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

FOURTH SECTION

DECISION

Application no. 76856/12
Zbigniew DWORZECKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 May 2016 as a Committee composed of:
Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*
Having regard to the above application lodged on 20 November 2012,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zbigniew Dworzecki, is a Polish national, who was born in 1960 and lives in Bristol, United Kingdom.

A. The circumstances of the case

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

Facts and proceedings before the domestic authorities

3. The applicant, a professional driver, had lived in the United Kingdom for 4 years and bought there a passenger vehicle. The steering wheel of the car was positioned on the right-hand side. In 2008 the applicant temporarily moved to Poland.

4. On 19 August 2008 he submitted a motion to the Ministry for Infrastructure, asking for permission to register in Poland his car with the steering wheel positioned on the right-hand side of the vehicle.

5. On the basis of the relevant provisions as they stood at the relevant time, it was generally not allowed to register a car with a steering wheel on the right-hand side in Poland unless a special permission was issued by the Minister for Infrastructure.

6. On 10 November 2008 the Minister for Infrastructure refused the applicant's request reasoning his decision primarily by safety arguments and holding that it was not safe to drive such a car on Polish roads.

7. On 26 November 2008 the applicant filed an appeal against the decision arguing that there were many cars with the steering wheel on the right-hand side on Polish roads. He also claimed that it was up to the driver to perform all the manoeuvres safely. He underlined that he was an experienced driver who would not represent any risk to safety on the road.

8. On 2 February 2009 the Minister for Infrastructure upheld the decision of 26 November 2008, maintaining the previous reasoning. He added that because a great number of cars with the steering wheel on the right-hand side had been brought to Poland, it was warranted so as to guarantee road safety, to limit the possibility of obtaining acceptance to registration of such vehicles.

9. On 9 March 2009 the applicant appealed against the above decision to the competent court. He argued that the Minister for Infrastructure looked at the case only from the general perspective, not regarding the particular circumstances.

10. On 24 June 2009 the Warsaw Administrative Court upheld the decision. The court observed that a car with the steering wheel on the right-hand side represented real danger for right-hand traffic. It further found that it was in the general interest of society to protect life of traffic participants and this general interest was more important than the purely economic interest of the applicant. According to the court, the applicant was willing to create two workplaces for drivers and use his car to perform carriage in Great Britain and France. The court underlined that the law of the European Union did not establish consistent procedures of performing technical checks in every member state and that member states were allowed to limit free movement of goods if it was essential to protect public safety.

11. On 15 October 2009 the applicant filed a cassation appeal. He argued that the Warsaw Administrative Court's findings concerned another case because he had not claimed that he was going to create workplaces or to perform carriage. He stated that, moving back to Poland, he brought his car with him as his property, previously bought during his permanent stay in Great Britain; that he was a professional driver and that he was going to drive his car between Poland and Great Britain.

12. On 21 September 2010 the Supreme Administrative Court quashed the first-instance court judgment and remitted the case finding that, indeed, the administrative court's reasoning did not concern the applicant's case.

13. In the resumed proceedings, on 17 December 2010 the Warsaw Administrative Court upheld the decision of the Minister for Infrastructure of 2 February 2009. The applicant did not provide a copy of this judgment.

14. On 21 February 2011 the applicant filed a cassation appeal arguing that the Warsaw Administrative Court unlawfully preferred public interest over the just interest of the applicant. He also stated that the court did not take into consideration that he was an experienced driver and his driving skills were sufficient to accommodate easily to right-hand or left-hand traffic. He further argued that the Minister for Infrastructure failed to fulfil its obligations under the provisions of Council Directive 70/331/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers and the provisions of Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers.

15. On 23 May 2012 the Supreme Administrative Court dismissed the cassation appeal holding that according to section 67 (1) of the Road Traffic Law, the Minister for Infrastructure was authorised to decide whether or not to allow the registration of a vehicle with the steering wheel on the right-hand side. The court underlined that Article 34 of the Treaty on the Functioning of the European Union did not establish the obligation to register in Poland a vehicle equipped as mentioned above and that Article 36 of the Treaty stated that the provisions of Article 34 did not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public policy, public security and protection of health and life of humans. The court underlined that road safety was one of the principal values that should be protected in order to maintain public interest and it could justify restrictions on free movement of goods.

16. The applicant's complaint was submitted to procedure before the European Commission.

17. On 20 March 2014 the Court of Justice of the European Union declared (in decision no. C-639/11) that by making registration in its territory of passenger vehicles which have their steering equipment on the right-hand side ... dependent on the repositioning of the steering wheel to the left-hand side, the Republic of Poland failed to fulfil its obligations under Article 2a of the Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ English Special Edition 1970 (II), p. 375), under Article 4(3) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1), and under Article 34 Treaty on the Functioning of the European Union.

B. Relevant domestic law and practice

18. Section 67 (1) of the Road Traffic Law of 22 June 1997 *(Prawo o ruchu drogowym)* provides that in individual and justified cases the Minister of Transport may allow for exception from technical conditions set for vehicles.

19. Section 68 of the Road Traffic Law provided at the relevant time that the manufacturer or importer of a new motor vehicle was to be required to obtain, for each new type of vehicle, an approval certificate issued by the Minister for Transport, except where the manufacturer or importer has obtained an approval certificate issued, in accordance with the European Community type-approval system, by the competent authority of a Member State of the European Union. This provision was repealed by the Act of 22 October 2012 with effect of 22 June 2013.

20. Paragraph 9 (2) of the Regulations of the Minister for Infrastructure of 31 December 2002 concerning the technical conditions applicable to vehicles and the extent of their essential equipment, at the relevant time provided as follows:

> "The steering wheel of a vehicle with more than three wheels, the construction of which allows it to reach a speed in excess of 40 km/h, shall not be positioned on the right-hand side of the vehicle."

21. The latter regulation was amended with effect of 15 August 2015 and allowed, under specified conditions, the positioning of the steering wheel of a vehicle on the right-hand side.

COMPLAINTS

22. The applicant complained under Article 1 of Protocol No. 1 to the Convention about a violation of his right to protection of property. According to the applicant, the influence of the steering wheel's position on the traffic safety is minimal, because it depends mainly on the driver's skills. The Minister's argument, justifying his decision, that too many cars having the steering wheel on the right-hand side had been already registered, was not based on the law.

23. He further stated that individuals permanently residing in Poland were discriminated against because their situation is worse than that of tourists or diplomatic corps members.

THE LAW

A. The applicant's complaint to the European Commission

24. As noted above, the applicant's complaint had been submitted to procedure before the European Commission. On 20 March 2014 the Court of Justice of the European Union gave a decision (see paragraph 17 above).

25. According to the Court's findings in the case of *Karoussiotis v. Portugal*, no. 23205/08, ECHR 2011 (extracts) anyone may lodge a complaint with the European Commission against a member State about any measure (law, regulation or administrative action) or practice which they consider incompatible with a provision or a principle of European Union law. The Court took the view that the European Commission procedure is not similar, in either its procedural aspects or its potential effects, to the procedure in pursuit of an individual application provided for in Article 34 of the European Convention on Human Rights. The Court thus concluded that where the European Commission decides on a complaint by a private individual, this does not constitute a "procedure of international investigation or settlement", within the meaning of Article 35 § 2 (b) of the Convention.

26. The Court does not see any reason to depart from the above approach in the present case. It follows that the Court is competent to examine the present application.

B. Alleged violation of Article 1 of Protocol No. 1

27. The applicant complained that the refusal to register his car in Poland amounted to a violation of his property rights. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of her possessions. No one shall be deprived of her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

28. At the relevant time the domestic provisions required a manufacturer or importer of a new motor vehicle to obtain, for each new type of vehicle, an approval certificate issued by the Minister for Transport. The steering wheel of a vehicle the construction of which allowed it to reach a speed in excess of 40 km/h, could not be positioned on the right-hand side of that vehicle (see paragraphs 20 and 21 above).

29. By refusing the applicant a permission to have his vehicle with the steering wheel positioned on the right-hand side the authorities enforced laws, as in force at the relevant time, it deemed necessary to control the use of property in accordance with the general interest consisting in road safety. Taking into account that a large number of cars with the steering wheel on the right-hand side had been previously brought to Poland, the decision of the Minister for Infrastructure to limit the possibility of obtaining acceptance to registration of such vehicles in the future, can be considered reasonable. The Court is satisfied that the domestic administrative authorities and courts properly and exhaustively reasoned their decisions and addressed the applicant's arguments.

30. Therefore, the Court considers that the interference complained of had a legal basis in the Road Traffic Law. It was undertaken in the general interest, namely road safety and did not impose an excessive individual burden. It was thus not disproportionate.

31. Taking into account the above, the applicant was not deprived of his right to peaceful enjoyment of his possessions, which would constitute a breach of Article 1 of Protocol No. 1 to the Convention. It follows that the complaint under that provision must be declared inadmissible as manifestly ill-founded.

C. Alleged violation of Article 14 of the Convention.

32. The applicant also complained that he was discriminated against because his situation was worse than that of tourists or diplomatic corps members. He relied on Article 14 of the Convention which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

33. However, for reasons stated above (see paragraphs 29-31) the Court considers that the present case raises no separate issue under Article 14 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 26 May 2016.

Fatoş Aracı
Deputy Registrar

Nona Tsotsoria
President