

**WILLE v. LIECHTENSTEIN**

**Right to freedom of expression – violation**  
**Right to an effective remedy – violation**

**Article 10**  
**Article 13**

Reprimand by Prince of Liechtenstein of President of Administrative Court for expressing opinion on jurisdiction of Constitutional Court and stating that the Prince would not re-appoint the President was not necessary in a democratic society. Since there has never been a case in which the Liechtenstein Constitutional Court accepted for adjudication a complaint against the Prince, there was no possible remedy.

In a judgment delivered at Strasbourg on 28 October 1999 in the case of *Wille v. Liechtenstein*, the European Court of Human Rights held by sixteen votes to one that there had been a violation of Article 10 (freedom of expression) and of Article 13 (right to an effective remedy) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 Swiss francs (CHF) for non-pecuniary damage and CHF 91,014.05 for legal costs and expenses.

### 1. Principal facts

The applicant, Herbert Wille, a Liechtenstein national, was born in 1944 and lives in Balzers (Liechtenstein).

In 1992 a controversy arose between His Serene Highness Prince Hans-Adam II of Liechtenstein (hereafter “the Prince”) and the Liechtenstein Government on political competences in connection with the plebiscite on the question of Liechtenstein’s accession to the European Economic Area. At the relevant time, the applicant was a member of the Liechtenstein Government. Following an argument 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 Diet and the Government.

In May 1993 the applicant did not stand for election of the new Diet. In December 1993 he 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, the applicant gave a public lecture

at the Liechtenstein-Institut, a research institute, on the “Nature and Functions of the Liechtenstein Constitutional Court”. In the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the “interpretation of the Constitution in case of disagreement between the Prince (Government) and the Diet”. This lecture was reported in the local press.

On 27 February 1995 the Prince addressed a letter to the applicant concerning the above lecture. The Prince disagreed with the applicant’s statement on the competence of the Constitutional Court and also noted an earlier political controversy. He continued that he had reason to believe that the applicant did not feel bound by the Constitution and expressed opinions which clearly infringed the Constitution. The applicant was, therefore, disqualified from holding a public office. The Prince wished to inform him in good time that he would not appoint him to public office, should he be proposed by the Diet or any other body.

In his reply of 20 March 1995, the applicant explained his legal opinion and complained that the Prince’s announcement interfered with his right to freedom of expression and to freedom to express academic opinions.

In a further letter to the applicant dated 4 April 1995, the Prince replied that he had attempted to avoid a public discussion in informing the applicant, in a personal letter, about his decision as early as possible.

In April 1997 the applicant was proposed by the Liechtenstein Diet for a further term of office as President of the Administrative Court. However, the Prince did not appoint him.

## **2. Procedure of the Court**

The application was lodged with the European Commission of Human Rights on 25 August 1995. Having found the application admissible, the Commission adopted a report on 17 September 1998 in which it expressed the opinion that there had been a violation of Article 10 of the Convention (fifteen votes to four), a violation of Article 13 of the Convention (sixteen votes to three) and that it was not necessary to determine whether there had been a violation of Article 6 of the Convention and that no separate issue arose under Article 14 in conjunction with Article 10 of the Convention (seventeen to two). It referred the case to the Court on 24 October 1998. The Liechtenstein Government also brought the case before the Court.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was transmitted to the Grand Chamber of the European Court of Human Rights on 1 November 1998, the date on which the Protocol entered into force.

### 3. Summary of the judgment

#### Complaints

The applicant complains that the Prince's letter of 27 February 1995 informing him that he would not appoint him to public office, should he be proposed by the Diet or any other body, violated his right to freedom of expression, as guaranteed by Article 10 of the Convention. He further complains under Articles 6 and 13 of the Convention that he had no remedy to defend his reputation and to seek protection of his personal rights.

#### Decision of the Court

##### *Article 10*

The Court found that the disputed measure, the Prince's letter of 27 February 1995, amounted to an interference with the applicant's exercise of his right to freedom of expression. It considered that recruitment to the civil service, a right not secured in the Convention, did not lie at the heart of the issue submitted to the Court. Even though the Prince raised the matter of a possible re-appointment of the applicant as President of the Administrative Court in the future, his communications to the applicant essentially consisted in a reprimand to the applicant for the opinions he previously had expressed.

In this respect the Court noted that the measure complained of occurred in the middle of the applicant's term of office as President of the Administrative Court and that it was unconnected with any concrete recruitment procedures involving an appraisal of personal qualifications. From the terms of the letter of 27 February 1995 it appeared that the Prince had come to a decision regarding his future conduct towards the applicant, and one which was connected to the exercise of one of his sovereign powers, i.e. his power to appoint State officials. Moreover, the said letter was expressly addressed to the applicant as the President of the Administrative Court, though sent to his home address. The Court did not accept the Government's argument that the letters of the Prince were private correspondence not constituting an act of state.

The Court recalled that such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined by paragraph 2 and was "necessary in a democratic society" to attain them.

Starting from the assumption that the interference was prescribed by law and pursued a legitimate aim, i.e. to maintain public order and promote civil stability, and to preserve judicial independence and impartiality, as claimed by the Government, the Court considered that it was, however, not "necessary in a democratic society".

In assessing whether the measure taken by the Prince as a reaction to the statement made by the applicant corresponded to a “pressing social need” and was “proportionate to the legitimate aim pursued”, the Court considered the impugned statement in the light of the case as a whole and attached particular importance to the office held by the applicant, the applicant’s statement as well as the context in which it was made and the reaction thereto.

The Court observed that at the time of the events the applicant was a high-ranking judge. It considered that, whenever the right of freedom of expression of persons in such a position was at issue, the “duties and responsibilities” referred to in Article 10, Section 2 assume a special significance since it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of judiciary are likely to be called in question. Nevertheless the Court also found that an interference with the freedom of expression of a judge in a position such as the applicant’s called for close scrutiny on the part of the Court.

The Court observed that the applicant’s lecture on 16 February 1995 formed part of a series of academic lectures on questions of constitutional jurisdiction and fundamental rights. The applicant’s lecture, since it dealt with matters of constitutional law and more specifically with the issue of whether one of the sovereigns of the State was subject to the jurisdiction of a constitutional court, inevitably had political implications. However, in the Court’s view, this element alone should not have prevented the applicant from making any statement on this matter. The opinion expressed by the applicant could not be regarded as an untenable proposition since it was shared by a considerable number of persons in Liechtenstein. Moreover, there was no evidence to conclude that the applicant’s lecture contained any remarks on pending cases, severe criticism of persons or public institutions or insults to high officials or the Prince.

The Court found that the Prince’s reaction, as expressed in his letter of 27 February 1995, was based on general inferences drawn from the applicant’s previous conduct in his position as a member of Government, in particular on the occasion of the political controversy in 1992, and his brief statement, as reported in the press, on a particular, though controversial, constitutional issue of judicial competence. No reference was made to any incident suggesting that the applicant’s view, as expressed at the lecture in question, had a bearing on his performance as President of the Administrative Court or on any other pending or imminent proceedings.

The Court concluded that the interference complained of was not “necessary in a democratic society” and held that there had been a violation of Article 10 of the Convention.

*Article 13*

The applicant, relying on Article 13 of the Convention, also complained that he did not have an effective judicial or other remedy enabling him to challenge the action taken by the Prince with regard to the opinion expressed on the occasion of his lecture.

The Court found that Government had 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. The Government have therefore failed to show that such a remedy would have been effective. It followed that the applicant had also been the victim of a violation of Article 13.

*Article 6 and Article 14 in conjunction with Article 10*

Before the Commission the applicant had also relied on Article 6 and Article 14, taken in conjunction with Article 10. However, before the Court the applicant did not reiterate these complaints and the Court did not find it necessary to deal with the matter of its own motion.

*Article 41*

The Court considered that the applicant may be taken to have suffered distress on account of the facts of the case and, on an equitable basis, awarded compensation for non-pecuniary damage in the amount of CHF 10,000. It rejected the remainder of the applicant's claim for compensation.

Furthermore the Court awarded CHF 91,014.05 in respect of costs and expenses relating to his representation before the Convention institutions.

*Judgment was given by a Grand Chamber of 17 judges, composed as follows:*

Elisabeth Palm (Swedish), President, Christos Rozakis (Greek), Luigi Ferrari Bravo (Italian), Georg Ress (German), Lucius Cafilisch (Swiss), Ireneu Cabral Barreto (Portuguese), Jean-Paul Costa (French), Willi Fuhrmann (Austrian), Karel Jungwiert (Czech), Boštjan Zupancic (Slovenian), Nina Vajic (Croatian), John Hedigan (Irish), Wilhelmina Thomassen (Dutch), Margarita Tsatsa-Nikolovska (FYRO Macedonian), Tudor Pantiru (Moldovan), Egils Levits (Latvian), and Kristaq Traja (Albanian), Judges.

Judges Cafilisch, Cabral Barreto, Zupancic and Hedigan expressed separate opinions.