AS TO THE ADMISSIBILITY OF

Application No. 30128/96
by F. S.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 October 1995 by F. S. against Germany and registered on 7 February 1996 under file No. 30128/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1923, is a Dutch national and resident in Doorwerth, the Netherlands. He is a retired consultant by profession. In the proceedings before the Commission, he is represented by Mr. R. Stahl, a lawyer practising in Cologne.

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

In 1986 the Wetzlar Tax Office (Finanzamt) commenced preliminary investigations on suspicion of tax evasion against Mr. M., the applicant's son-in-law, resident in Germany. On 3 September 1986, on the basis of a search warrant issued by the Wetzlar District Court (Amtsgericht) on 18 August 1986, officers of the Wetzlar Tax Office searched Mr. M.'s premises in Büdingen. Several letters addressed to the applicant were found, opened and read, and seized. They contained information about various banking accounts. Thereupon, the banking institutes concerned were requested to submit further information. The appeals lodged by Mr. M. and also the applicant against the search and seizure were to no avail. The Wetzlar District Court, relying on SS. 94 and 98 para. 2 of the Code of Criminal Procedure (Straf-prozeßordnung), confirmed the seizure by order of 9 February 1987. In the ensuing investigations, the documents in question were found to be irrelevant and the originals were returned on 29 January 1990.

Subsequently the Federal Ministry of Finance informed the applicant that it intended to submit information and documents to the Dutch tax authorities on his assets, namely his savings on various banking accounts, as well as his capital income in the Federal Republic of Germany.

On 20 April 1994 the Cologne Tax Court (Finanzgericht) dismissed the applicant's request for an interim injunction (einstweilige Anordnung) prohibiting the Tax Office from disclosing the information in question to the Dutch authorities. The Court found that the German authorities were entitled to forward the information in question pursuant to S. 2 para. 2 of the EC Mutual Administrative Assistance Act (EG-Amtshilfe-Gesetz). According to this provision, German tax authorities could inform the tax authorities of another EC Member State, on their own motion, about matters relevant for the assessment of taxes if there were reasons to assume that taxes in that other State were evaded. In the present case, there were such indications as correspondence regarding the banking accounts concerned had been exchanged via an address where the applicant had not been resident. The Court, having regard to the general aim of the EC Mutual Administrative Assistance Act, namely to support the correct assessment of taxes in the EC Member States, also considered that the German tax authorities were not prevented from forwarding the information which had been lawfully obtained in the context of earlier tax evasion proceedings.

On 17 May 1995 the Federal Tax Court (Bundesfinanzhof) dismissed the applicant's appeal (Beschwerde). The Federal Tax Court confirmed that the Federal Ministry of Finance was entitled to make available to the Dutch tax authorities the information on the applicant's assets and capital income. In particular, the storing of documents on the banking accounts concerned with the applicant's son-in-law in Germany justified the assumption that these documents were withheld from the Dutch authorities for the purpose of evading taxes. Thus the conditions under S. 2 para. 2 of the EC Mutual Administrative Assistance Act were met. Moreover, there were no other impediments to the transmission of the information in question. The information had been lawfully obtained in the context of tax evasion proceedings, and it was irrelevant that these proceedings had been conducted against a third person. In the proceedings under the EC Mutual Administrative Assistance Act the tax authorities were not competent to review the lawfulness of the seizure orders issued by the competent courts. The Federal Tax Court also considered that the intended transmission of information did not entail any breach of the applicant's rights of personal liberty. In this respect, the Court noted that the information did not relate to any business secrets, nor could it disparage the applicant in public. The Dutch authorities were bound to use the information so obtained only for the purposes of tax assessment. Finally, there was no disproportionality as the intended transmission concerned information which the applicant would have had anyway to provide to the Dutch tax authorities.

On 3 July 1995 the applicant informed the Federal Ministry of Finance about his intention to file a constitutional complaint (Verfassungsbeschwerde) with the Federal Constitutional Court (Bundesverfassungsgericht). On 18 July 1995 the Federal Ministry of Finance replied that it had meanwhile transmitted the said information to the Dutch authorities. The applicant's constitutional complaint was received by the Federal Constitutional Court on 19 February 1995. On 12 November 1996 the Federal Constitutional Court refused to entertain the applicant's constitutional complaint.

COMPLAINTS

The applicant complains that the Federal Ministry of Finance

transmitted information concerning his assets and capital income to the Dutch authorities. He considers that there was a breach of his right to respect for his private life under Article 8 of the Convention and of his right to respect for his possessions under Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains that the transmission in question violated his right to respect for his private life under Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8), as far as relevant, provides as follows:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... for the prevention of disorder or crime, ..."

The Commission recalls that the notion of private life is not limited to an "inner circle" in which the individual may live his own personal life as he chooses, but extends to relations with the outside world and may include professional and business activities (cf., mutatis mutandis, Eur. Court HR, Niemietz v. Germany judgment of 16 December 1992, Series A no. 251-B, pp. 33-34, paras. 29-31). Moreover, issues of data protection may come within the scope of Article 8 para. 1 (Art. 8-1) (cf., mutatis mutandis, Eur. Court. HR, Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 22, para. 48).

The Commission therefore finds that the disclosure of information on the applicant's assets and capital income to the Dutch tax authorities amounts to an interference with his right under Article 8 para. 1 (Art. 8-1). Such interference violates Article 8, if it is not justified under paragraph 2 of Article 8 (Art. 8-2) as being in accordance with the law and necessary in a democratic society to achieve one of the aims mentioned therein.

The Commission notes that the transmission of information in question was based upon S. 2 para. 1 of the EC Mutual Administrative Assistance Act. The Cologne Tax Court and the Federal Tax Court confirmed the lawfulness of the impugned measure. The Commission finds that the applicant's submissions do not disclose any non-observance of the relevant legal provisions. Consequently, the interference was in accordance with German law.

The Commission is of the opinion that the measure in question was taken in the interest of the economic well-being of the country, and also aimed at the prevention of crime.

It remains to be examined whether the interference was necessary in a democratic society to accomplish the said aim.

The Commission recalls that, in Article 8 para. 2 (Art. 8-2) as in several other provisions of the Convention, the phrase "necessary in a democratic society" implies the existence of a "pressing social need". The Contracting States enjoy a certain margin of appreciation in assessing whether such a need exists, but this goes hand in hand with a European supervision which covers the basic legislation and the decisions applying it, even those given by an independent court (cf. Eur. Court HR, Barfod v. Denmark judgment of 22 February 1989, Series A no. 149, p. 12, para. 28; Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, pp. 37-38, para. 97).

The Commission must thus determine whether there were relevant reasons for the transmission of the information in question, and whether this measure was, in the particular circumstances of the case, proportionate to the legitimate aims pursued.

In the present case, the Federal Ministry of Finance, on its own motion, transmitted information on the applicant's assets and capital income, which had been lawfully obtained in the context of tax evasion proceedings against the applicant's son-in-law, to the Dutch tax authorities for the purpose of reviewing the applicant's tax assessments. The German authorities found that in the applicant's case there were reasons to assume that he was evading taxes in the Netherlands. The German tax courts also considered the general aim of the underlying legislation, namely to support the correct assessment of taxes in the EC Member States. The Federal Tax Court found no disproportionality as the intended transmission concerned information which the applicant would have had anyway to provide to the Dutch tax authorities.

In these circumstances, the Commission, bearing in mind the current trend towards strengthening international cooperation in the administration of justice (see, mutatis mutandis, Eur. Court HR, Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 45, para. 113; Drozd and Janousek v. France and Spain judgment of 26 June 1992, Series A no. 240, p. 34, para. 110), finds that there were relevant and sufficient reasons for the measure complained of.

Accordingly, the measure complained of can be considered to be justified under Article 8 para. 2 (Art. 8-2) of the Convention.

It follows that this aspect of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has further invoked Article 1 of Protocol No. 1 (P1-1) with regard to the above matter.

The Commission finds that the impugned transmission of the information on the applicant's assets and capital income does not, in itself, amount to any interference with his right to the peaceful enjoyment of his possessions within the meaning of Article 1 para. 1 of Protocol No. 1 (P1-1-1). To the extent that the applicant's submissions could be understood as a complaint about the implication of German authorities in the eventual imposition of taxes in the Netherlands, the Commission observes that, pursuant to paragraph 2 of this provision, the States may enforce such laws as they deem necessary to secure the payment of taxes.

It follows that this part of the application is likewise manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber