



Complaint concerning preventive body searches for weapons in high-risk areas in Amsterdam: declared inadmissible

In its decision in the case of [Colon v. the Netherlands](#) (application no. 49458/06) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the designation of security risk areas in Amsterdam where any person can be subjected to a preventive body search by the police looking for weapons.

The Court held in particular that the relevant legislative framework contained sufficient guarantees against abuse, particularly the approval and supervision of the decision by the local council and the mayor's consultation with the public prosecutor and local police commander. The Court further found the system effective in combating violent crime.

Principal facts

In response to a rise in violent crime in Amsterdam, on 20 November 2002, the mayor issued an order designating most of the old city centre a security risk area for a period of six months. By virtue of that decision, a public prosecutor was empowered, under the Arms and Ammunition Act, to order that for a non-renewable period of 12 hours any person present in the designated area might be subjected to a preventive body search for weapons. In June 2003, the mayor designated the same area as a security risk area for another 12 months based on the fact that weapons were still being confiscated during searches and that there had been insufficient decrease in the number of violent crimes.

On 19 February 2004 the applicant, Ferdinand Jozef Colon, a Netherlands national, who was born in 1947 and lives in Amsterdam, was stopped by police acting on orders of the public prosecutor to conduct random searches of people present in the security risk area. Mr Colon refused to submit to a search and was arrested, then taken to a police station, where he refused to give a statement.

In January 2005, Mr Colon was convicted by the regional court of failing to obey a lawful order and sentenced to pay a fine of 150 euros. The court of appeal subsequently acquitted him, holding in particular that the mayor's decisions had failed to give any reasons why the security risk area had to be designated for such lengthy periods and cover such a large zone. However, in February 2007, the Supreme Court quashed that judgment, holding that the mayor had a broad discretion to assess the need for any such order after consultation with the public prosecutor, and remitted the case. In December 2007, the court of appeal found that the mayor had given sufficient reasons for his decisions and that any interference with Mr Colon's rights had been justified by the interest of the protection of the public order. The court convicted Mr Colon, but did not impose a sentence on him.

In parallel, in November 2005, Mr Colon lodged an objection against another decision by the mayor to designate the city centre as a security risk area for another 12 months. His objection was dismissed by the mayor in June 2006. The mayor took the view that Mr Colon could not be regarded as a person with a direct interest, given that he neither lived in the area nor had a paid job there but merely visited it for social visits and volunteer work. The application was prompted by this decision, not by the outcome of the criminal proceedings.

The designation of the old city centre of Amsterdam as a security risk area has been renewed every six months until the present.

Two reports, commissioned by the municipality of Amsterdam and produced by an institute for safety and crisis management, which were published in May 2006 and May 2007 respectively, found that the number of incidents involving the use of weapons had dropped significantly since the beginning of the preventive searches.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 28 November 2006.

Relying in particular on Article 8 (right to respect for private life) of the European Convention on Human Rights and Article 2 of Protocol No. 4 (freedom of movement) to the Convention, Mr Colon complained that the designation of a security risk area by the mayor violated his right to respect for private life and that his freedom of movement was unlawfully restricted by the mayor's decisions.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Egbert **Myjer** (the Netherlands),
Ján **Šikuta** (Slovakia),
Ineta **Ziemele** (Latvia),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino), *Judges*,

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

Article 8

Observing that Mr Colon, like any member of the public, could be stopped anywhere and at any time in the security risk area without notice or any choice as to whether or not to submit to a search, the Court found that there had been an interference with his rights under Article 8.

The Court was satisfied that that interference had been in accordance with the law. It observed that, under Netherlands law, before the public prosecutor could order the police to carry out a search operation, a prior order designating the area concerned had to be given by an administrative authority of the municipality. That order had to be based on a bye-law adopted by an elected representative body, the local council, which had powers to investigate the use made by the mayor of his or her authority. Review of the order was available in the form of an objection to the mayor, followed if necessary by an appeal to the administrative courts. Furthermore, the criminal courts had a responsibility of their own to examine the lawfulness of the order and the scope of the authority of the official who issued it.

It was moreover not in dispute between the parties that the interference caused by the preventive searches had pursued legitimate aims, namely public safety and the prevention of disorder and crime.

As regards the question of whether the interference was necessary in a democratic society, the Court accepted that the designation of security risk areas within which preventive searches were possible was complementary to other measures aimed at forestalling violent crime, including a general amnesty for people who handed in their illegal weapons, the use of surveillance cameras, and a policy to tackle antisocial behaviour by young people. Under the relevant provisions, the security risk areas were to be no larger than necessary and the relevant order was to be revoked when no longer needed. Furthermore, no single authority alone could order a preventive search operation, as the mayor was required to consult with the public prosecutor before issuing a designation order, and the public prosecutor had to define the area in which preventive searching was to be carried out. The public prosecutor's order, moreover, was to be valid for no more than 12 hours.

Finally, the Court noted that it was apparent from the figures given by the mayor and from the evaluation reports that preventive searches were effective in helping to reduce violent crime in Amsterdam.

The Court therefore concluded that the Netherlands authorities were entitled to consider that the public interest outweighed the subjective disadvantage caused to Mr Colon by the interference with his private life. The complaint under Article 8 was therefore declared inadmissible.

Article 2 of Protocol No. 4

The Court agreed with the Netherlands Government that, while there had been a chance that Mr Colon might have suffered the inconvenience of the police searching him within the security risk area, he had in no way been prevented from entering that area, moving within it and leaving it again. His liberty of movement had therefore not been affected. Consequently, the complaint under Article 2 of Protocol No. 4 was also inadmissible.

The decision is available only in English.

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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.