

EMD-bulletin

– nytt fra menneskerettsdomstolen i Strasbourg

Nr. 1 År 2015 Dato 27. januar Utgiver Norsk senter for menneskerettigheter

Kategori 1-avgjørelser fra EMD: Desember



Article 6 – Right to a fair trial

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

3. *Everyone charged with a criminal offence has the following minimum rights:*

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not a sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.



Norsk senter for menneskerettigheter

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BATTISTA v. ITALY

Date: 02/12/2014 **Application no.:** 43978/09

Articles: 35; 41; P4-2 ; P4-2-2 ; P4-2-3

Conclusion: Remainder inadmissible; Violation of Article 2 of Protocol No. 4 - Freedom of movement-{general} (Article 2 para. 2 of Protocol No. 4 - Freedom to leave a country); Non-pecuniary damage - award

The case concerned the fact that it was impossible for Mr. Battista, the applicant, to obtain a passport or an identity card valid for travel abroad on account of his failure to pay maintenance for his children.

The Court found in particular that Mr. Battista had been subjected to an automatic blanket measure of indefinite duration. It also noted that there had been no fresh examination of the reasons for the measure, or its proportionality, since the case had begun.

The Court concluded that the automatic imposition of such a measure, on an indefinite basis and without taking Mr. Battista's individual circumstances into account, could not be considered necessary in a democratic society, and entailed a violation of the Convention.

Norsk sammendrag på [Lovdata.no](http://lovdata.no)

DUBSKÁ and KREJZOVÁ v. THE CZECH REPUBLIC

Date: 11/12/2014 **Application no.:** 28859/11; 28473/12

Articles: 8; 8-1; 8-2; 35

Conclusion: No violation of Article 8 – Right to respect for private and family life (Article 8-1 - Respect for private life)

The case concerned the prohibition under Czech law on midwives assisting home births.

The Court took into consideration, in particular, that there was no European consensus on whether or not to allow home births, and that this question involved the allocation of financial resources, for example for an adequate emergency system for home births. It concluded that States had a lot of room for manoeuvre ("margin of appreciation") in regulating this issue. Moreover, the applicants did not have to bear a disproportionate burden on account of the fact that they could only be assisted by a medical professional if giving birth in a hospital.

Norsk sammendrag på [Lovdata.no](http://lovdata.no)

IBRAHIM and OTHERS v. THE UNITED KINGDOM

Date: 16/12/2014 **Application no.:** 50541/08; 50571/08; 50573/08; 40351/09

Articles: 6; 6+6-3-c; 6-1; 6-3; 6-3-c

Conclusion: No violation of Article 6+6-3-c - Right to a fair trial (Article 6 - Criminal proceedings Article 6-1 - Fair hearing) (Article 6 - Right to a fair trial Article 6-3 - Rights of defence Article 6-3-c -

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Defence through legal assistance); No violation of Article 6+6-3-c - Right to a fair trial (Article 6 - Criminal proceedings Article 6-1 - Fair hearing) (Article 6 - Right to a fair trial Article 6-3 - Rights of defence Article 6-3-c - Defence through legal assistance)

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants, Mr Ibrahim, Mr Mohammed and Mr Omar, were arrested on suspicion of having detonated three of the bombs. Mr Abdurahman, the fourth applicant, was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers.

The Court noted that two weeks earlier, suicide bombers had detonated their bombs on the London transport system, killing fifty-two people and injuring countless more. It was satisfied that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons justifying the temporary delay in allowing the applicants' access to lawyers. It also found that no undue prejudice had been caused to the applicants' right to a fair trial by the admission at their trials of the statements they had made during police interviews and before they had been given access to legal assistance. The Court took into account the counterbalancing safeguards contained in the national legislative framework, as applied in each of the applicants' cases; the circumstances in which the statements had been obtained and their reliability; the procedural safeguards at trial, and in particular the possibility to challenge the statements; and the strength of the other prosecution evidence. In addition, as concerned the fourth applicant, who had made self-incriminating statements during his police interview, the Court emphasised the fact that he had not retracted his statements even once he had consulted a lawyer but had continued to rely on his statement in his defence up until his request that it be excluded at trial.

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Avgjørelser mot Norge: Desember

N.A. v. NORWAY

Date: 18/12/2014 **Application no.:** 27473/11

Articles: 6; 6-1; 6-2

Conclusion: No violation of Article 6 - Right to a fair trial (Article 6-2 – Charged with a criminal offence); No violation of Article 6 - Right to a fair trial (Article 6 – Civil proceedings Article 6-1 – Fair hearing)

The applicant, Ms N.A., is a Norwegian national who was born in 1986 and lives in Norway. The case concerned her complaint that she had been ordered to pay compensation to her children for having caused injuries to them, although she had been acquitted of the related criminal charges.

The Court noted that in holding the applicant liable to pay compensation, the High Court, considering the evidence of the case as a whole, found it clearly probable that the applicant (and her former husband) had ill-treated their children or had aided and abetted in doing so by consent or by incitement to the acts. It further held that the physical and psychological injuries sustained by the children had been a direct consequence of the ill-treatment and that it had been foreseeable to the applicant (and her former husband) that serious injuries could occur in the case of such small children.

Although the High Court's reasoning on compensation was relatively succinct and did not identify the person or persons who had perpetrated the ill-treatment, the Court found that Article 6 § 1 does not require a detailed answer to every argument. On the approach adopted by the High Court, it was sufficient for holding the applicant liable that she had consented to the reprehensible acts. The Court, having regard to the entirety of the domestic proceedings, to the High Court's role in these and to the nature of the task it was required to carry out, as well as the manner in which the applicants' interests were presented and protected before it, was satisfied that the latter stated adequate reasons for its decision ordering her to pay compensation. These reasons were sufficient to afford the applicant an opportunity to make effective use of her right to appeal to the Supreme, of which she indeed availed herself by appealing against the High Court's reasoning regarding the assessment of the evidence.

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Månedens utvalgte: N.A. v. Norway

Fakta:

Klageren var en norsk statsborger som i september 2009 sammen med sin tidligere mann ble tiltalt for å ha forårsaket alvorlig skade på parets datter, herunder livstruende hodeskader som resulterte i varig hjerneskade. De to ble også tiltalt for ved gjentatte anledninger å ha utøvet vold mot sønnen,

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som på det aktuelle tidspunktet var mindre enn tre år gammel. Etter først å ha blitt dømt etter tiltalen i januar 2010, ble de to frikjent i september 2010 etter anke. I ankeavgjørelsen fant lagmannsretten samtidig at de to var erstatningsansvarlige overfor begge barna. Den videre anken for Høyesterett ble nektet fremmet i november 2010.

Anførsler:

Klageren anførte krenkelse av artikkel 6(2) under henvisning til at uskyldspresumsjonen var krenket. Hun viste til at lagmannsretten hadde knyttet avgjørelsen av erstatningsspørsmålet tett til straffesaken, der hun var frikjent. Klageren anførte også krenkelse av artikkel 6(1), under henvisning til at rettergangen var urettferdig idet lagmannsretten ikke hadde gitt tilstrekkelig begrunnelse for avgjørelsen om å tilkjenne erstatning.

Staten imøtegikk klagerens anførsler.

Domstolens vurderinger:

I behandlingen av artikkel 6(2) uttalte Domstolen innledningsvis at den, i likhet med i tidligere sammenliknbare saker, ikke fant at erstatningssaken medførte en «straffesiktelse» etter de såkalte Engelkriteriene. Domstolen måtte derfor vurdere om artikkel 6(2) kom til anvendelse på et annet grunnlag, særlig hvorvidt erstatningssaken likevel var knyttet til straffesaken på en slik måte at den falt innenfor artikkelens virkeområde. I denne vurderingen var beslutningstakerens språkbruk av avgjørende betydning. Domstolen måtte nærmere bestemt ta stilling til hvorvidt den nasjonale domstolens avgjørelse i erstatningssaken inneholdt uttalelser som tilskrev klageren et straffansvar.

I den foreliggende saken var det ikke tilstrekkelig til å bringe saken innenfor virkeområdet til artikkel 6(2) at lagmannsretten hadde behandlet erstatningsspørsmålet og straffespørsmålet i samme avgjørelse, da dette var en naturlig følge av at begge spørsmål var reist i samme saksgang. Domstolen bemerket at lagmannsretten behandlet de to spørsmålene i klart atskilte deler av dommen og anså at lagmannsretten bevisst søkte å distansere resonnetet i erstatningsspørsmålet fra straffesaken. I denne sammenheng viste Domstolen blant annet til at lagmannsretten i sin vurdering hadde forklart at frifinnelse i straffesaken ikke utelukket muligheten for kompensasjon til offeret på grunnlag av en mindre streng bevisbyrde, såfremt grensene for uskyldspresumsjonen i artikkel 6(2) ble respektert. Domstolen skjelnet ikke noe i lagmannsrettens spesifikke begrunnelse hva gjaldt erstatningsspørsmålet som kunne sees som en fastleggelse av straffansvar, verken i beskrivelsen av faktum eller i vurderingen av dette. Det var heller ingen annen tilknytning mellom straffespørsmålet og erstatningsspørsmålet som kunne rettferdiggjøre at forholdet falt under artikkel 6(2). Domstolen fant etter dette at artikkel 6(2) ikke kom til anvendelse og at det derfor ikke forelå noen krenkelse av denne bestemmelsen.

Hva gjaldt artikkel 6(1), bemerket Domstolen at det avgjørende var om kravene etter bestemmelsen, slik tolket i Domstolens rettspraksis, var etterlevet. I den foreliggende saken var lagmannsrettens resonnement i erstatningsspørsmålet relativt kortfattet, og gjerningspersonene bak mishandlingen ble ikke klart identifisert. Domstolen bemerket imidlertid at artikkel 6(1) ikke krever et detaljert svar på enhver anførsel, og for lagmannsrettens tilnærming var det tilstrekkelig for å illegge erstatningsansvar at klageren hadde samtykket til de klanderverdige handlingene. I lys av den



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samlede nasjonale saksbehandlingen, lagmannsrettens rolle og oppgave samt ivaretagelsen av klagerens interesser, fant Domstolen at lagmannsretten hadde gitt en tilstrekkelig begrunnelse for avgjørelsen om å ilegge klageren erstatningsansvar. Det forelå etter dette ingen krenkelse av artikkel 6(1).

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