



Repeated conviction and imprisonment for public nudity in Scotland not in breach of freedom of expression

In today's Chamber judgment¹ in the case of [Gough v. the United Kingdom](#) (application no. 49327/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights, and

no violation of Article 10 (freedom of expression).

The case concerned in particular Mr Gough's complaint about his repeated arrest, prosecution, conviction and imprisonment in Scotland for breach of the peace because of his nudity in public places.

The Court found that Mr Gough's nudity in public was a form of expression of his opinion on the inoffensive nature of the human body. It accepted that the cumulative impact of the numerous sentences of imprisonment served in Scotland – which amounted to over seven years – was severe. However, the Court emphasised Mr Gough's own responsibility for his convictions and the sentences imposed because of his wilful refusal to obey the law over a number of years. It also referred to his duty to show tolerance and sensibility to the views of members of the public, who were likely to be alarmed and offended by his nakedness. It pointed out that there were other avenues open to Mr Gough to express his views on nudity. It concluded that Mr Gough's lengthy imprisonment had been the consequence of his repeated violation of the criminal law, in full knowledge of the consequences, through conduct which went against the standards of accepted public behaviour in any modern democratic society. Having regard to the discretion allowed to the national authorities in this area, the Court found no violation of Article 10. The Court also found that, even if Mr Gough's conduct fell within the scope of protection of "private life" under Article 8, the measures taken against him were justified for the reasons given in respect of Article 10.

Principal facts

The applicant, Stephen Peter Gough, is a British national who was born in 1959 and has his permanent residence in Eastleigh (Hampshire, England).

In 2003 Mr Gough decided to walk naked from Land's End in England to John O'Groats in Scotland, earning the nickname "the naked Rambler". Between 2003 and 2012 he was arrested over thirty times in Scotland for being naked in public. He was convicted on a number of occasions of breach of the peace. He was also convicted of contempt of court for refusing to dress for his court appearances. Although he was at first admonished or received relatively short custodial sentences, the sentences increased with his repeat offending. More than once, he received the maximum twelve-month sentence. He was often rearrested as he left prison. As a consequence, between May 2006 and October 2012 (when he left Scotland), Mr Gough enjoyed a total of around seven days at liberty. He spent a cumulative total of over seven years in detention in Scotland between 2003 and

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.

2012 following convictions for appearing naked in public. Most of his time in detention was spent in segregation because he refused to wear clothes.

Complaints, procedure and composition of the Court

Relying principally on Article 8 (right to respect for private life) and Article 10 (freedom of expression), Mr Gough complained in particular about the repressive measures taken against him for expressing his views on nudity by appearing naked in public places.

The application was lodged with the European Court of Human Rights on 29 July 2011.

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

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

The Court reiterated that the right to freedom of expression extended not only to the substance of ideas expressed but also to the form in which they were conveyed. Since Mr Gough had chosen to be naked in public in order to give expression to his opinion as to the inoffensive nature of the human body, his public nudity could be seen as a form of expression which fell within the ambit of Article 10. His arrest, prosecution, conviction and detention constituted an interference with that Article; the question was whether that interference was justified.

The repressive measures taken against Mr Gough were in accordance with domestic law and pursued the legitimate aim of preventing disorder and crime, including the broad aim of seeking to ensure respect for the law in general.

As to whether the measures were “necessary in a democratic society”, the Court noted that they were not the result of any blanket prohibition on public nudity. Each arrest was considered on its own facts and each conviction and sentence followed upon careful consideration of the individual incident and Mr Gough’s offending history. It was also noteworthy that, following his early convictions, Mr Gough was either admonished or received a short custodial sentence. It was only after a number of convictions that the courts began to impose more substantial custodial sentences. Even then, efforts were made to enable a less harsh penalty to be imposed but Mr Gough refused to agree to a condition of remaining clothed in public. The Court accepted that the cumulative impact of the measures was undeniably severe, in that Mr Gough had served over seven years’ in prison in Scotland since 2003 following convictions for appearing naked in public. However, it considered that his own responsibility for the convictions and the sentences imposed could not be ignored. It emphasised that in exercising his right to freedom of expression, Mr Gough was under a general duty to respect the laws of Scotland and to pursue his desire to bring about change in accordance with those laws. He had many other avenues for expressing his opinion on nudity or for initiating a public debate on the subject. The Court also found that Mr Gough was under a duty, particularly in light of the fact that he was asking for tolerance in respect of his own conduct, to demonstrate

tolerance of and sensibility to the views of other members of the public. However, he insisted upon his right to appear naked at all times and in all places, including in the courts, in the communal areas of prisons and on aeroplanes, without any demonstration of sensitivity to the views of others or to the fact that they might consider his behaviour offensive. In conclusion, while Mr Gough's case was troubling, since his intransigence had led to his spending a substantial period of time in prison for what was in itself usually a relatively trivial offence, his imprisonment was the consequence of his repeated violation of the criminal law, in full knowledge of the consequences, through conduct which went against the standards of accepted public behaviour in any modern democratic society. Having regard to these considerations and to the broad discretion given to member States ("wide margin of appreciation") to decide on such matters, there was no violation of Article 10 of the Convention.

Article 8 (right to respect for private life)

The Court was of the view that Article 8 could not be taken to protect every conceivable personal choice as to a person's desired appearance in public, and that there had to be a minimal level of seriousness. It was doubtful whether the minimal level of seriousness had been reached in relation to Mr Gough's choice to appear fully naked on all occasions in all public places without distinction, having regard to the absence of support for such a choice in any known democratic society in the world. In any case, even if Article 8 applied no violation of that Article was disclosed, for essentially the same reasons given by the Court in the context of its analysis of Mr Gough's Article 10 complaint.

Other complaints

The applicant also complained about his treatment while in prison. The Court found that he had failed to bring proceedings in the Scottish courts to seek redress for the alleged violations of his rights. The complaints were accordingly inadmissible.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.