



Complaint about obligation to testify as a witness against former accomplices was inadmissible

In its decision in the case of [Wanner v. Germany](#) (application no. 26892/12) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned the applicant's conviction for giving false testimony as a witness in criminal proceedings against his former accomplices.

The Court observed that, since Mr Wanner's conviction for assault had become final, there was no legal possibility of him being prosecuted again for his participation in that offence. It found that he could no longer rely on the presumption of innocence, as the protection afforded by that presumption ceases once an accused has properly been proved guilty of the charge in question.

Principal facts

The applicant, Dieter Wanner, is a German national who was born in 1978 and lives in Schutterwald.

On 23 March 2007 the District Court convicted Mr Wanner, *inter alia*, of aggravated assault, committed jointly with others. It established that on the night of 29 April 2006 he and three unknown accomplices had entered the victim's flat and, while hitting and kicking him, demanded that he repay 3,500 euros. Mr Wanner appealed but withdrew his appeal before the Regional Court.

At the request of the public prosecutor Mr Wanner was heard in September 2007 as a witness by the investigating judge in proceedings against his unknown accomplices. The judge informed him that, as a witness, he had to tell the truth. Mr Wanner maintained that he had not been at the crime scene and consequently could not say anything about those who had taken part in the assault.

Subsequently, he was charged with giving false testimony while not under oath. In the first instance trial before the District Court he was acquitted of those charges. On appeal, he was, however, convicted of giving false testimony while not under oath and sentenced to six months' imprisonment on probation. The Regional Court considered that there had been no danger of a new prosecution for the assault because Mr Wanner's conviction had become final. Consequently, he did not have to be informed of his right not to provide answers by which he might incriminate himself.

Mr Wanner's further appeal on points of law and a constitutional complaint were rejected.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 April 2012.

Relying, in particular, on Articles 6 (right to a fair trial/presumption of innocence/privilege against self-incrimination) and 10 (freedom of expression), Mr Wanner complained about his criminal conviction for giving false testimony as a witness.

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

Yonko **Grozev** (Bulgaria), *President*,
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),

Gabriele Kucsko-Stadlmayer (Austria),
Lətif Hüseynov (Azerbaijan),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 6

The Court reiterated that the right not to incriminate oneself is closely linked to the presumption of innocence contained in Article 6 § 2. However, its protection ceases once an accused has properly been proved guilty of the offence.

Regarding the first part of Mr Wanner's complaint, in which he argued that his truthful answers as a witness could have led to his further criminal prosecution for offences of which he had not yet been convicted, the Court held that Article 6 (criminal limb) was not applicable. The facts of the case did not support his allegation that he risked prosecution regarding further offences. His examination as a witness in the proceedings against his unknown accomplices in the assault for which he had already been convicted had served the sole purpose of identifying those accomplices. Therefore, Mr Wanner could not be considered to have been "charged" with a criminal offence within the meaning of Article 6 § 1.

As concerns his further allegation that the authorities had intended to compel him to make a retroactive confession following the termination of the criminal proceedings against him, the Court noted that there was no legal possibility of him being prosecuted again for his participation in the assault since the judgment of the District Court had become final. He was, legally, not "substantially affected" by his obligation as a witness to answer truthfully the questions by the investigating judge. The Court concluded therefore that he could not rely on his right not to incriminate himself since he no longer ran any risk of further prosecution.

Rather, the effective administration of justice required a witness to comply with the civic duty of giving truthful testimony in accordance with the relevant procedural law. Article 6 did not offer any privileges to a former defendant whose conviction had become final as regards giving testimony about the crime of which he was convicted. Consequently, the Court found that Article 6 was not applicable in respect of Mr Wanner's complaint that the authorities had intended to compel him to make a retroactive confession.

Thus, the Court held that the complaint under Article 6 was incompatible *ratione materiae* with the provisions of the Convention and therefore decided to declare that part of the application inadmissible.

Article 10

The Court did not rule out that a negative right to freedom of expression is protected under Article 10, but found that this question would only have to be determined if Mr Wanner complained about the coercion to testify. In the present case, however, he complained that he was found guilty of having made a false statement. Even assuming that Article 10 was applicable in these circumstances, the Court took the view that the complaint would, in any event, be inadmissible because the interference met the requirements of Article 10 § 2.

Accordingly, the complaint was, in any event, manifestly ill-founded and must therefore be declared inadmissible.

The decision is available only in English.

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