



## Television broadcast showing non-blurred image of an individual obtained using a hidden camera entailed a violation of his privacy

In today's **Chamber** judgment<sup>1</sup> in the case of **Bremner v. Turkey** (application no. 37428/06) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

The case concerned the broadcasting of a television documentary in which the applicant, Mr Bremner, who was shown promoting his evangelical Christian beliefs, was described as a "foreign pedlar of religion" engaged in covert activities in Turkey.

The Court found in particular that the broadcasting of Mr Bremner's image without blurring it could not be regarded as a contribution to any debate of general interest for society, regardless of the degree of public interest in the question of religious proselytising.

### Principal facts

The applicant, Dion Ross Bremner, is an Australian national who was born in 1967 and lives in Strathfield (Australia).

Mr Bremner, who was a correspondent for an Australian newspaper at the relevant time, also worked for a Christian bookshop. On 24 June 1997 he appeared in a television documentary which, according to its presenter, concerned covert activities conducted in Turkey by "foreign pedlars of religion".

A meeting was filmed using a hidden camera in a restaurant in the presence of Mr Bremner, A.N. and a group of friends of the latter who supposedly wished to learn more about Christianity. A second meeting took place in a flat and was also filmed using a hidden camera. The programme's presenter then entered the room with a camera and a microphone. She claimed to have heard about the meeting and wanted to join in and interview Mr Bremner about his activities. She asked him why he was promoting his Christian beliefs on a voluntary basis and covertly. Mr Bremner replied that his activity was not covert, but that he had responded to an invitation from A.N.

According to Mr Bremner, the programme's presenter was accompanied by police officers who took him into police custody after the discussion and he was released the next day after giving a statement.

On 25 June 1997 the public prosecutor brought proceedings against Mr Bremner for insulting God and Islam. On 28 April 1998 the criminal court found him innocent, taking the view that no offence had been made out.

Mr Bremner sued the presenter and producers of the programme, claiming damages. His claim was dismissed by the District Court on the ground that there had been an interest in informing the public. The Court of Cassation quashed that judgment, noting that the dispute concerned a conflict

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](http://www.coe.int/t/dghl/monitoring/execution).

between freedom of expression on the one hand and personality rights on the other. It observed that freedom of the press was not unlimited. It took the view that Mr Bremner had not committed any illegal act, that he had simply exercised his rights to freedom of expression and freedom of conscience. His right to respect for his private life had been doubly breached, first at the time of the filming with a hidden camera and secondly when the documentary was broadcast with expressions such as “pedlar of religion” or “bigotry”.

After the case had been referred back to it, the District Court decided not to follow the Court of Cassation’s reasoning and upheld the initial judgment. The case was then automatically referred to the plenary civil divisions of the Court of Cassation, which endorsed the initial judgment by 35 votes to 11. The judges took the view that the footage in question did not concern details of Mr Bremner’s private life but was part of a documentary on a topical issue of interest to public opinion.

Mr Bremner also claimed that he had subsequently been forced by his landlord to leave the flat that he had been renting, allegedly on security grounds, and that he had ultimately been removed by the authorities to Bulgaria.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicant alleged that the broadcasting of the documentary and the refusal of the judicial authorities to grant his request for compensation breached his right to respect for his private life. He also alleged that there had been a violation of his rights under Articles 6 (right to a fair hearing), 9 (freedom of thought, conscience and religion) and 10 (freedom of expression).

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

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

Paul Lemmens (Belgium), *President*,  
Işıl Karakaş (Turkey),  
Helen Keller (Switzerland),  
Ksenija Turković (Croatia),  
Egidijus Kūris (Lithuania),  
Robert Spano (Iceland),  
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 8

The Court observed that the documentary concerned religious proselytising, which was undeniably a matter of general interest. It noted that the programme had been critical and that offensive terms such as “pedlar of religion” had been used. It found that this expression was a value judgment and, as such, was not susceptible of proof. The Court found, however, that the documentary did not contain any gratuitous personal attacks and did not amount to hate speech.

As regards the method used, the Court was of the view that a technique as intrusive and as damaging to private life must in principle be used restrictively. The Court was not unaware that, in certain cases, the use of hidden cameras might prove necessary for journalists when information was difficult to obtain by any other means. However, that tool had to be used in compliance with ethical principles and with restraint.

As regards the balance between the right to freedom of expression on the one hand and the right to respect for private life on the other, the Court observed that Mr Bremner had not placed himself in the public arena except for the fact that he had published an advertisement, which could not have led him to suspect that he might be the subject of public criticism. He thought that he was merely meeting a group of individuals interested in Christianity.

As to the contribution allegedly made by the broadcasting of Mr Bremner's image to a debate in the general interest, the Court did not find any general-interest justification for the journalists' decision to broadcast his image without blurring it. In view of the fact that Mr Bremner was not famous, there was nothing to suggest that the broadcasting of his image would be newsworthy or useful.

In addition, the Court noted that none of the domestic courts seemed to have assessed the degree of contribution of the broadcasting of Mr Bremner's image, without blurring it, to a debate in the general interest. The Court took the view that the Turkish authorities had not struck a fair balance between the competing interests. The manner in which they had dealt with the case had not afforded Mr Bremner adequate and effective protection of his right to his own image and therefore to respect for his private life. The Court thus found that there had been a violation of Article 8 of the Convention.

### Articles 6, 9 and 10

The Court found Mr Bremner's complaints inadmissible under Articles 6 and 10, and his Article 9 complaint was inadmissible for failure to exhaust domestic remedies.

### Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 7,500 euros in respect of non-pecuniary damage.

*The judgment is available only in French.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

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

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

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

**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.