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

FIRST SECTION

DECISION

Application no. 78099/14
Krzysztof PASSELLA
against Poland

The European Court of Human Rights (First Section), sitting on 5 December 2024 as a Committee composed of:

Alena Poláčková*, President*,
Krzysztof Wojtyczek,
Artūrs Kučs*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 78099/14) 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 10 December 2014 by a Polish national, Mr Krzysztof Passella, who was born in 1970 and lives in Oświęcim, and was represented before the Court by Ms M. Brzozowska, a lawyer practising in Warsaw;

the decision to give notice of the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention to the Polish Government ("the Government"), represented by their Agent, Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the Government's observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the seizure of the applicant's personal electronic devices by a military jurisdiction in the course of a criminal investigation into allegations of leaking non-public information.

2. The applicant was temporarily employed as a civil servant, working with the Commander-in-Chief of the Polish Task Force in Ghazni,

Afghanistan (*Polski Kontyngent Wojskowy)*. In this capacity, he had received training regarding the protection of NATO and EU classified data.

3. On 15 January 2014, the Head of the National Counter-Intelligence Cell (*Narodowa Komorka Kontrwywiadu*) in Afghanistan filed a crime notice with the Mazowiecki Military Police Unit (*Oddział Żandarmerii Wojskowej*). The authority submitted that the applicant was likely to be transporting electronic devices containing classified information.

4. On the same day, when the applicant boarded a plane to return to Poland, soldiers of the Bagram Military Police Unit of the Polish Task Force in Afghanistan searched the applicant and seized nineteen electronic devices belonging to him including his mobile telephone, personal computer and his external hard drive. The search and seizure were carried out pursuant to a so-called "urgent case procedure" prescribed by Article 308 § 1 of the Code of Criminal Procedure (*Kodeks postepowania karnego*). The unit officers had identified themselves and the applicant, informed the applicant of the purpose of the procedure, and asked him to give up any documents or devices containing or storing any classified information. Given the applicant's refusal, the officers had proceeded to search and seize. The applicant was informed that, he could ask to be served with an *ex post facto* search and seizure warrant within seven days. A report was drawn up by the officers and signed by the applicant.

5. The applicant asked to be served with the relevant search and seizure warrant.

6. On 22 January 2014 the Military Prosecutor (*Prokurator Prokuratury Wojskowej*) in Ghazni issued a decision by which he retrospectively approved the search, finding it to be in accordance with the law and justified. That decision was served on the applicant on 14 April 2014, having been sent from Afghanistan to his home address in Poland.

7. On 24 January 2014 the Ghazni Garrison Department of the Polish Task Force (*Wydzial Żandarmerii Wojskowej Polskich Sił Zadaniowych*) classified the electronic devices that had been confiscated as evidence in the criminal investigation into allegations of leaking non-public information which had been acquired at work, namely the images and personal data of Polish and Afghan special military officers. The applicant was not named as a suspect in these proceedings.

8. On 6 February 2014 the applicant lodged an interlocutory appeal concerning the search of 15 January 2014 and, on 17 April 2014, he lodged an interlocutory appeal against the decision of 22 January 2014. In both appeals, the applicant argued that the search and seizure were unjustified. The applicant also claimed that, because of the delay in the service of the decision approving the search (see paragraph 6 above), that measure had been without legal basis for longer than the statutory periods of seven days, calculated from the date when the measure had been carried out, either until the date when it had been approved by a formal decision (Article 230 of the Code of Criminal

Procedure, "CCP") or until the service of such decision (Article 220 § 3 of the CCP).

9. On 12 June 2014 the Warsaw Military Garrison Court (*Wojskowy Sąd Garnizonowy*) dismissed the above-mentioned appeals. The court held that the National Counter-Intelligence Cell and a witness – the applicant's superior – had informed the authorities about the possible disclosure of classified information by the applicant and therefore the decisions of 15 and 22 January 2014 were lawful. As regards the fact that the decision of 22 January 2014 had been served on the applicant only on 14 April 2014, the court held that the statutory service date of seven days was clearly only of an instructive nature. The court also stressed that the time it had taken for the decision to be served was not unreasonable, considering that the document had travelled a very long distance, had had to abide by the rules of a military dispatch, and had ultimately been taken over by a civilian postal service. The court also stressed that the impugned measure had, in fact, been validated within the statutory deadline of seven days. Lastly, in this context, the court attached importance to the fact that the lengthy service of the impugned decision had not deprived the applicant of his right to appeal against the measure.

10. On an unspecified date the applicant appealed against the decision of 24 January 2014.

11. On 16 July 2014 the Warsaw Military Garrison Court dismissed the appeal. The court held that the challenged decision had had a legal basis as the decision of 22 January 2014, confirming the lawfulness of the search, had been issued within the statutory deadline of seven days. The court also relied on the information submitted in the case by the National Counter-Intelligence Cell.

12. In the meantime, on 16 June and 17 July 2014 the Mazowiecki Military Police Unit decided that fourteen of the nineteen objects seized, including the applicant's camera, should be returned to him. The applicant collected these items on 27 August 2014.

13. On 30 June 2015 the Mazowiecki Military Police Unit decided that the remaining objects that had been confiscated as evidence in the applicant's case were of no use for the investigation and that all of them, except for the external hard drive, should be returned to the applicant. These items were indeed returned to the applicant.

14. On 10 July 2015 the Warsaw Military Prosecutor who had supervised the applicant's investigation by the Mazowiecki Military Police Unit, discontinued the investigation on the grounds that it was impossible to verify whether an offence had been committed.

15. In the same decision, the prosecutor decided that the applicant's external hard drive should stay with the authorities to be stored in conditions compliant with the Act of 5 August 2010 on the Protection of Classified information (*Ustawa ochronie informacji niejawnych*). The hard drive in

question contained thirty-two files with copies of a foreign document which bore a classified information clause (NATO secret). The measure was taken as a precaution because the investigation had not disproved the applicant's explanation that the document only had historic value, had been declassified and had been given to him informally by an American colleague who had since passed away. The prosecutor ordered that the remaining contents of the external drive in question be copied to a similar device and returned to the applicant.

16. On 6 August 2015 the applicant formally relinquished the ownership of the external hard drive that had been seized and remained in the possession of the authorities.

17. On 23 September 2016 the applicant collected the replacement hard drive with the non-classified content.

18. The applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention that the confiscation of his computer and his hard drive amounted to an unlawful and unjustified interference with his right to respect for his private life and the control of use of his property. In particular, the applicant argued that the belated serving of the decision, which had only authorised the seizure retroactively, had made it impossible for him to contest the measure in a timely manner. During that time, the authorities had read and made copies of the contents of the applicant's electronic devices and the applicant had not been able to use them. Moreover, the decisions to seize the items in question and to classify them as evidence had been unjustified. Overall, the measure was unlawful and disproportionate.

THE COURT'S ASSESSMENT

19. The Government raised two preliminary objections to the admissibility of the case. They argued firstly that the applicant was no longer a victim. Secondly, they argued that the applicant had not suffered a significant disadvantage owing to the fact that most of his personal electronic devices had been returned to him several months after the seizure (see paragraph 12 above), while the remainder were returned to him some eighteen months after the seizure (see paragraphs 13 and 15 above).

20. The applicant, represented by a lawyer, did not file any observations within the set time-limit. In his application form, the applicant submitted that his laptop computer stored thousands of documents related to his doctoral research and his work as a court-appointed expert, as well as his private documents, photographs and videos.

21. The Court does not find it necessary to examine the Government's preliminary objections, because the present case is in any event inadmissible, for the following reasons.

22. The Court notes at the outset that the present case has two aspects: a property one, linked to the applicant's complaint under Article 1 of Protocol No. 1 to the Convention and a privacy one, linked to the applicant's complaint under Article 8 of the Convention.

23. The Court can accept that there has been an interference with the applicant's rights to the peaceful enjoyment of his possessions and to respect for his private life due to the seizure and inspection of some of his personal electronic devices.

24. In the light of the findings of the military courts (see paragraphs 9 and 11 above) which examined the applicant's complaint about the alleged non-compliance of the decision to approve the search with the statutory time-limits (see paragraph 8 above), the Court also finds that the impugned interference was in accordance with the law.

25. Turning to the complaint under Article 1 of Protocol No. 1 to the Convention, the Court must consider whether a "fair balance" was struck between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights. In this respect, the Court first notes that the seizure was in the general interest of protecting potentially confidential military information. As to the impact on the applicant, he failed to substantiate that any material loss either financial or otherwise have been sustained by him owing to his inability to use the electronic devices seized, given that these devices were seized for a limited period of either six months (14 devices) or eighteen months (4 devices) (see paragraphs 4, 12, 13 and 15 above). His external hard drive was replaced with a new one, the original content having been uploaded onto that device with exception of one document that was deemed protected under a special regime (see paragraphs 15 and 17 above). While the applicant submitted that his laptop stored both work and private-life related materials (see paragraph 20 above), he did not claim that that storage was unique or that he had been unable to access a copy of these materials through another device. Therefore, the Court finds that the interference did not impose an excessive burden on the applicant and that, consequently, this complaint is manifestly ill-founded.

26. As regards the complaint under Article 8 of the Convention, and whether the interference was "necessary in a democratic society", the Court attaches importance to the fact that the applicant was a civil servant working in the context of the Polish military operation in Afghanistan (see paragraph 2 above). In this capacity, he had received training regarding the protection of NATO and EU classified data (ibid.). It follows that the applicant ought to have exercised diligence, and, by precaution, possibly sought some form of clearance before taking photos and noting down the personal data of Polish and Afghan special military officers (see paragraph 7 above), or copying a foreign document which bore a classified information clause (see paragraph 15 above) and before storing all that content on his personal electronic devices with which he was returning to

his home country. Moreover, the applicant must have been aware of the consequences of any potentially risky, even if ultimately not illegal, conduct on his part. While the devices in question might have also contained purely private information (compare and contrast *Sergets v. Latvia* (dec.) [Committee], no. 41744/12, § 26, 6 October 2020), it has not been argued that any such information was divulged or stored by the authorities. As the case materials demonstrate, the content of the applicant's devices had only been viewed by authorised persons involved in the specific criminal procedure that was lawful (compare, *mutatis mutandis*, *Berezovs v. Latvia* (dec.) [Committee], no. 33012/13, § 20, 11 March 2021). Ultimately, all content, except for one foreign document, was returned to the applicant. The Court therefore considers that the applicant has failed to demonstrate that the interference alleged was not "necessary in a democratic society", as required by Article 8 of the Convention.

27. In the light of the above considerations, the Court concludes that this complaint is also manifestly ill-founded.

28. It follows that this application must be declared inadmissible 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 16 January 2025.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President