



Refusal to adjourn a hearing listed on a Jewish holiday did not infringe lawyer's freedom of religion

In today's Chamber judgment in the case [Sessa Francesco v. Italy](#) (application no. 28790/08), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned the judicial authority's refusal to adjourn a hearing listed on the date of a Jewish holiday.

The Court considered in particular that, even supposing that there had been an interference with the applicant's right under Article 9, such interference, prescribed by law, was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice – and the principle that cases be heard within a reasonable time.

Principal facts

The applicant, Francesco Sessa, is an Italian national who was born in 1955 and lives in Naples (Italy). He is a member of the Jewish faith and a lawyer by profession. In his capacity as representative of one of the complainants in a case, he appeared before the Forlì investigating judge at a hearing concerning the production of evidence. As the judge was prevented from sitting, his replacement invited the parties to choose between two dates for the adjourned hearing – 13 or 18 October 2005 – in accordance with the timetable already established by the investigating judge.

The applicant pointed out that both dates corresponded to Jewish holidays (Yom Kippur and Sukkoth) and that his religious obligations would prevent him from attending the hearing. The judge listed the hearing for 13 October 2005. The applicant lodged an application for an adjournment with the investigating judge in the case and a criminal complaint against him.

At the hearing on 13 October 2005 the judge noted Mr Sessa's absence for "personal reasons" and asked the parties to express their view regarding the request for an adjournment. The prosecution and counsel for the defendants objected to the application whilst counsel for the other complainant supported Mr Sessa's request. By a judgment of the same day, the judge rejected the request for an adjournment. He stated that, in accordance with the Code of Criminal Procedure, only the presence of the prosecution and counsel for the defendant was required at hearings concerning the immediate production of evidence, the presence of counsel for the complainant being optional.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Moreover, the Code of Criminal Procedure did not provide that the judge was obliged to adjourn a hearing where there were legitimate grounds for the complainant's counsel's inability to appear. Lastly, the judge stated that as a large number of people were involved in the proceedings (defendants, claimants, court-appointed experts, experts) and the court's heavy workload would mean postponing the hearing to 2006, the application had to be rejected in accordance with the principle that cases should be heard within a reasonable time. An appeal by the applicant was rejected in February 2008 on the ground that there was no evidence that there had been any intention to infringe his right to freely manifest his Jewish faith or to offend his dignity on grounds of his religious belief.

Complaints, procedure and composition of the Court

Relying in particular on Article 9 (freedom of thought, conscience and religion), the applicant complained that the judicial authority had refused to adjourn a hearing listed for the date of a Jewish holiday. The application was lodged with the European Court of Human Rights on 3 June 2008.

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

Françoise **Tulkens** (Belgium), *President*,
Dragoljub **Popović** (Serbia),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 9

The judge had refused to allow the applicant's request for an adjournment, basing his decision on the provision of the Code of Criminal Procedure which provided that an adjournment of hearings concerning the immediate production of evidence was justified only where the prosecutor or counsel for the defendant was absent (the presence of counsel for the complainant not being necessary).

The Court was not convinced that holding the hearing in question on the date of a Jewish holiday and refusing to adjourn it to a later date amounted to a restriction on the applicant's right to freely manifest his faith. Firstly, it was not in dispute between the parties that he had been able to carry out his religious duties. Furthermore, he should have known that his request would be refused on the basis of the statutory provisions in force and could have arranged to be replaced at the hearing in order to comply with his professional obligations. The Court noted, lastly, that Mr Sessa had not shown that pressure had been exerted on him to change his religious beliefs or to prevent him from manifesting his religion or beliefs.

Even supposing that there had been an interference with the applicant's right under Article 9 § 1, the Court considered that such interference, prescribed by law, was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice – and the principle that cases be heard within a reasonable time. The interference had observed a

reasonable relationship of proportionality between the means employed and the aim pursued. The Court concluded that there had been no violation of Article 9.

Other Articles

The right to an effective remedy within the meaning Article 13 of the Convention could not be interpreted as a right to have an application decided in the way the applicant sought. In Mr Sessa's case the Court did not find any evidence on which to call into question the effectiveness of the criminal proceedings brought before the Italian courts. This complaint under Article 13 was therefore rejected as manifestly ill-founded.

Nor had the applicant in any way shown that he had been discriminated against as compared with persons in a similar situation to his. The complaint under Article 14 was therefore also rejected as manifestly ill-founded.

Separate opinion

Judges Tulkens, Popović and Keller expressed a joint dissenting opinion, the text of which is annexed to the judgment.

The judgment is available only in French.

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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.