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

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Unjustified arrest and criminal conviction of applicants at Amsterdam squat protest

In today's **Chamber** judgment[1] in the case of Laurijsen and Others v. the Netherlands (application nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned a protest against the eviction of a squat at Passeerdersgracht in Amsterdam. The applicants were arrested for blockading the road in front of and near the squat and summonsed for disturbing public order and failing to comply with a police order to disperse, acts that were prohibited by the municipal by-law (*Algemene Plaatselijke Verordening*). The Regional Court partly acquitted and partly discharged them as it considered that the local regulation did not apply because the protest fell within the scope of the Public Assemblies Act (*Wet openbare manifestaties*). The Court of Appeal and the Supreme Court, however, found that the protest had not been peaceful in nature because, from the outset, the aim of it had been to confront the police and to physically prevent the squat from being cleared. Those courts considered that the protest was therefore excluded from the protective scope of the Public Assemblies Act and the Convention. The applicants were each fined 100 euros in total.

The Court found that the applicants' participation in the protest fell under the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. It further found that the Supreme Court had not examined whether the applicants' role in the gathering had in fact been peaceful within the meaning of that provision and had therefore failed to convincingly establish why it had been necessary, under Article 11 § 2 of the Convention, to interfere with the applicants' right to freedom of assembly.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are five Dutch nationals, Cornelis Laurijsen, Wendy Springer, Nicky van Oostrum, Rosa Koenen and Anat Segal, who were born between 1955 and 1988. They live in Amsterdam and Den Dolder (the Netherlands).

In the early morning of 5 July 2011, in response to calls to protest issued earlier that week on two websites, around 150 demonstrators gathered around a building, "the Schijnheilig squat", at Passeerdersgracht in Amsterdam, whose occupants had been notified that they would be evicted. The demonstrators blocked off the street with chairs and tables. Loud music was played from a rooftop opposite. Banners with slogans like "Squatting's here to stay" and "Van der Laan is going down" ("*Van der Laan gaat eraan*"; referring to Mr Eberhard van der Laan, then Mayor of Amsterdam) were put up on public buildings and bridges nearby. The protesters chatted, danced,

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.

played musical instruments, and chanted anti-Government slogans. Most of the participants wore plain clothing; some were dressed-up in costumes or wedding dresses; others wore sunglasses, balaclavas, masks or scarves to hide their faces.

One hour into the demonstration, the Police Commissioner ordered the protestors to disperse. As no-one obeyed, he repeated the order a couple of times, before instructing the Mobile Unit, a special operations unit of the police, to charge. Using protective shields and wielding truncheons, the police advanced and cleared the area in front of the squat. Beer bottles and a beer crate were thrown at the police; several smoke bombs were set off, and there was a small fire.

A total of 138 demonstrators, including the applicants, were then arrested and charged for participating in an unlawful gathering or otherwise disturbing public order, and failing to comply with a police order to disperse, all prohibited by the Amsterdam general municipal by-law (*Algemene Plaatselijke Verordening*; "the APV") laid down by the local Council. They were released that afternoon. Six other protestors were arrested, placed in police custody and prosecuted for publicly committing acts of violence in concert against persons or property in violation of the Criminal Code.

The applicants were summonsed to appear before the limited jurisdiction judge (*kantonrechter)* of the Regional Court of Amsterdam. By separate judgments of 14 June 2013, the judge found that they had failed to comply with police orders to disperse but did not find that they had participated in an unlawful gathering as referred to in the APV. He held that the gathering had been more a demonstration covered by the Public Assemblies Act than an unlawful gathering entailing disorder in the sense of section 2.2 of the APV as, at the outset, there had been no threat of disorder. The applicants were acquitted of the offence of participating in an unlawful gathering or otherwise disturbing public order and were discharged from prosecution for failing to comply with police orders to disperse.

The Public Prosecution Service appealed against those judgments. By separate judgments of 31 August 2015, the Court of Appeal of Amsterdam quashed the Regional Court's judgments. It held that the aim of the protest had been to confront the police and to physically prevent the eviction of the squat. Therefore, the gathering could not be regarded as a demonstration in the sense of the Public Assemblies Act but fell within the scope of the APV. It found the applicants guilty of participating in an unlawful gathering or otherwise disturbing public order and of failing to comply with a police order to disperse, in breach of the APV. It sentenced each of them to two fines of 50 euros (EUR).

The applicants lodged appeals on points of law with the Supreme Court, submitting, among other things, that the appellate court had failed to recognise that the protest had been a "peaceful assembly" within the meaning of Article 11 of the Convention and that it had fallen within the scope of the Public Assemblies Act. By separate judgments of 11 April 2017, the Supreme Court dismissed the applicants' appeals on points of law, noting in particular that the protest had not fallen within the scope of Article 11 of the Convention.

Complaints, procedure and composition of the Court

The applicants complained that the dispersal of the gathering and their subsequent arrest, deprivation of liberty and criminal conviction had unjustly interfered with their right to freedom of peaceful assembly, guaranteed by Article 11 of the Convention.

They submitted that the gathering had been a "peaceful assembly" within the meaning of Article 11 of the Convention; that, in the absence of an order by the Mayor of Amsterdam pursuant to provisions of the Public Assemblies Act to end the demonstration, the police intervention and subsequent arrest and conviction had lacked a legal basis; and that the interference had been disproportionate.

The applications were lodged with the European Court of Human Rights on 24 and 31 July 2017.

Given the similar subject matter, the Court examined them in a single judgment.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

The Court considered that even if the aim of the demonstration had been to try to prevent the eviction of the Schijnheilig squat, that did not, of itself, remove the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. It noted that no violent intentions or behaviour could be inferred from the calls posted online, the slogans chanted, or the way some protestors had been dressed. On the face of it, those should have been taken to be expressions of dissatisfaction and protest rather than deliberate and unambiguous calls for violence. Moreover, the Court noted that the applicants had not been amongst the group of protesters who had been arrested and prosecuted for violent behaviour.

In several cases the Court has recognised that Article 11 offers protection to ostensibly peaceful protesters in demonstrations tarnished by violence on the part of other protesters. Since it did not appear that the applicants had personally set off smoke bombs, thrown objects, kicked out at the police, or otherwise resorted to or incited violence, the Court found that their participation in the protest fell under the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. Therefore, their arrest, prosecution and conviction had amounted to an interference with that right.

The Court went on to note that the Supreme Court, as well as the appellate court, had found that the demonstration was not covered by the Public Assemblies Act. The Supreme Court had adopted the position that Article 11 of the Convention did not therefore apply and had essentially stopped its assessment at that point, without examining whether the applicants' role in the gathering had in fact been "peaceful" within the meaning of that provision. By reaching such a conclusion and not exercising the "balancing test" which was required under Article 11 § 2 of the Convention, the Supreme Court had failed to give relevant and sufficient reasons for the interference with the applicants' right to freedom of assembly, and thus had failed to convincingly establish the necessity for such restrictions.

The Court found therefore that the requirements under Article 11 of the Convention had not been met because the analysis of applicability of that provision – and, consequently, the assessment of the justification of the interference – had not been carried out at the national level in a manner consistent with the Convention and the Court's case-law. It followed that the interference with the applicants' rights could not be said to have been "necessary in a democratic society" and was thus in breach of Article 11 of the Convention.

Just satisfaction (Article 41)

The Court held that the Netherlands was to pay the applicants 100 euros (EUR) each in respect of pecuniary damage and EUR 100 each in respect of non-pecuniary damage. In respect of costs and

expenses, the Netherlands was to pay EUR 562 each to Mr Laurijsen (application no. 56896/17), Ms Springer (application no. 56910/17) and Ms Koenen (application no. 56917/17), EUR 363 to Ms Van Oostrum (application no. 56914/17), and EUR 419 to Ms Segal (application no. 57307/17).

Separate opinion

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

The judgment is available only in English.

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