



Photographer's apprehension and conviction of disobeying the police while covering a demonstration, without a sanction, was proportionate

In today's Grand Chamber judgment¹ in the case of [Pentikäinen v. Finland](#) (application no. 11882/10) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the apprehension of a media photographer during a demonstration and his subsequent detention and conviction for disobeying the police.

The Court found that the Finnish authorities had based their decisions on relevant and sufficient reasons and had struck a fair balance between the competing interests at stake. They had not deliberately prevented or hindered the media from covering the demonstration. Mr Pentikäinen had not been prevented from carrying out his work as a journalist either during or after the demonstration. In particular, he had not been apprehended for his work as a journalist as such but for refusing to obey police orders to leave the scene of the demonstration. His equipment had not been confiscated and he had not been sanctioned.

Principal facts

The applicant, Markus Veikko Pentikäinen, is a Finnish national who was born in 1980 and lives in Helsinki (Finland). He is a photographer and journalist employed by the weekly magazine *Suomen Kuvailehti*.

Mr Pentikäinen was sent by his employer to take photos of a demonstration held in the evening of 9 September 2006 in protest against the Asia-Europe meeting (ASEM) in Helsinki. As the demonstration turned violent, the police first prevented the crowd from marching but allowed a peaceful demonstration to be held on the spot. Later on the police cordoned off the demonstration area and ordered the crowd to disperse. Mr Pentikäinen remained in the area, where a small group of demonstrators was still gathered, to cover the events. Together with them he was apprehended. He remained in police detention from around 9.30 pm until his release the next day at 3 pm.

Mr Pentikäinen was convicted by the Helsinki District Court for disobeying the police in December 2007, the judgment being eventually upheld by the Court of Appeal in April 2009 and the Supreme Court in September 2009. The courts did not impose any penalty on him, holding that his offence was excusable since as a journalist he had been faced with contradictory expectations, arising from the obligations imposed on the one hand by the police and on the other by his employer.

Complaints, procedure and composition of the Court

Mr Pentikäinen complained that his rights under Article 10 (freedom of expression) had been violated by his apprehension, detention and conviction, as he had been prevented from doing his job as a journalist.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In its Chamber judgment of 4 February 2014 the Court held, by five votes to two, that there had been no violation of Article 10 of the Convention.

On 30 April 2014 Mr Pentikäinen requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 2 June 2014 the panel of the Grand Chamber accepted that request. A Grand Chamber hearing took place on 17 December 2014.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean Spielmann (Luxembourg), *President*,
Guido Raimondi (Italy),
Mark Villiger (Liechtenstein),
Boštjan M. Zupančič (Slovenia),
Khanlar Hajiyev (Azerbaijan),
Päivi Hirvelä (Finland),
Kristina Pardalos (San Marino),
Angelika Nußberger (Germany),
Linos-Alexandre Sicilianos (Greece),
André Potocki (France),
Paul Lemmens (Belgium),
Aleš Pejchal (the Czech Republic),
Johannes Silvis (the Netherlands),
Dmitry Dedov (Russia),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Iulia Antoanella Motoc (Romania),

and also Lawrence Early, *Jurisconsult*.

Decision of the Court

Article 10

The Court underlined that its examination of the case was limited to Mr Pentikäinen's complaints as declared admissible by the Chamber, namely that his apprehension, detention and conviction had entailed an unjustified interference with his right to freedom of expression. A later submission which he had made to the Grand Chamber, claiming that his detention had been illegal as it had lasted overnight and for about 18 hours, had not been part of the original application and therefore fell outside the scope of the examination.

The Court accepted that there had been an interference with Mr Pentikäinen's right to freedom of expression as guaranteed by Article 10. Even if his apprehension and conviction had not been aimed at him as a journalist but had been the consequence of his failure to comply with police orders to disperse, his work as a journalist had been adversely affected. The interference had a basis in Finnish law, namely in the Police Act, the Coercive Measures Act and the Penal Code. Furthermore, it had pursued legitimate aims within the meaning of Article 10 § 2, namely the protection of public safety and the prevention of disorder and crime.

As regards the question of whether the interference had been "necessary in a democratic society" within the meaning of Article 10, the Court noted that the Finnish police, in particular in view of violence which had occurred during previous similar demonstrations held earlier during the same year, had good reason to expect that the event of 9 September 2006 might turn violent. The police orders for the crowd to disperse had therefore been based on a reasonable assessment of the facts. Furthermore, Mr Pentikäinen had not as such been prevented from reporting on the event. He had

been able to take photographs during the entire demonstration until the moment he was apprehended.

Mr Pentikäinen's apprehension had taken place in the cordoned-off area where he had remained together with a core group of demonstrators. The Court noted that from the video recordings of the event in the case file, it appeared that he had not been wearing any distinct signs which would have identified him as a journalist, nor had his press badge been visible. His appearance had thus not allowed him to be clearly distinguishable from the protesters. While the police had to have learned about his status as a journalist at the latest at the police station when one police officer had taken his press card, Mr Pentikäinen had failed to make it sufficiently clear earlier during the events that he was a journalist.

By not obeying the orders given by the police, Mr Pentikäinen had knowingly taken the risk of being apprehended. The Helsinki District Court had found it established that he had been aware of the police orders to leave the scene but that he had decided to ignore them. The fact that, according to his own submissions, he had called his employer while in the cordoned-off area to discuss whether he should leave the area or not showed that he had understood, or at least contemplated, that the order applied to him as well. It was also relevant that all other journalists except him had obeyed the police orders to leave the area. Nothing suggested that he could not have continued to exercise his professional assignment in the vicinity of the cordoned-off area, had he obeyed the order.

As regards his detention, the Court noted that Mr Pentikäinen had been one of the first of the people apprehended to be interrogated by the police and shortly after he had been released. While his camera equipment had been taken away for the duration of his detention, the camera and the photographic material had been returned to him entirely and unaltered.

Concerning his conviction, the Court noted that Mr Pentikäinen had been found guilty of disobeying the police but that no penalty had been imposed. It was significant that the conduct for which he was convicted had not been his journalistic activity as such but only his refusal to comply with a police order at the very end of the demonstration, which had been judged by the police to have become a riot. Moreover, any interference with the exercise of his journalistic freedom had been of limited extent, given the opportunities made available to him to cover the event adequately.

The Court observed, as was shown by the material in the case file, that the prosecution following the demonstration had been directed against altogether 86 defendants. It noted in that context that journalists could not be exempted from their duty to obey the ordinary criminal law solely based on the fact that Article 10 provides protection to them. While the Court acknowledged that journalists sometimes had to face a conflict between the general duty to abide by criminal law and their professional duty to obtain and disseminate information, it emphasised that if a journalist made the choice to disobey ordinary criminal law, he or she had to be aware of the risk of being subject to legal sanctions. Mr Pentikäinen's conviction had had no adverse consequences for him: as no sanction had been imposed, the conviction had not, in accordance with national law, been entered in his criminal record. In sum, it could be said that his conviction had been proportionate to the legitimate aims pursued.

In conclusion, the Court found that the Finnish authorities had based their decisions on relevant and sufficient reasons and had struck a fair balance between the competing interests at stake. They had not deliberately prevented or hindered the media from covering the demonstration. Mr Pentikäinen had not been prevented from carrying out his work as a journalist either during or after the demonstration. There had accordingly been no violation of Article 10.

Separate opinions

Judge Motoc expressed a concurring opinion. Judge Spano, joined by Judges Spielmann, Lemmens and Dedov, expressed a dissenting opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and French.

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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.