

Press release issued by the Registrar

**CHAMBER JUDGMENT
VOSKUIL v. THE NETHERLANDS**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Voskuil v. the Netherlands* (application no. 64752/01).

The Court held unanimously that there had been:

- a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights;
- a **violation of Article 5 § 1** (right to liberty and security) of the Convention.

Under Article 41 (just satisfaction), the Court dismissed the applicant's claim for just satisfaction. (The judgment is available only in English.)

1. Principal facts

The applicant, Koen Voskuil, is a Netherlands national who was born in 1975 and lives in Amsterdam. He is a journalist.

The case concerned Mr Voskuil's allegations that he was denied the right not to disclose his source for two articles he had written for the newspaper *Sp!ts* and that he was detained for more than two weeks in an attempt to compel him to do so.

In March 2000, following a criminal investigation during which an arsenal of weapons in a flat on the Nachtwachtlaan in Amsterdam were found, three individuals, K., Van S., and H., were convicted of arms trafficking.

On 12 and 13 September 2000 the newspaper *Sp!ts* published two articles written by Mr Voskuil and a colleague which expressed doubts as to whether it had been a coincidence that the Amsterdam police had found weapons in the Nachtwachtlaan flat, where they had initially only been called to check a water leak. In particular, the article of 13 September, entitled "Chance hit or Perfect Shot?" (*"Toevalstreffer of loepzuiver schot?"*), quoted an unnamed Amsterdam policeman who referred to the leak as a "breakthrough" which had been staged for the purpose of the investigation.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicant was subsequently summoned to appear as a witness for the defence in the appeal proceedings concerning the three individuals accused of arms trafficking.

At the first hearing on 22 September 2000 before Amsterdam Court of Appeal the applicant stated, in particular, that he knew that the policeman he had quoted in the article of 13 September 2000 had been involved in a previous investigation concerning K.. When the applicant was asked whether that policeman was also involved in or aware of the investigation in the flat, he invoked his right to not disclose a source (*verschoningsrecht*). The Court of Appeal considered that, if the statement made by the police officer to the applicant was correct, not only the conviction of March 2000 but also the integrity of the police and judicial authorities would be called into question. On being reminded that the court had the power to order his detention for failure to comply with a judicial order, the applicant admitted that his source had both been aware of, and involved in, the investigation of the flat. The court ordered the applicant to reveal the identity of his source in the interests of those accused and the integrity of the police and judicial authorities. The applicant invoked his right to remain silent (*zwijgrecht*). At that point, the court ordered his immediate detention.

The applicant was served with a copy of the decision to detain him on 25 September 2000.

Following the hearing of 22 September an internal police investigation was carried out which revealed that eight police officers had been involved in both the first and second investigations into K.. All those officers made sworn affidavits to the effect that they had never been in contact with the applicant.

Aware of the results of that investigation, the applicant insisted that he did not want to reveal the identity of his source. He claimed that, if he started revealing his sources, it would be tantamount to ending his career as those sources who wanted to remain anonymous would no longer be willing to provide him with tip-offs. The applicant's lawyer further argued that the journalist should be the last rather than the first means of bringing the truth to light. An investigation of the police force could be carried out and other witnesses examined. Those witnesses could notably be confronted with the applicant's articles and another article published in a weekly news magazine with similar allegations.

Ultimately, on 9 October 2000 the Court of Appeal decided to lift the order for the applicant's detention. It considered that the report published by the applicant was implausible.

On 30 October 2000 the criminal proceedings continued before the Court of Appeal which was composed of different judges. The applicant, seven other journalists who had also published similar articles about the case against K., two plumbers and a caretaker were heard.

According to the Government, final decisions have been reached concerning the criminal proceedings against K., Van S. and H..

2. Procedure and composition of the Court

The application was lodged with the European court of human rights on 26 October 2000.

Judgment was given by a Chamber of seven judges, composed as follows:

Boštjan M. **Zupančič** (Slovenian), *President*,
Corneliu **Bîrsan** (Romanian),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
David Thór **Björgvinsson** (Icelandic),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,
Wilhelmina **Thomassen** (Dutch), *ad hoc judge*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying, in particular, on Article 10, Mr Voskuil complained that he was denied the right not to disclose his source of information and was detained in order to compel him to do so. He also alleged, in particular, that he was not given, within 24 hours, a copy of the order to detain him, which was not in accordance with the procedure required by domestic law in the Netherlands, in breach of Article 5 § 1.

Decision of the Court

Article 10

Both parties agreed that there had been an interference with the applicant's right to freedom of expression in that his refusal to name his source had led the Court of Appeal to order his detention. The Court found that that interference was based in domestic law (Article 294 § 1 of the Code of Criminal Procedure) and was satisfied that it pursued the "legitimate aim" of preventing crime.

The Court recalled that the protection of a journalist's sources was one of the basic conditions for freedom of the press, as reflected in various international instruments including the Council of Europe's Committee of Ministers Recommendation No. R (2000) 7 on the right of journalists to not disclose their sources of information. Without such protection, sources might be deterred from assisting the press in informing the public on matters of public interest and, as a result, the vital public-watchdog role of the press might be undermined. The order to disclose a source could only be justified by an overriding requirement in the public interest.

The Court understood the reasons for the applicant being required to identify his source to be: firstly, to ensure a fair trial for the individuals accused of arms trafficking; and, secondly, to protect the integrity of the Amsterdam police.

The Court found that the first reason was not relevant. Whatever the potential significance to the criminal proceedings of the information which the Court of Appeal had attempted to extract from the applicant, it had not prevented the merits of the case from having been considered on 30 October 2000. Indeed, the applicant's alleged information had been substituted with evidence from other witnesses.

¹ This summary by the Registry does not bind the Court.

As concerned the second reason, the Court was not in a position to establish whether or not there had been any truth in the allegations published by the applicant. It took the view that, in any case, in a democratic state governed by the rule of law, the use of improper methods by a public authority was precisely the kind of issue about which the public had the right to be informed.

The Court was struck by the lengths to which the Netherlands authorities had been prepared to go to learn the source's identity. Such far-reaching measures could but discourage those who had true and accurate information relating to wrongdoing from coming forward in the future and sharing their knowledge with the press.

In conclusion, the Government's interest in knowing the identity of the applicant's source had not been sufficient to override the applicant's interest in concealing it. There had therefore been a violation of Article 10.

Article 5 § 1

The Court observed that the Government did not deny that the applicant had only been provided with a written copy of his detention order three days after the hearing of 22 September 2000. The Court therefore found that the procedure prescribed by Article 224 of the Netherlands Code of Criminal Procedure had not been followed. There had accordingly been a violation of Article 5 § 1.

Judge Thomassen expressed a concurring opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.