

Liechtenstein

The European Court of Human Rights ruled on 28 October 1999 in the case *Wille v. Liechtenstein* that the government of Liechtenstein had violated Articles 10 and 13 of the European Convention on Human Rights and Fundamental Freedoms.

The Principality of Liechtenstein is a constitutional monarchy and a parliamentary democracy. There is a hereditary monarchy and Prince Hans-Adam II is the head of the state. The leader of the majority party in the unicameral parliament, the Landtag, is appointed by the monarch as the head of the government. The Landtag consists of 25 seats and its members are elected, for a period of four years, directly by universal suffrage. The parliament elects the members of government who are then appointed by the Prince.

Human Rights Background

Liechtenstein is a state party to the major international human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

There have been no allegations of grave violations of human rights in Liechtenstein. In February 1999, however, the Committee on the Elimination of All Forms of Discrimination against Women, criticised the Liechtenstein Government in its Concluding Observations after discussion of the government's initial report on the implementation of the Convention. The Committee expressed its concern:

that patriarchal patterns of behaviour persist and thereby compromise de jure equality between women and men that has been achieved.

The Committee expresses deep concern at the persistence of de facto inequality between women and men, which is particularly reflected in the low participation of women in public life and decision-making, in the economy and in their under-representation in tertiary education.

Judiciary

The court system is comprised of lower courts, High Courts, a Supreme Court and an Administrative Court that hears appeals against government decisions. The State Court protects the rights accorded by the Constitution, decides on conflicts of jurisdiction between the courts and the administrative authorities and acts as a disciplinary court for members of the government.

The Landtag elects the members of the judiciary who are then consequently appointed by the Prince. The Prince also has the authority to alter criminal sentences or pardon offenders.

Wille v. Liechtenstein

The European Court of Human Rights delivered a judgement on 28 October 1999 regarding a complaint lodged against the Liechtenstein Government by Mr. Wille under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court found the government in violation of Articles 10 and 13 of the Convention.

In 1992 an issue arose between Prince Hans-Adam II and the Liechtenstein Government relating to political competence in connection with the question of Liechtenstein's accession to the European Economic Area. Mr. Wille was at that time a member of government. Following a discussion between the Prince and members of the government at a meeting on 28 October 1992, the matter was settled on the basis of a common declaration by the Prince, the Landtag and the government.

In December 1993, Mr. Wille was appointed President of the Liechtenstein Administrative Court (Verwaltungsbeschwerdeinstanz) for a fixed term of office. On 16 February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, Mr. Wille gave a public lecture at the Liechtenstein Institute on the nature and functions of the Liechtenstein Constitutional Court. Mr. Wille expressed the view that the Constitutional Court was competent to decide on the interpretation of the Constitution in cases of disagreement between the Prince and the Landtag.

A newspaper published an article on the lecture and as a result the Prince wrote a letter to Mr. Wille stating that, inter alia, he would not appoint Mr. Wille in the future to a public office as he considered that Mr. Wille did not feel himself to be bound by the Constitution.

In spring 1997, Mr. Wille's term of office as President of the Administrative Court expired. On 14 April 1997 the Liechtenstein Landtag decided to propose him again as President of the Administrative Court, but the Prince refused to accept the proposed appointment. He stated that he was convinced that Mr. Wille did not feel bound by the Liechtenstein Constitution and that he would violate his duties as head of state if he were to appoint Mr. Wille as President of the Administrative Court.

On 25 August 1997 Mr. Wille filed a complaint against the Liechtenstein Government with the European Commission on Human Rights. Mr. Wille complained that the decision of the Prince not to appoint him to public office in the future constituted a violation of his rights under Articles 6 (right to a fair trial), 10 (freedom of expression), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission declared the application admissible and stated that:

there had been a violation of Article 10 (fifteen votes to four); that in the present case it was not necessary to determine whether there had been a violation of Article 6 (seventeen votes to two); that there had been a violation of Article 13, in conjunction with Article 10 (sixteen votes to three); and that no separate issue arose under Article 14, in conjunction with Article 10 (seventeen votes to two).

After the Commission declared the complaint to be admissible both the Commission and the government of Liechtenstein referred the case to the European Court of Human Rights. Mr. Wille, in the proceedings before the court, only submitted a request to establish a violation of Articles 10 and 13 of the Convention.

Violations of Article 10

Article 10 of the European Convention on Human Rights and Fundamental Freedoms states:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The court decided on 28 October 1999 on the matter and said that:

The announcement by the Prince of his intention not to reappoint the applicant to a public post constituted a reprimand for the previous exercise by the applicant of his right to freedom of expression and, moreover, had a chilling effect on the exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future.

It follows that there was an interference with the exercise of the applicant's right to freedom of expression, as secured in Article 10 § 1.

The government was of the view that Mr. Wille was invited to give the lecture as a judge and that he had used the opportunity to express his own political and legal opinions, thereby risking the public trust in the independence and impartiality of the judiciary.

The court, however, stated that "questions of constitutional law, by their very nature, have political implications" and that Mr. Wille's lecture did not contain remarks on pending cases, nor did he criticise persons or public institutions or insult high officials or the Prince. The court further observed that the government did not refer to any incident suggesting that the lecture of Mr. Wille influenced his performance as President of the Administrative Court. Furthermore, the government did not indicate that Mr. Wille acted in an objectionable way in the pursuit of his judicial duties.

The court then assumed that the interference was prescribed by law and pursued a legitimate aim but it was of the opinion that the interference was not "necessary in a democratic society":

On the facts of the present case, the court finds that, while relevant, the reasons relied on by the government in order to justify the interference with the applicant's right to freedom of expression are not sufficient to show that the interference complained of was "necessary in a democratic society". Even allowing for a certain margin of appreciation, the Prince's action appears disproportionate to the aim pursued. Accordingly the court holds that there has been a violation of Article 10 of the Convention.

Violations of Article 13

Article 13 of the Convention states:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

In a previous judgement, the court determined that the remedy must be "effective" in practice as well as in law. The court in this case therefore decided:

As regards the government's argument that the applicant should have seized the Constitutional Court against the Diet [Landtag] for not having insisted on its right to nominate him for a new term of office as President of the Administrative Court, it suffices to note that the applicant's complaint under Article 10 concerned acts by the Prince and not by the Diet. The government, however, has failed to show that there exists any precedent in the Constitutional Court's case-law, since its establishment in 1925, that that court has ever accepted for adjudication a complaint brought against the Prince. They have therefore failed to show that such a remedy would have been effective. It follows the applicant has also been the victim of a violation of Article 13.

The court decided that the government had to pay non-pecuniary damage of CHF 10,000 and bear the cost and expenses of CHF 91,014.05 for the Strasbourg proceedings.