



Press release Communiqué de presse

DIRECTORATE OF INFORMATION
DIRECTION DE LA COMMUNICATION
B.P. 431 R 6 F-67006 STRASBOURG CEDEX
Tél : 88 41 25 60 Telex : 871388F Telefax : 88 41 27 90.

EUROPEAN COURT OF HUMAN RIGHTS

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JUDGMENT IN THE CASE OF NIEMIETZ v. GERMANY

In a judgment delivered at Strasbourg on 16 December 1992 in the case of Niemietz v. Germany, the European Court of Human Rights held unanimously that the search of the applicant's law office had given rise to a violation of Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). It dismissed unanimously his claim for just satisfaction under Article 50¹.

The judgment was read out in open court by Mr Rolv Ryssdal, the President of the Court.

I.

BACKGROUND TO THE CASE

A. Principal facts

On 9 December 1985 a letter concerning criminal proceedings pending before the Freising District Court was sent by telefax from the Freiburg post office to a judge of that court. It bore the signature "Klaus Wegner" - possibly a fictitious person - followed by the words "on behalf of the Anti-clerical Working Group of the Freiburg Bunte Liste". The applicant had for some years been chairman of the Bunte Liste, which is a local political party, and the colleague with whom he shared his office had also been active on its behalf.

1. The text of the Articles mentioned in this release is appended.

2. In view of the contents of the letter, criminal proceedings were subsequently instituted against Klaus Wegner for insulting behaviour. In the course of the investigations the Munich District Court issued, on 8 August 1986, a warrant to search, inter alia, the applicant's office for and to seize any documents revealing the identity of Klaus Wegner; the reason given in the warrant was that mail for the Bunte Liste was sent to a post-office box the contents of which had, until 1985, been forwarded to the applicant's office. The search was effected on 13 November 1986; four cabinets with data concerning clients and six individual files were examined but no relevant documents were found.

3. On 27 March 1987 the Munich I Regional Court declared the applicant's appeal against the search warrant to be inadmissible, on the ground that it had already been executed. It considered that there was no legal interest in having the warrant declared unlawful and it also noted, amongst other things, that it could not be assumed that mail for the Bunte Liste could concern a lawyer-client relationship. On 18 August 1987 the Federal Constitutional Court declined to accept for adjudication the applicant's constitutional complaint against the search warrant and the Regional Court's decision, on the ground that it did not offer sufficient prospects of success.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 15 February 1988, was declared partly admissible on 5 April 1990.

Having attempted unsuccessfully to secure a friendly settlement, the Commission drew up a report¹ on 29 May 1991, in which it established the facts and expressed the unanimous opinion that there had been a violation of Article 8 of the Convention and that no separate issue arose under Article 1 of Protocol No. 1.

The Commission referred the case to the Court on 12 July 1991.

II.

SUMMARY OF THE JUDGMENT²

I. Article 8 of the Convention

1. The Court held firstly that there had been an interference with the applicant's rights under Article 8, thereby rejecting the German Government's argument that that provision did not afford protection against the search of a lawyer's office. It noted the following in this connection.

1. Available to the press and the public on request to the Registrar of the Court.

2. This summary by the registry does not bind the Court.

(a) Respect for private life comprised to a certain degree the right to establish and develop relationships with others. There was no reason of principle why the notion of "private life" should be taken to exclude professional or business activities, since it was in the course of their working lives that the majority of people had a significant opportunity of developing such relationships. To deny the protection of Article 8 on the ground that the measure complained of related only to professional activities could lead to an inequality of treatment, in that such protection would remain available to a person whose professional and non-professional activities could not be distinguished.

(b) In certain Contracting States the word "home" had been accepted as extending to business premises, an interpretation which was consonant with the French text of Article 8 ("domicile"). A narrow interpretation of "home" could give rise to the same risk of inequality of treatment as that mentioned at (a) above.

(c) To interpret the words "private life" and "home" as including certain professional or business activities or premises would be consonant with the object and purpose of Article 8; the entitlement of the Contracting States to "interfere" under paragraph 2 of that provision would remain and might be more far-reaching for such activities or premises than would otherwise be the case.

(d) In addition, it was clear from the particular circumstances of the case that the search operations must have covered "correspondence" within the meaning of Article 8.

[see paragraphs 27-33 of the judgment]

2. In the Court's opinion, the interference in question was "in accordance with the law" and pursued aims that were legitimate under paragraph 2 of Article 8, but was not "necessary in a democratic society". It considered in particular that, having regard to the materials that were in fact inspected, the search impinged on professional secrecy to an extent that was disproportionate in the circumstances.

3. The Court thus concluded that there had been a breach of Article 8.

[see paragraphs 34-38 of the judgment and point 1 of the operative provisions]

II. Article 1 of Protocol No. 1

Mr Niemietz submitted that, by impairing his reputation as a lawyer, the search had violated Article 1 of Protocol No. 1. The Court concluded that no separate issue arose under this provision.

[see paragraphs 39-40 of the judgment and point 2 of the operative provisions]

III. Article 50 of the Convention

The Court dismissed the applicant's claim for compensation under Article 50: he had not established any pecuniary damage or supplied particulars of his costs and expenses, and the finding of a violation of Article 8 constituted sufficient just satisfaction for any non-pecuniary damage he might have sustained.

[see paragraphs 41-43 of the judgment and point 3 of the operative provisions]

In accordance with the Convention the judgment was delivered by a Chamber composed of nine judges, namely, Mr R. Ryssdal (Norwegian), President, Mr R. Bernhardt (German), Mr L.-E. Pettiti (French), Mr B. Walsh (Irish), Mr C. Russo (Italian), Mr A. Spielmann (Luxemburger), Mr N. Valticos (Greek), Mr A.N. Loizou (Cypriot) and Sir John Freeland (British), and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar.

For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 251-B of Series A of the Publications of the Court (available from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D - 5000 Köln 41).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

APPENDIX

Articles mentioned in the release

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 50 of the Convention

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the (...) Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."