European Court of Human Rights: Perinçek v. Switzerland and Pentikäinen v. Finland

IRIS 2014-7:1/2

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Two cases that have been previously reported in IRIS, Perinçek v. Switzerland (see IRIS 2014-2/1) and Pentikäinen v. Finland (see IRIS 2014-4/2), were referred to the Grand Chamber on 2 June 2014. The consequence of the referrals is that neither the judgment of 17 December 2013 in Perinçek v. Switzerland, nor the judgment of 4 February 2014 in Pentikäinen v. Finland have become final. In its application of Article 43 of the Convention the panel of the Grand Chamber was of the opinion that both cases raise serious questions affecting the interpretation or application of the Convention, or concern serious issues of general importance, in which the Grand Chamber of 17 judges is now to deliver a final judgment, most likely in 2015.

In Perinçek v. Switzerland, the Second section of the Court ruled by five votes to two, that Switzerland had violated the right to freedom of expression by convicting Doğu Perinçek, chairman of the Turkish Workers' Party, of publicly challenging the existence of genocide against the Armenian people. The Swiss Courts found Perinçek guilty of racial discrimination within the meaning of Article 261bis of the Swiss Criminal Code. According to the Swiss Courts, the Armenian genocide, like the Jewish genocide, was a proven historical fact, recognised by the Swiss Parliament, while Perinçek's motives in denying this historical fact were of a racist tendency and did not contribute to the historical debate. The Second section of the European Court however clearly distinguished the discussions on the legal qualification of the atrocities perpetrated against the Armenian people in the first decades of the 20th century from those concerning the negation of the crimes of the Holocaust, committed by the Nazi-regime shortly before and during World War II. The Court took the view that Switzerland had failed to show how there was a social need in that country to punish an individual for racial discrimination on the basis of declarations challenging the legal characterisation as "genocide" of acts perpetrated on the territory of the former Ottoman Empire in 1915 and the following years. The Swiss Government requested the referral to the Grand Chamber in order to reconsider the approach and reasoning of the majority of the Second section, finding that there has been a violation of Article 10.

In Pentikäinen v. Finland the Fourth section of the European Court found that a Finnish press photographer's conviction for disobeying a police order while covering a demonstration did not breach his freedom of expression as guaranteed

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by Article 10 of the Convention. Pentikäinen had not been prevented from taking photos of the demonstration and no equipment or photos had been confiscated. His arrest was a consequence of his decision to ignore the police orders to leave the area, while there was also a separate secure area which had been reserved for the press. The Court considered that the fact that the applicant was a journalist did not give him a greater right to stay at the scene than the other people and that the conduct sanctioned by the criminal conviction was not his journalistic activity as such, but his refusal to comply with a police order at the very end of the demonstration, when the latter was judged by the police to have become a riot. The European Court concluded, by five votes to two, that the Finnish courts had struck a fair balance between the competing interests at stake. Pentikäinen requested a referral to the Grand Chamber. His claim was supported by the Finnish Union of Journalists, the International Federation of Journalists and the European Federation of Journalists, arguing that the Court's finding risked undermining press freedom and the rights of journalists covering issues of importance for society.

Decision by the Panel of 2 June 2014 to refer the case of Perinçek v. Switzerland, Appl. No. 27510/08 of 17 December 2013, to the Grand Chamber

https://hudoc.echr.coe.int/eng?i=001-158235

Decision by the Panel of 2 June 2014 to refer the case of Pentikäinen v. Finland, Appl. No. 11882/10 of 4 February 2014, to the Grand Chamber.

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