

APPLICATION/REQUÊTE N° 16810/90

Filip REYNTJENS v/BELGIUM

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DECISION of 9 September 1992 on the admissibility of the application

DÉCISION du 9 septembre 1992 sur la recevabilité de la requête

Article 5, paragraph 1 (b) of the Convention *Person held at a police station for several hours for an identity check. Measure justified to secure fulfilment of an obligation prescribed by law*

Article 8, paragraph 1 of the Convention *The obligation to carry an identity card and to show it to the police whenever requested does not constitute an interference with the right to respect for private life in so far as the document does not contain any information relating to private life*

Article 26 of the Convention *To exhaust domestic remedies the person concerned must have raised before the national authorities, at least in substance, the complaint he puts before the Commission*

Article 2 of the Fourth Protocol *The obligation to carry an identity card and to show it to the police whenever requested does not constitute a restriction on liberty of movement*

(TRANSLATION)

THE FACTS

The applicant, a Belgian national born in 1952 in Antwerp, is a lecturer in law. He resides in Antwerp.

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

On 25 October 1987, at about 3 p.m., the applicant, who was driving along the public highway, was stopped by police officers who asked him to show them his identity card. On being asked by the applicant why they wanted to see his identity card, the officers explained that it was merely a routine identity check and that he was not suspected of committing an offence. The applicant refused to submit to the identity check, giving his reasons in the following terms: 'I am not carrying my identity card because, as a matter of principle, I refuse to show it to the police on request (Ik ben geen drager van mijn identiteitskaart omdat ik uit principiële redenen toch weiger om deze te overhandigen wanneer een politiedienst deze vraagt)'. He was then asked by the officers to accompany them to the police station where he was questioned. The applicant was allowed to leave the police station at about 5.30 p.m. after a record of the interview had been drawn up.

On 7 March 1988 the applicant was summoned to appear in the Antwerp Police Court for contravening Article 1 of the royal decree of 26 January 1967 on identity cards, which is worded as follows:

'Every Belgian citizen over fifteen years of age must carry an identity card certifying his registration on the population register or, where that card has been lost or destroyed, a certificate issued in accordance with Article 7. This certificate, which can in no circumstances be deemed a substitute for an identity card, shall be valid for a period of one month, which may be extended by the administrative authorities of the municipality where the person concerned has his principal residence.

One or other of the above documents must be shown to the police on request, and whenever a statement is made, a certificate applied for or, in general, when the bearer's identity needs to be established.

One or other of the above documents must also be shown to a bailiff serving a process or any of the persons charged with serving a copy of such process pursuant to Article 37 para. 1 of the Judicial Code.

A contravention of this provision is normally punished by a fine, pursuant to Article 9 of the decree (1)

In the Police Court the applicant claimed that, in the case of a random identity check carried out without there being any suspicion that a person had committed an offence, the royal decree of 26 January 1967 was in breach of the Population Registers Act of 2 June 1856, the Constitution and the Convention. On 28 June 1988 the Police Court accepted this argument, in part, and refused to apply the impugned royal decree in the case before it, on the ground that it infringed Article 5 of the Convention, an international legal instrument taking precedence over Belgian laws and decrees. It gave the following reasons for its decision:

Onderzocht dient te worden of het K.B. op de identiteitskaart niet strijdig is met artikel 5 van het E.V.R.M. dat de persoonlijke vrijheid garandeert. Bij een identiteitscontrole is inderdaad van een vrijheidsberoving sprake vermits de gecontroleerde enige tijd staande gehouden of medegenomen wordt naar het politie- of rijswachtbureau voor verdere controle. Derhalve stelt zich de vraag of een korte vrijheidsberoving kadert in de geest van artikel 5 van het E.V.R.M.

De thesis dewelke de Europese Commissie desbetreffende aankleeft is dat een korte vrijheidsberoving verenigbaar kan zijn met artikel 5 van het E.V.R.M. op voorwaarde dat de wetgeving dewelke tot de vrijheidsberoving voorziet met een bijzondere en specifieke doelstelling werd uitgevaardigd (men denke bv. aan de bestrijding van het terrorisme).

Welnu, de reglementering op de identiteitskaart in België is veel te algemeen daar zij in artikel 1 van het Koninklijk Besluit bepaalt dat de identiteitskaart moet worden voorgelegd bij *elke* vordering van de politie.

Bovendien weze opgemerkt dat uit een rechtsvergelijkend oogpunt kan worden vastgesteld dat in de ons omringende democratische samenlevingen een dergelijke reglementering onbestaande is.

[Translation from French text]

The court must consider whether or not the royal decree on identity cards is in breach of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees liberty of the person. An

(1) At that time in Belgium two royal decrees concerning identity cards were simultaneously in force: that of 26 January 1967 and a royal decree of 29 July 1985 which introduced a new type of identity card with a view to harmonisation with other European countries. Pending the renewal of all existing identity cards the 1967 royal decree remained in force in respect of bearers of an old style identity card (Article 15 of the Law of 29 July 1985).

identity check does indeed involve a deprivation of liberty, given that the person whose identity is being checked is detained for a brief period or taken to the police station for a further check

The question consequently arises whether this brief deprivation of liberty is consonant with the spirit of Article 5 of the Convention

The European Commission's own position on this question is that a brief deprivation of liberty may be compatible with Article 5 of the Convention, provided that the legislation providing for that deprivation of liberty has been promulgated for a specific purpose (the prevention of terrorism, for example)

In the present case the regulations on identity cards in Belgium are much too general, since under Article 1 of the royal decree an identity card must be shown *whenever* the police ask to see it

It should also be observed looking at the matter from the comparative law point of view, that it can be shown such regulations do not exist in neighbouring democratic countries

On appeal by the prosecution the Antwerp Criminal Court, sitting as an appeal court, gave judgment on 31 August 1988, ordering the applicant to pay a fine of BEF 1,500, suspended for one year. The Criminal Court first pointed out that Article 5 of the Convention concerned only deprivation of liberty by arrest or detention. Examining the case from the standpoint of Article 8 of the Convention it held as follows

'Overwegende dat eveneens artikel 8 E V R M waarin het recht van een ieder op eerbiediging van zijn prive- en gezinsleven is vastgelegd de inmenging van het openbaar gezag in de uitoefening van dat recht toestaat wanneer ze bij de wet voorzien is en in een democratische samenleving nodig is onder meer voor de bescherming van de openbare veiligheid de openbare orde en het voorkomen van strafbare feiten (Cass nr 1986 7 okt 1981 Cass nr 7913 24 mei 1983)

Overwegende dat het nieuwe K B van 29 juli 1985 betreffende de identiteitskaarten (Belg Stbl 7/9/1985 12811) eveneens uitdrukkelijk verwijst naar de wet van 2 juni 1856, dat overeenkomstig artikel 15 van het nieuw K B het K B van 26 januari 1967 betreffende de identiteitskaarten gewijzigd bij het K B van 30 juni 1981, ten aanzien van de houders van een identiteitskaart als bedoeld in dat besluit van kracht is tot dat de identiteitskaarten volledig vernieuwd zijn,

Dat dit nieuw K B zijn oorsprong vindt in het Europees Akkoord betreffende het stelsel inzake het personenverkeer tussen de Lid Staten van de Raad van

Europa, ondertekend te Parijs op 13 december 1957 (Annuaire Europeen, V, 382) en in de resolutie 77 (26) van 28 september 1977 van het Ministercomité van de Raad van Europa betreffende de invoering en de harmonisatie van de nationale identiteitskaarten. Dat de resolutie onder meer steunt op de overweging dat de onderdanen van de Lid-Staten vaak hun identiteit en nationaliteit moeten aantonen zowel in het prive-verkeer als ten overstaan van hun nationale overheden, (zie L Huybrechts, O c k 1176),

Dat het verkeer binnen Europa vergemakkelijkt wordt door een geharmoniseerd document (zie E E G -resolutie van 29 06 1981),

Overwegende dat uit geen enkel element van het strafdossier blijkt dat de identiteitscontrole in casu door de verbaliserende rijkswachter t a v beklaagde 'willekeurig' en tergend zou zijn geweest, dat beklaagde niet in het bezit werd bevonden van zijn identiteitskaart '

[Translation from French text]

"Whereas, moreover, Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees to everyone the right to respect for his private and family life, authorises interference by a public authority with the exercise of that right when such interference is in accordance with the law and is necessary in a democratic society in pursuance of aims which include the protection of public safety and the prevention of disorder or crime (Cass No 1986, 7 October 1981, Cass No 7913, 24 May 1983),

Whereas the new royal decree of 29 July 1985 on identity cards (Moniteur belge 7 9 85, 12811) also expressly refers to the Law of 2 June 1856 [and] whereas, pursuant to Article 15 of the new royal decree, the royal decree of 26 January 1967 on identity cards, as amended by the royal decree of 30 June 1981, [remains] in force in respect of the bearers of identity cards issued thereunder until all existing identity cards have been renewed

Whereas this new royal decree has its origin in the European Agreement on regulations governing the movement of persons between member States of the Council of Europe (European Yearbook V, p 382) and Resolution 77 (26) of the Committee of Ministers of the Council of Europe, of 28 September 1977, on the establishment and harmonisation of national identity cards, whereas one of the considerations on which that Resolution is based is that the nationals of a member State must often establish their identity and nationality, both in their private law relations and in their relations with the national authorities (cf L Huybrechts O c k 1176),

Whereas movement within Europe has been facilitated by a harmonised travel document (see EEC resolution of 29 June 1981),

Whereas there is no evidence in the criminal file that when the police carried out the identity check in issue they dealt with the accused in an 'arbitrary' and provocative manner, whereas the accused was found not to be carrying his identity card "

The applicant lodged an appeal on points of law, relying on Articles 5 and 8 of the Convention and Article 2 of Protocol No. 4. In a judgment dated 27 February 1990 the Court of Cassation dismissed the appeal. In response to the applicant's argument that the decree was unlawful because there was no link between it and the law on which it was based and that the Crown had therefore exceeded its powers, the Court of Cassation held, *inter alia*, that the basis for the royal decrees on identity cards was the Law of 2 June 1856, Article 4 of which was intended to make it possible, by keeping accurate population registers, to keep a check on where Belgian citizens and aliens present in Belgium lived and to establish with precision their successive places of residence. The court further held that by authorising police officers to ask to see identity cards the royal decrees in question had established a simple and practical way of discovering gaps and inaccuracies in statements concerning the information recorded in the population registers.

COMPLAINTS

1 Before the Commission the applicant submits that he was detained for more than two and a half hours on the ground that he had refused to show his identity card to the police and that this detention did not fall within any of the categories of arrest or detention authorised by sub paragraphs 1 (a) to 1 (f) of Article 5 of the Convention. He asserts, *inter alia*, that when he was asked to show his identity card he was not suspected of having committed an offence.

2 The applicant further maintains that an identity check carried out without a specific legitimate reason, as in the present case, and the recording of information following such an identity check constitute interference with the right to respect for one's private life, guaranteed by Article 8 of the Convention. Although such interference is in accordance with the law, it is by no means 'necessary in a democratic society', as paragraph 2 of that provision requires for such interference to be justified. He notes that among the objectives justifying interference set out in paragraph 2 of Article 8 the only one which could be held to apply to identity checks is 'the prevention of crime'. However, according to the preamble to the 1967 royal decree and the case-law on this question, the aim of the obligation to carry an identity card is to make it possible to verify the accuracy of the information recorded in the population registers. Having regard to this alleged aim, it cannot be maintained that the organisation of identity checks is a measure necessary for 'the prevention of crime'.

The question also arises in what way random identity checks contribute to the prevention of crime', especially in view of the fact that of sixteen member countries of the Council of Europe in respect of which the applicant has been able to obtain information on this point only four (Denmark, Greece, Portugal and Spain) have, like Belgium, rules requiring their citizens to carry identity cards at all times

3 The applicant further asserts that the obligation to carry an identity card and to show it to the police whenever requested to do so infringes the right to liberty of movement guaranteed by Article 2 of Protocol No 4. He submits that a person not carrying his identity card is prevented from visiting places where there are frequent identity checks. Moreover, stopping somebody travelling on the public highway for an identity check constitutes an impediment to the liberty of movement, even though the impediment concerned lasts only a few minutes. Lastly, the mere possibility of being detained when not carrying one's identity card is also an impediment to the liberty of movement.

4 Lastly, the applicant complains of a violation of Article 18 of the Convention. He submits that the way identity checks are carried out constitutes an abuse of authority, since they are used for a purpose they were not intended to serve. He maintains that identity checks are used as general policing measures, whereas, according to the preamble to the 1967 royal decree and case law on this question, the purpose of the obligation to carry an identity card is to enable the accuracy of information recorded in the population registers to be verified. Some identity checks, in fact, are carried out outside office hours, making it impossible to consult the registers.

THE LAW

1 Relying on Article 5 of the Convention, the applicant complains that he was detained by the police for more than two and a half hours on the ground that he had refused to show them his identity card. He maintains that this detention did not fall within any of the categories of arrest or detention set out in sub paragraphs 1 (a) to 1 (f) of Article 5 of the Convention.

The Commission recalls that Article 5 para. 1 (b) authorises deprivation of liberty in the case of

'the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law

The question arises whether the applicant was deprived of his liberty in the present case (cf. No. 8819/79, Dec. 19.3.81, D.R. 24 pp. 158-161). However, the Commission does not consider it necessary to examine that question, since, even if he

was, the deprivation of liberty involved would have fallen into one of the categories authorised by the Convention for the reasons set out below.

In the present case the applicant was taken to the police station after refusing to submit to an identity check. As the applicant himself admits, the obligation to carry one's identity card and to show it to the police for identification purposes when requested to do so is an obligation prescribed by law. The Commission considers that this obligation is sufficiently concrete and specific to be covered by Article 5 para 1 (b) of the Convention. In this case the Commission is of the opinion that in view of the need to secure the immediate fulfilment of the applicant's legal obligation and the short duration of the applicant's detention at the police station it is possible to conclude that a fair balance was struck between the need to secure fulfilment of that obligation and the right to liberty (cf. No. 10179/82, Dec. 13.5.87, D.R. 52 p. 111).

Consequently, in connection with this complaint there is no appearance of a violation of the Convention, and this part of the application must be rejected as manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.

2. Relying on Article 8 of the Convention, the applicant complains of unjustified interference with the exercise of his right to respect for his private life. He submits that an identity check carried out without a specific legitimate reason and the recording of information following such an identity check are by no means measures necessary in a democratic society, as paragraph 2 of that provision requires for such interference to be justified.

Article 8 guarantees *inter alia*, the right to respect for one's private life.

In this case the Commission considers that the obligation to carry an identity card and to show it to the police whenever requested to do so does not as such constitute an interference in a person's private life within the meaning of Article 8 of the Convention. It notes that under the legislation applicable to identity cards these may not carry any information other than the bearer's name, forenames, sex, date and place of birth, and main address and his spouse's name and forenames where appropriate. They may also carry, if the bearer submits a written request to that effect, his identification number on the National Population Register and the name and forenames of his deceased or former spouse. The Commission accordingly takes the view that an identity card does not contain information relating to private life, in so far as the identification number in the national register appears therein only if the bearer of the identity card submits a request to that effect in writing (cf. No. 10473/83, Dec. 11.12.85, D.R. 45 p. 121). In the absence of any special circumstance warranting a reappraisal of this general consideration, the Commission considers that examination of this complaint in the form in which it has been submitted by the applicant reveals no interference in his private life within the meaning of Article 8 of the Convention.

It follows that in this respect the application must be rejected as manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

3 The applicant further asserts that the obligation to carry an identity card and to show it to the police whenever requested to do so infringes the liberty of movement guaranteed by Article 2 of Protocol No 4

That provision is worded as follows

"1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence

2 []

3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

4 []

Referring to the considerations set out under 2 above, the Commission considers that, except where there are special circumstances not found in this case, the mere obligation to carry an identity card and to show it to the police whenever requested to do so does not constitute a restriction of the liberty of movement

It follows that this complaint, in the form in which it has been submitted, must be rejected as manifestly ill founded pursuant to Article 27 para 2 of the Convention

4 Lastly, the applicant complains of a violation of Article 18 of the Convention, on the ground that identity checks are used for a purpose they were not intended to serve

Article 18 of the Convention is worded as follows

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed "

However, under Article 26 of the Convention, The Commission may only deal with [a] matter after all domestic remedies have been exhausted according to the generally recognised rules of international law

In this case the applicant did not raise this complaint, either formally or even in substance, during the proceedings in the Court of Cassation. In particular, the fact that the applicant maintained that the royal decree of 26 January 1967 was unlawful because there was no link between that decree and the law on which it was based does not mean that the applicant raised, in substance, his complaint relating to Article 18 of the Convention (cf., *mutatis mutandis*, No. 11425/85, Dec. 5 10 87, D.R. 53 p. 76).

It follows that in respect of this complaint the applicant has not satisfied the exhaustion of domestic remedies requirement and that this part of his application must be rejected pursuant to Article 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.