



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

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## FIRST SECTION

Applications nos. 30614/22 and 30848/22  
Maciej NABRDALIK against Poland  
and Maciej MOSKWA against Poland  
lodged on 8 June 2022  
communicated on 15 February 2023

## SUBJECT MATTER OF THE CASE

The applications were lodged by two photojournalists Mr Maciej Nabrdalik (“the first applicant”) and Mr Maciej Moskwa (“the second applicant”). The events complained of attracted some media attention in Poland back in November 2021. They concern the applicants’ apprehension which lasted for some eighty minutes and search of their clothes and car by the Polish military officers, in a close vicinity of the closed area near the Polish-Belarusian border established after the outbreak of the migration crisis. The events complained of took place outside the closed area to which nobody, including journalists or activists from charity organisations had access.

The applicants were apprehended and searched by the military officers who as a rule, do not have the statutory power to arrest people. The applicants’ appeals against the arrest and the search were not examined by the courts. Instead, they were transferred to the prosecutor, because it was held that the arrest in question had not been based on the provisions of the Code of Criminal Proceedings or on the basis of the Police Act. The domestic authorities did not use the term “deprivation of liberty” in relation to the events complained of; they rather generally described them referring to the “way in which operational activities had been carried out”.

The applicants maintain that they were deprived of liberty.

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They complain under Article 3 of the Convention that excessive force and offensive language was used towards them at the time of the arrest. They were also handcuffed with their hands behind their back which caused hand injuries to the second applicant. The applicants were also forced to take off their hats and jackets and they could not put them back on during the events complained of. The air temperature was about 3-4 degrees Celsius.

They further rely on Article 5 § 1 of the Convention, submitting that they were deprived of their liberty for about one hour and twenty minutes without any legal basis and by the military officers who did not have the authority to arrest people. They were not informed of the reasons or basis for their arrest and their appeals were not examined by courts, contrary to Article 5 §§ 2 and 4 of the Convention.

They also complain under Article 8 of the Convention that the intervention of the military officers and search of their clothes and car as well as their phones and cameras amounted to a violation of their private life and of the right to respect for their correspondence.

They rely on Article 10 of the Convention, submitting that they were arrested when they were collecting journalistic materials. The military officers checked the contents of their phones and cameras, took photos of their correspondence and pictures, which might lead to disclosure of confidential sources of information. The officers had also access to potentially fragile data contained in the phones.

Lastly, they complain under Article 13 in conjunction with Articles 3, 5, 8 and 10 of the Convention, claiming that their appeals were not examined by courts. Instead, they were transferred to the prosecutor. Since their deprivation of liberty was qualified as a “preventive check” rather than arrest, they were deprived of the possibility to have their grievances examined by a court.

## QUESTIONS TO THE PARTIES

### As regards Article 3 of the Convention:

1. Were the applicants subjected to inhuman or degrading treatment at the time of their apprehension and search, in breach of Article 3 of the Convention? Reference is made to the applicants’ allegations regarding the military officers’ actions, their use of force and offensive language, handcuffing and hand injuries sustained by the second applicant.

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As regards Article 5 of the Convention:

2. Is Article 5 of the Convention applicable to the circumstances of the present case?

3. If so, were the applicants deprived of their liberty in breach of Article 5 § 1 of the Convention? In particular, was their deprivation of liberty “in accordance with a procedure prescribed by law”?

Assuming that the applicants were deprived of their liberty:

4. Were they informed promptly of the reasons therefor, as required by Article 5 § 2 of the Convention?

5. Did the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their deprivation of liberty as required by Article 5 § 4 of the Convention?

As regards Article 8 of the Convention:

7. Was there an interference with the applicants’ right to respect for their private life and correspondence, within the meaning of Article 8 § 1 of the Convention? Reference is made to the applicants’ allegations that their clothes and car were searched, the contents of their phones and cameras checked and partly copied.

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

As regards Article 10 of the Convention:

8. Was there an interference with the applicants’ freedom of expression, in particular their right to receive and impart information and ideas, within the meaning of Article 10 § 1 of the Convention? Reference is made to the applicants’ allegations that the content of their phones and cameras was checked and partly copied when they, as journalists, were collecting materials for their work (see *Roemen and Schmit v. Luxembourg*, no. 51772/99, § 57, ECHR 2003-IV)?

If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

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As regards Article 13 of the Convention:

9. Did the applicants have at their disposal an effective domestic remedy for their complaints under Articles 3, 5, 8 and 10, as required by Article 13 of the Convention?