

EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENTS CONCERNING The Netherlands, Slovakia, Turkey and the United Kingdom

The European Court of Human Rights has today notified in writing the following six Chamber judgments, none of which is final:¹

Chamber (Former Section 1)

No violation Article 2 of Protocol No. 4

(1) *Olivieira v. the Netherlands* (application no. 33129/96)

(2) *Landvreugd v. the Netherlands* (no. 37331/97)

The applicants, Hans Walter Olivieira and Franklin Edgar Landvreugd, are both Netherlands nationals. On 6 November 1992 and 2 December 1994 respectively the Burgomaster (*Burgemeester*) of Amsterdam imposed a prohibition order (*verwijderingsbevel*) on the applicants, banning them for 14 days from, respectively, a designated emergency area in the city centre and an area just outside the old city centre (the Ganzenhoef area), after they had been found either in possession of hard drugs or related equipment or openly using the drugs. Neither applicant lived or worked in the area concerned. Both were convicted and sentenced for failing to comply with their prohibition orders.

In each case, the European Court of Human Rights held, by four votes to three, that there had been no violation of Article 2 of Protocol No. 4 of the European Convention on Human Rights (liberty of movement) and, unanimously, that no separate issue arose under Article 8 (right to respect for private life). (The judgment is available only in English.)

Chamber (Section 2)

(3) *Yağmurdereli v. Turkey* (no. 29590/96)

Violation Article 10 Violation Article 6 § 1

Eşber Yağmurdereli, a Turkish national born in 1945, is a lawyer, writer and doctor of philosophy and is partially sighted. He was sentenced to life imprisonment on 8 March 1985 after being found guilty of attempting to undermine the constitutional order and was released on parole in August 1991. A speech he gave at a meeting in September 1991 led to his being

1. Under Article 43 of the European Convention on Human Rights, 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.

charged with disseminating separatist propaganda aimed at undermining the territorial integrity of the State and national unity, and on 23 June 1994 the Istanbul National Security Court sentenced him to one year and eight months' imprisonment. The court was composed of three judges, one of whom was a member of the Military Legal Service.

Following the enactment of the Prevention of Terrorism Act on 27 October 1995, the National Security Court, composed, *inter alia*, of a military judge, re-examined the applicant's case. Noting that the applicant had referred to part of the national territory as "Kurdistan" and to the terrorist acts carried out by the PKK as a "struggle for democracy and freedom", it sentenced him, *inter alia*, to ten months' imprisonment.

On 11 July 1997, in the light of that new conviction, the Samsun Assize Court set aside the decision to grant him parole. He was released on 18 January 2001, however, in accordance with new legislation concerning the stay of execution of sentences.

He complained of a violation of Article 10 (freedom of expression). Relying on Article 6 § 1 (right to a fair trial), he also complained of the presence of a military judge on the bench of the Istanbul National Security Court.

The Court found that the applicant's conviction amounted to an interference with his right to freedom of expression, which Turkey did not dispute, and that the interference was prescribed by law. Having regard to the sensitivity of the security situation in south-east Turkey and to the need for the authorities to be alert to acts capable of fuelling additional violence, it held that the interference pursued the legitimate aims of protecting national security and territorial integrity and preventing disorder and crime.

However, the Court found that the applicant's comments had taken the form of a political speech and that, as they had been made during a public discussion of a new anti-terrorist law, they concerned a matter of public interest. Although some parts of the speech were evidently not "neutral", the Court did not construe them as being capable of provoking hatred and violence between citizens. Considering that the speech had been made at a peaceful gathering far away from the conflict zone and following the adoption of a new anti-terrorist law, the Court held that its potential impact was reduced.

It therefore concluded that the measure taken against the applicant could not be deemed to be "necessary in a democratic society" and held, by six votes to one, that there had been a violation of Article 10.

With regard to the complaint that a regular army officer of the Military Legal Service sat on the bench of the National Security Courts, the Court reiterated that these judges continued to belong to the army, which in turn took its orders from the executive, and that the administrative authorities and the army were involved in their appointment. Noting that the applicant was a civilian charged with the offence of undermining the territorial integrity of the State and national unity before a court composed, *inter alia*, of a military judge, the Court considered that objectively he had a legitimate reason to fear that the court which tried him lacked independence and impartiality.

Accordingly, it concluded unanimously that there had been a violation of Article 6 § 1 and awarded the applicant 7,500 euros (EUR) for non-pecuniary damage and EUR 4,000 for costs and expenses. (The judgment is available only in French).

Violation Article 14 taken in conjunction with Article 1 of Protocol No. 1

(4) Wessels-Bergervoet v. the Netherlands (no. 34462/97)

R.E.W. Wessels-Bergervoet, a Dutch national, and her husband have always lived in the Netherlands. Her husband was granted a married person's old age pension under the General Old Age Pension Act (*Algemene Ouderdomswet*; "AOW") as from 1 August 1984. However, his pension was reduced by 38% as he had not been insured under the Act during a period totalling 19 years, when he had worked in Germany and had been insured under German social security legislation. No appeal was filed against this decision.

The applicant was granted an old age pension under the AOW as from 1 March 1989 on the same basis as her husband's pension; reduced by 38%. She appealed unsuccessfully.

She complained that the only reason for the reduction in her pension was that she was married to a man who was not insured under the AOW on the grounds of his employment abroad and that a married man in the same situation would not have had his pension reduced for this reason. She maintained, in particular, that the reduction in her pension is the result of discriminatory treatment.

The Court held, unanimously, that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 1 of Protocol No. 1 (protection of property). It also held that the question of the application of Article 41 was not ready for decision. (The judgment is available only in English.)

(5) William Faulkner v. the United Kingdom (no. 37471/97)

Violation Article 8

William Faulkner, an Irish national born in 1947, was released from detention in February 1999. Prior to that he was detained at HMP Magilligan, County Derry, Northern Ireland, on temporary transfer from a Scottish prison while serving a seven-year sentence for a drug offence.

On 1 July 1996 a sealed letter sent by him to the Scottish Minister of State was returned to him by the prison authorities. The Court has been informed that the Prison Service is unable to explain why the letter had not been sent, since there was nothing untoward in its content.

The applicant alleged, in particular, that the prison authorities interfered with a letter from him to the Scottish Minister of State.

The Court held, unanimously, that there had been a violation of Article 8 (right to respect for correspondence) and that the finding of a violation in itself constituted sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It awarded him 1,500 pounds sterling less 823.22 euros (EUR) for costs and expenses. (The judgment is available only in English.)

Chamber (Section 4)

(6) *Komanický v. Slovakia* (no. 32106/96)

Violation Article 6 § 1

Ioan Kornelij Komanický, a Slovakian national, was dismissed from his job working for the District National Committee (*Okresný národný výbor*) in Bardejov in 1988 for breach of discipline. Subsequently his dismissal was declared unlawful and Mr Komanický claimed compensation for unlawful dismissal.

He complained that, in those proceedings, he had no fair and public hearing, alleging that the courts did not apply the law correctly and that they decided arbitrarily without having heard him. He also complained that he was not allowed to study the case file prior to a hearing on 10 January 1995 and that he had no possibility of commenting on statements made by the witnesses at the hearing on 4 November 1994. Finally, he submitted that the Regional Court's judgment of 6 March 1996 was based on additional evidence of which he had not been aware and that the court proceeded with his case in his absence, although he had notified the court in advance that he could not attend for health reasons.

The Court held, unanimously, that there had been a violation of Article 6 § 1 (right to fair hearing) in respect of the procedure followed by the national courts and that it was not necessary to rule on the complaint under Article 13 (right to an effective remedy). It awarded the applicant EUR 1,000 for non-pecuniary damage and EUR 100 for costs and expenses. (The judgment is available only in English.)

These summaries by the Registry do not bind the Court. The full texts of 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 in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.