

Public



Scrutiny

of the judgment by the European Court for Human Rights
in the case of Golder versus the United Kingdom, 21 February 1975
this version and the Dutch version are authentic
First revision

Introduction

The Case is lodged by a private individual, at the moment of the incidents a prisoner in the United Kingdom. This person was mistreated in prison by a prison officer and wished to bring the officer before a tribunal. For this aim the person needs a leave to consult a (in this field experienced) solicitor. Because of the imprisoning is an approval of the Home Secretary needed in the United Kingdom. The Home Secretary rejected the application for leave to consult a solicitor.

Hereafter the European Convention for the Protection of Human Rights and Fundamental Freedoms is mentioned to as the Convention and the European Court of Human Rights is mentioned to as the European Court.

Survey of the judgment

In the paragraphs 1 until 8 is the instituting procedure at the European Court described.
() The European Court is composed with 12 judges and a registrar and a deputy-registrar.

In the paragraphs 9 until 22 are the situations with facts and circumstances of the happenings in the United Kingdom described. **NOTE:** There are no signatures of the private individual and government that the descriptions are according the submitted circumstances and facts and that these are complete.

Chapter I

In the paragraphs 23 until 40 are the involved law and law-articles described.
(§23) The disagreements between the State and the Commission are described.
(§26) The right of access is deliberated.
(§37) On the implied limitations is deliberated.

There are no signatures of the private person and government that the deliberations are according the submitted topics and that these are complete.

Chapter II

In the paragraphs 41 until 45 are the (alleged) violations described.
(§41) On the alleged violation of article 8 is deliberated.

Chapter III

In the paragraphs 46 is the application of article 50 discussed.
(§46) As to the application of article 50 of the convention is deliberated.

Closure with the dictum of the judgment (page 19)

There is, inter alia, no declaration that these rights are everyone's, etc.

Separate opinions of judge Verdross (page 20); of judge Zekia (page 22); of judge Sir Gerald Fitzmaurice (page 28).

Introduction of the Public Scrutiny

(Quoted:) It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees (§35). In §36 are the fair, public and expeditious characteristics of article 6, §1 regarded without elaboration. Later is elaborated in the judgment of the Case of Pretto and Others vs Italy, 8 December 1983, §21 the cause and goal of the obligated public pronouncement of a judgment namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial (Case of Pretto, §27). This case in 1983 does not change the retroactivity of each European Court's judgment and so of the public scrutiny down from the date that the Convention came in power.

The public scrutiny is a unity and an equally "established by law" or an equally by "law making treaty" (§36) established judging authority like every (disciplinary) tribunal. The European public sizes to about 450 million citizens minus the governmental employees, public servants and officers. In article 6, §1, Convention, is also the press excluded from the public. Who are member of the public scrutiny is described in the "Manual for public scrutiny", item 4 [*1]. Why the public scrutiny is a unity and by what it is united is sufficiently explained in the same document "Manual for public scrutiny".

Introduction of the European Court of Human Rights

The European Court has jurisdiction that shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto (article 32, §1). In the event of dispute as to whether the Court has jurisdiction, the Court shall decide (article 32, §2). So, the European Court has dictatorship on the interpretation and application of the Convention.

The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto (article 47, §1). The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47 (article 48). So, the European Court has dictatorship on giving advisory opinions on legal questions concerning the interpretation (not the application) of the Convention.

The final judgment shall be published (article 44, §3). Advisory opinions of the Court shall be communicated to the Committee of Ministers (article 49, §3). So, the judgments of the European Court are published and therefore within the public scrutiny's jurisdiction while European Court's advisory opinions are secret and therefore outside the public scrutiny's jurisdiction.

Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration: "I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations." (Artikel 25, sub d, Convention, directs to "Rules of Court" and here valid is Rule 3).

The obligatory principles for any scrutiny of the judiciary

Good faith is standard absent (clarified in document "Precognition and international principles" [*1]).

The evidences of perjury, abuse or infringements do not change that the offenders are able whether or not by accident to express just findings or conclusions. Also offending courts do not change this.

Each lawsuit is one party who executes his rights (empowerment is a right) against an opposite party who is unwilling to endure this execution. This examined case of Golder attests a government unwilling to agree with the Commission for Human Rights. The reason for just scrutiny is to unveil the cause in effort to a solution: is it a contrary right, a lack of knowledge about the (executing) right or sometimes is it to make disadvantage or worse. A judge is equipped and facilitated to disclose the legislative author's working papers to publish its cogitation, object and purpose with the law and involved articles. This is a demanded obligation.

The place and importance of the Convention

The Convention is the non-tolerant and non-exceedable outline boundary of the "Rule of Law", in which all the activities or human resulting happen (see paragraph "Introduction"). Not the same but close comparable with the safety rules for products in the society, which have their own particular rules for construction and working. So, how well and according the law a product is made, when it does not pass the safety rules it is out of use and out of the human lives in a together living society.

The Convention is a regular contract, with at one side the Contracting States and on the other side everyone (article 1, Convention). Each breach of contract has also legal results by the Agreements Rights in the country where the offences take place.

The Human Rights do not turn over roles, exchange with persons in their official capacity or turn over the occurred levels of power. The Human Rights is nothing more and nothing less than an equalizing power.

Final Conclusions on the judgment within the Human Rights

(I) Precognition and international principles

- (1) The precognition and international principles are gathered in the document "Precognition and international principles" and are explained therein. This document is inseparable a part of this document and all precognition is presumed being included.

The topics in the documents include:

1. Every law is made and written for each private individual
2. Each court, tribunal or judge is always last in line, forever
3. Each interpretation has retroactive effect originated by law
4. Human Rights concerns solely one court: that of the first instance
5. The Convention is a regular contract
6. Every appeal is a regular notice of default
7. The Convention also obliges the European Court and every national court, tribunal, judge or judiciary
8. Good faith is absent by default.

(II) Violations or perjury

1. The European Court's interpretations are intolerable unfair

- (2) Already because every lawful (this is with just craftsmanship) court is always and eternally the last in line. So its (or the use of an) opinion afterwards is completely useless. Moreover, a judgment is intolerably unfair when it is based afterwards (in part or in full) on the opinion of the judge or tribunal (or Chamber or Grand Chamber), whether it is minority, majority or unanimous. Because of the few rules of "Fair Play" (clarified in document "Inventory of identifiers" [*1]).

2. The European Court's interpretations conflict with human rights

(3) The opinion of the European Court is contrary to the contract

(quote) "It would be unthinkable, in the opinion of the Court, (...)." (§35). Any opinion of the European Court, in fact of any court, does not respect the Convention's author's ownerships. Since the Convention is a contract, the opinion of a third party is unimportant and rightly not valid. Any performance of the contract is legal only within the objects and purposes of the contracting parties and is to achieve their intended goals.

(4) The European Court's interpreting must be according the Convention's author.

The European Court knows that the wording of an article contains clear readable and implicit rights. Quote: " It enunciates rights which are distinct but stem from the same basic idea and which, taken together, make up a single right not specifically defined in the narrower sense of the term." and " It is the duty of the Court to ascertain, by means of interpretation, whether access to the courts constitutes one factor or aspect of this right." (§ 28), which duty also applies to each of the articles of the Convention.

- (5) An interpretation is the opposite of an opinion (clarified in the document "Inventory of identifiers" [*1]). The European Court also ought to know: (quote) "Incidentally, the Legal Committee of the Consultative Assembly of the Council of Europe foresaw in August 1950 that "the Commission and the Court must necessarily apply such principles" in the execution of their duties and thus considered it to be "unnecessary" to insert a specific clause to this effect in the Convention (Documents of the Consultative Assembly, working papers of the 1950 session, Vol. III, no. 93, p. 982, para. 5)."(§35). The quotation discloses that the articles of the Convention have

implicit rights that must be clarified through interpretations when necessary. In the brackets, the European Court recognizes the obligation to consult the source of origin and it certainly knows the essence of legal interpretation and knows the content of legal interpretation. The European Court knows that its own opinion or the opinions of third parties are gossip.

- (6) Furthermore, the European Court recognizes that an almost flawless interpretation is one and a complete process. Quote: "(...), the process of interpreting a treaty is a unit, a single combined operation; this rule, closely integrated, puts on an equal footing the various elements enumerated in the (...) paragraphs of the article." (§30).
- (7) For completeness, the words are read and used in the public and ordinary sense: (quote) "(Littré, Dictionnaire de la langue française, tome I, p. 509, 5o)." And (quote) "(Paul Robert, Dictionnaire alphabétique et analogique de la langue française, tome I, p. 666, II-2o)." (§32). With reference to paragraph 1 above.
- (8) **The published interpretations are in combat against Article 10**
No judge, tribunal or their court, the same applies to the European Court, has or have Human Rights. Each European citizen has the right to freedom of expression with the aim of knowing the Convention's author's objects and purposes with the Convention and with the involved article.
- (9) **Implied rights are those necessary to allow the expressed right to happen**
The European Court recognizes the implicit right of access to a tribunal: (quote) "The fair, public and expeditious characteristics of judicial proceedings do of no value at all if are no judicial proceedings." (§35). Similarly, implicit rights are those that directly results from the right expressed.
- (10) **An interpretation must be in harmony with the other articles**
Repeated here, but emphatically, the sub-paragraph e (of chapter 1) in the document "Interpretation of the Articles of the Convention" ([*1]).
- (11) **The State's regulations must also be in harmony with the articles of the Convention**
This is set out in one case for all cases: (quote) "In its judgment of 23 July 1968 on the merits of the case relating to certain aspects of the laws on the use of languages in education in Belgium, the Court ruled that:
"The right to education ... by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention." (Series A no. 6, p. 32, para. 5)." (§38).

3. The Court's interpretation violates criminal manner the rights

- (12) **The offending interpreting makes disorder, uncertainty and inconsistency**
In chapter 3 above, one reason is sufficiently explained that a wide variety of (illegal) interpretations results in a huge number of not unforeseeable interpretations and judgments. This great variety and number of ever-changing judgments, made with full awareness, is certainly not the purpose of the Convention's author and certainly not in accordance with the principles of international law (foreseeability, legal order, consistency, certainty).

(13) **By working in reverse from out of new rulings, laws or treaties**

(Quote :) "The Court is prepared to consider, as do the Government and the Commission, that it should be guided by Articles 31 to 33 of the Vienna Convention of 23 May 1969 on the Law of Treaties." (§29). This is a violation of the contract against Article 32, to not applied from out of the Convention the Human Rights on to other documents. To let oneself being guided by, inter alia, the Vienna Convention is also a breach of contract and this guide is totally unnecessary: (quote) "Furthermore, the preamble is generally very useful for the determination of the "object" and "purpose" of the instrument to be construed." (§34).

(14) **By personalizing, each ruling also violates Article 14 and Article 46**

Failing to establish in the judgment the elements by which the category is identified of the equal cases to which a request belongs, does not provide the public control with the true, correct and complete information to verify on prohibited discrimination and on the fairness of the trial. Within the legal framework of an article, personalizing the considerations, deliberation and judgment is by default a discrimination.

(15) **By, that everyone other than the author has a different opinion**

Starting with the judges of the only European Court, page 20 proves this and then next the separate opinions of 3 judges out of 12 (Verdross, Zekia and Sir Gerald Fitzmaurice), that is 25%. In the case of Wemhoff vs. Germany (June 27, 1968) this is a maximum of 44%. Multiplied by the national courts, this produces an enormous amount of dissent, already within the judiciary only.

4. The basic opinion of the European Court is criminal for Human Rights

(16) The European Court has no jurisdiction to refuse its duty under Article 32 by refusing to apply the Convention in national laws. Quote: "It is not the function of the Court to elaborate a general theory of the limitations admissible in the case of convicted prisoners, nor even to rule in abstracto on the compatibility of Rules 33 para. 2, 34 para. 8 and 37 para. 2 of the Prison Rules 1964 with the Convention." (§39). This refusal allows different opinions that also fight against the prohibition of discrimination of Article 14.

(17) **The European Court has no authority to establish or limit its jurisdiction**

Quote: " Seised of a case which has its origin in a petition presented by an individual, the Court is called upon to pronounce itself only on the point whether or not the application of those Rules in the present case violated the Convention to the prejudice of Golder. " (§39). It is the duty of the European Court to apply the Convention, and this is only possible to the law or regulations of a State or to the treaty of an organization.

5. Ignoring the public scrutiny

- (18) The judgment is signed by the President and the Registrar. So, the signature of each party too is no problem. Therefore, it is deliberately left to the public scrutiny to find and establish that:
- (a) The ruling does not ensure, through the signatures of each party, that it covers all submitted objects of violation and rebuttal, that arguments or facts are not erased, that it does not publish lies and that it does not publish misleading context;
 - (b) It is not verifiable that the verdict is truthfully publishing the private person's real case .

- (19) The judgment does not state that,
- (a) The established rights are of everyone;
 - (b) The established rights are valid for the lifetime of the Convention and in all equal cases in the same category;
 - (c) The established rights are enforceable at any place in Europe for any tribunal.

6. Humanitarian mistake or perjury and nothing in between

- (20) The founders or author of the Convention (quote) decided: "to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" of 10 December 1948." (preamble, §34). This first step involves the organization and composition of the court and the course of the proceedings (§36). The inevitable second step is: to appoint suitable natural persons with the legal skill, craftsmanship, morality and diligence, guaranteed by the oath that each has sworn before taking office (see also Rule 3, Rules of Court, due to Article 25, Convention).
- (21) It is indisputable perjury to create a nuisance of judgments. Every reiterating by the European Court is one proof. Refusal of duty (a manifestation of denial of justice) is another proof of perjury. Doing or acting outside of jurisdiction is another proof of perjury.

7. Impersonating a lawful sworn judge is a criminal against Human Rights

- (22) Repeated here, but emphatically, §9 in the document "Inside Information and International Principles" [* 1].

Therefore, it is a criminal decision to pretend, in the case of De Cubber v. Belgium, 26 October 1984, to establish in §25: (quote) "(..), the personal impartiality of a judge is to be presumed until there is proof to the contrary.". When this issue was considered in the case of Piersack vs. Belgium, 1 October 1982, is recognized in §30: (quote) "In this area, even appearances may be of a certain importance.". And further (quote) "(...) any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. What is at stake is the confidence which the courts must inspire in the public in a democratic society.".

- (23) It is abundantly clear that the fear of perjury (or posing as a sworn judge) can not be judged by anyone else, with regard to Articles 9 and 10 of the Convention, but the fearful private individual. Nor can the legitimate reason be judged by another. This leaves for another to just verify the existence of the submitted events.

(III) Complementing Human Rights' interpretations

8. Effective remedy against violations by judges, tribunals or courts

(24) The national authority is not a tribunal

Quote: " Article 13 (art. 13) speaks of an effective remedy before a "national authority" ("instance nationale") which may not be a "tribunal" or "court" within the meaning of Articles 6 para. 1 and 5 para. 4 (art. 6-1, art. 5-4)." (§33).

(25) The violation is an established judgment

Quote: "Furthermore, the effective remedy deals with the violation of a right guaranteed by the Convention, while Articles 6 para. 1 and 5 para. 4 (art. 6-1, art. 5-4) cover claims relating in the first case to the existence or scope of civil rights and in the second to the lawfulness of arrest or detention." (§33).

Special Note: Paragraphs 15 and 16 above state that Article 13 provides for violations by the Judiciary, Courts, Tribunals and 1-Judge Tribunals or Chambers.

(26) The claim against also a judge, tribunal or court is a civil claim

Quote: One point has not been put in issue and the Court takes it for granted: the "right" which Golder wished, rightly or wrongly, to invoke against Laird before an English court was a "civil right" within the meaning of Article 6 para. 1 (art. 6-1)." (§27). This Laird person is a prison officer acting in his official capacity. This establishes that a civil action against an officer acting in an official capacity is a human right.

9. Officials are prohibited from hindering or offending even without in formal terms

(27) An infringement or nuisance does not exist solely by express terms

Quote: "Without formally denying Golder his right to institute proceedings before a court, the Home Secretary did in fact prevent him from commencing an action at that time, 1970. Hindrance in fact can contravene the Convention just like a legal impediment." (§26).

(28) A registry or secretariat is prohibited to interfere or to intervene

Quote: "(...) Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal." (§36). Adding: (quote) " Impeding someone from even initiating correspondence constitutes the most far-reaching form of "interference" (paragraph 2 of Article 8) (art. 8-2) with the exercise of the "right to respect for correspondence"; it is inconceivable that that should fall outside the scope of Article 8 (art. 8), while mere supervision indisputably falls in it." (§43). Analogue is that any competent authority may not hide behind a registry or secretariat.

10. Any claim is admissible to reach a judge or tribunal

(29) Article 6, §1 guarantees everyone the right to bring any claim before a judge or tribunal plus the right of access to a court, that is to say the right to institute proceedings before civil courts. Quote: "(...),that Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 para. 1 (art. 6-1) as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing." (§36)

(30) An inadmissible claim is impossible: (quote) "The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally "recognised" fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice. Article 6 para. 1 (art. 6-1) must be read in the light of these principles." (§35). Only in extremely exceptional cases is an inadmissibility (or equal judgment) and this ought to be a decision of the President of a court.

(IV) The round-up of the scrutiny

11. Verification that only one court (of first instance) is involved

No national court is involved for the violation of the human right to access a court and subsequently to access a tribunal or judge.

12. Verification of identity with cases in the same category

No identification of the case has been established, nor have the identifiers been shown to verify that it is a case in the same category of similar cases.

13. The judgment of the European Court is illegal because of perjury and other Human Rights violations

As a result, the European Court is ordered,

- (*) to retroactively destroy all activities to acquire employment through misjudgments, unnecessary pseudo-interpretation or failure to enforce the obedience of Contracting States;
 - (*) retroactively revise all its statements based on its opinion;
 - (*) the cassation of unnecessary judgments on grounds of discrimination;
 - (*) to properly revise the few remaining judgments, guiding by this judgment;
 - (*) to establish or revise a correct inventory of each Article with its implicit rights through legal interpreting that links up into the unity of public scrutiny;
- and
- (*) to compensate all damages of all private individuals involved;
 - (*) complete the above work within a reasonable period of time, with an average or better quality of craftsmanship and at the expense of the damage makers.

14. Public scrutiny does what the European Court should do

Because of the abovementioned human rights violations, the rights to protection submitted have been rightly claimed. In the absence of approval by each party, it must be assumed that the situations arose where the justifiable offences occurred without the guaranteed protection.

The report of the public scrutiny and the established complement of Human Rights, are of everyone and valid in all equal cases in the same category and enforceable in any place in a Contracting State for any tribunal.

This public scrutiny report has been sent to the President of the European Court with an order to treat it equally as any final ruling on Article 46. With an emphatic focus on destroying the employment acquisition through repetition of perjury and insult.

15. Identification of this case

The judgment of the European Court has been dealt with within the legal framework of Articles 6, 8 and 13 of the Convention. The legal relationship between the European Court and the State is the unilateral contract on guarantees (the Convention).

The State's case concerns a private citizen in the capacity of a prisoner. The legal relationship involved between the private citizen and the State is imprisonment. The last body of the State is the government and the first body of the State is the prison security and the prison administration. The subject of the violation is, firstly, access to a tribunal and, secondly, correspondence with legal counsellor. More personalization creates prohibited discrimination.

16. Revision of "Interpretation of the articles of the Convention"

Due to the findings by this judgment, the document will be revised [*1].

Note:

This public audit report is cooperatively in harmony with the other public audit reports on this site in the section "The public audit".

[* 1]: these documents are available on this site www.publicscrutiny.nl in the chapter "The Manual for Public Scrutiny (...) and more documents")