18 above).

35. Lastly, the Court also attaches importance to the fact that the applicant's value judgment regarding the alleged unlawfulness of the limitation placed on imported duty-free cigarettes, while enjoying as such a high level of protection under Article 10 (see, *Szima*, cited above, § 32), was based on inaccurate, or at least insufficiently nuanced information (contrast, *mutatis mutandis*, *Straume*, cited above, § 108). It is not disputed that an act of Parliament (the 2008 Act) delegated to the minister the power to issue an ordinance specifying the number of cigarettes that could be imported without tax and that the newly introduced quota was also compliant with the applicable EU law (see paragraphs 7 and 14 above). The applicant himself stressed during the interview in question that his criticism did not concern the

content of the regulation but only the legislative process leading up to its adoption (see paragraph 7 above). In this context, the Court accepts the conclusion of the domestic authorities that the applicant breached the professional and ethical obligation to act diligently, to disseminate true information and to have good knowledge of the legal framework pertaining to the customs service (see paragraphs 14 and 16 above).

36. Overall, the Court considers that the applicant could legitimately be expected to bear the duties of loyalty, restraint and diligence owing to his two roles as active customs officer and trade union leader. The grounds relied on by the authorities and the courts in the proceedings under review were thus relevant and sufficient. Lastly, given that the sanction that the applicant received was of disciplinary (not criminal) nature and was the third least severe form of discipline under the law (see paragraph 24 above), it cannot be regarded disproportionate in the circumstances.

37. It follows that the interference complained of was proportionate to the legitimate aim pursued and, accordingly, was “necessary in a democratic society”.

38. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 September 2026.

Liv Tigerstedt
Deputy Registrar

Raffaele Sabato
President