CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28046/95
by Michał PONIŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 10 February 2000 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mrs S. Botoucharova,
Mr G. Ress, *judges,*

and Mr V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 11 December 1994 and registered on 27 July 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, who is a businessman, has dual Polish and Canadian nationality. He was born in 1943 and is represented before the Court by Mr Jerzy Marcin Majewski, a lawyer practising in Poznań, Poland.

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

On 26 October 1994 the Poznań District Prosecutor (*Prokurator Rejonowy*) charged the applicant under Article 267 of the Criminal Code with the offence of securing execution of document by deception. The applicant was also charged under Article 482 of the Commercial Code with the offence of acting against the interests of the "R" company. The prosecuting authorities considered that on 4 June 1992 the applicant, acting as the president of the "R" company, had deceived a notary public in order to obtain a power of attorney authorising his brother to sell shares in that company. Furthermore, they considered that on 4 June 1992 the applicant had acted against the interests of the "R" company when he had sold the company shares and had granted his brother another power of attorney to sell company shares without having the right to do so.

On 10 November 1994 the applicant was interviewed by the Poznań District Prosecutor who informed him about the charges laid against him and the facts on which they were based.

On 10 November 1994 the Poznań District Prosecutor ordered the applicant to report once a week to the Poznań Grunwald Police Station and to surrender his Canadian passport. The prosecutor considered that these measures were necessary in order to ensure the proper course of the criminal investigation (*zapewnienie prawidłowego toku postępowania przygotowawczego*). The order was based, *inter alia*, on Article 235 of the Code of Criminal Procedure which granted the prosecuting authorities a right to order a person charged with a criminal offence to report to the police.

On 15 November 1994 the applicant lodged with the Poznań Regional Prosecutor (*Prokurator Wojewódzki*) an appeal against the order of 10 November 1994. On 21 November 1994 the Regional Prosecutor rejected the part of the appeal concerning the applicant's obligation to report to the police and instructed the District Prosecutor to return immediately the applicant's passport. It appears that subsequently the applicant received his passport without delay.

On 30 November 1994 the Poznań Regional Prosecutor rejected the applicant's request of 28 November 1994 to quash the order requiring him to report once a week to the police. The prosecutor considered that the applicant had failed to show any legal grounds for quashing the order.

In a letter of 1 December 1994 the Poznań District Prosecutor advised counsel for the applicant that his request of 15 November 1994 to be given written grounds for the order issued on 10 November 1994 was unsubstantiated since that order clearly stated that the measures it imposed on the applicant were necessary to ensure the proper course of the criminal investigation.

On 8 December 1994 counsel for the applicant received from the Poznań District Prosecutor written grounds for the statement of charges issued on 26 October 1994.

On 12 December 1994 the applicant requested the Poznań District Prosecutor to discontinue the proceedings in his case.

The applicant failed to provide information about the outcome of the proceedings.

COMPLAINTS

The applicant submits that the decision of the prosecution service ordering him to report once a week to the police station amounted to "an internment" and "a hidden deportation" and deprived him of his right to liberty guaranteed by Article 5 of the Convention.

Furthermore, the applicant invokes paragraph 1 (c) of Article 5. In that context, he submits that the fact that Polish law provides for special procedures concerning the taking of evidence from persons residing abroad shows that it does not allow the authorities to require individuals whose usual place of residence is abroad to report to the police. He also avers that the decision ordering him to report to the police was unlawful because it was taken to ensure the proper course of the criminal investigation, whereas the prosecuting authorities failed to take any action for a period of one month after the decision had been taken.

The applicant further complains about a breach of Article 5 § 2 in his case. He submits that a reference to the necessity of ensuring the proper course of criminal investigation and to the relevant provisions of the Criminal Code cannot be considered as an information about the reasons for the measure taken by the prosecution with respect to the applicant.

Moreover, the applicant invokes paragraph 4 of Article 5, claiming that he was not entitled to take proceedings by which the lawfulness of the order to report once a week to the police station, which in the applicant's opinion amounted to detention, could be decided by a court.

The applicant further complains about a breach of Article 6 § 3 (a). In that respect he submits that the Poznań District Prosecutor did not provide him with written grounds for the decision to charge him within the period of 14 days after he had been informed about the charges. The applicant also claims that the charges laid against him contradicted facts.

The applicant further alleges a violation of Article 6 § 3 (b), claiming that the prosecuting authorities did not consider his arguments and erroneously construed domestic regulations concerning criminal procedure.

Finally, the applicant complains that the facts of the case disclose a violation of Article 2 §§ 1 and 2 of Protocol No. 4, as he was "deprived of the right to leave Poland lawfully".

THE LAW

1. The applicant raises numerous complaints under Article 5 of the Convention. In particular, he claims that the measures applied to him amounted to "an internment", "a hidden deportation" and a detention, and therefore deprived him of his right to liberty. The applicant also relies on Article 5 § 1 (c), Article 5 § 2 (the right to be informed promptly of the reasons for an arrest and of any charge) and Article 5 § 4 (the right to a speedy determination of the lawfulness of detention).

The Court recalls that in proclaiming the "right to liberty" paragraph 1 of Article 5 is contemplating the physical liberty of the person. It is not concerned with mere restrictions on liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (see the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 33, § 92).

In the present case, the impugned restriction imposed on the applicant consisted of an obligation to report once a week to the police station. The Court considers that this cannot be regarded as a measure involving deprivation of liberty within the meaning of Article 5. It follows that the applicant's complaints under Article 5 of the Convention are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 (see, *mutatis mutandis*, the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281, p. 19, § 39).

2. The applicant further complains about a violation of Article 6 § 3 (a) and (b) of the Convention, which provide:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;"

The applicant claims that a breach of Article 6 § 3 (a) resulted from the fact that the Poznań District Prosecutor did not provide him with written grounds for the statement of indictment within the period of 14 days after he had been informed about the charges. The applicant also alleges that the charges laid against him contradicted facts. He further complains about a breach of Article 6 § 3 (b) contending that the prosecuting authorities did not consider his arguments and erroneously construed domestic regulations concerning criminal procedure.

The Court observes that on 10 November 1994 the Poznań District Prosecutor informed the applicant orally about the offences with which he was charged and the facts on which the charges were based. On 8 December 1994 written grounds for the indictment were served on the applicant's counsel. The applicant did not provide any *prima facie* evidence showing that this information was inadequate and impaired in any way his ability to defend himself. In addition, he did not submit any evidence pointing towards a violation of his right to have adequate time and facilities to prepare his defence.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. Furthermore, the applicant complains that the facts of his case disclose a violation of Article 2 §§ 1 and 2 of Protocol No. 4. Article 2 of Protocol No. 4 provides:

> "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. Everyone shall be free to leave any country, including his own.
>
> 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. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

The applicant complains that the prosecuting authorities deprived him of "the right to leave Poland lawfully".

The Court notes that on 10 November 1994 the Poznań District Prosecutor informed the applicant about the criminal charges against him. On the same date the prosecutor ordered the applicant to report once a week to the Poznań Grunwald Police Station and to surrender his Canadian passport. On 15 November 1994 the applicant appealed against that decision to the Poznań Regional Prosecutor. On 21 November 1994 the Regional Prosecutor allowed the part of the applicant's appeal concerning the surrender of his passport and instructed the District Prosecutor to return it immediately to the applicant. It appears from the applicant's submissions that the passport was subsequently returned to him without delay and that he was afterwards free to travel abroad subject to the obligation to report once a week to the Poznań Grunwald Police Station.

Furthermore, the Court observes that the prosecuting authorities based their decision to impose restrictions on the applicant's freedom of movement on the provisions of the Code of Criminal Procedure allowing them to apply such measures to persons charged with a criminal offence. In addition, the impugned measures were applied to the applicant after he had been charged under Article 267 of the Criminal Code with the offence of securing execution of document by deception and under Article 482 of the Commercial Code with the offence of acting against the interests of the "R" company.

In the circumstances of the present case, the Court considers that the obligation to report once a week to the police imposed by the prosecuting authorities, insofar as it restricted the applicant's rights guaranteed by paragraphs 1 and 2 of Article 2 of Protocol No. 4, was "in accordance with law" and could be regarded as "necessary in a democratic society … for the prevention of crime …". The impugned measure was therefore covered by paragraph 3 of Article 2 of Protocol No. 4 (see, *mutatis mutandis*, Schmid v. Austria, Eur. Comm. HR, Dec. 9.7.1985, D.R. 44, pp. 196-197).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President