

10. RECENT SIGNIFICANT CASES FROM THE EUROPEAN COURT OF HUMAN RIGHTS

by: Francisco Forrest Martin*

The following are cases from the European Court of Human Rights over the last year (September 2002-August 2003) that are significant to U.S. law and policy. Cases are only briefly summarized. The complete decisions can be found on the European Court's website at <<http://www.echr.coe.int>>.

LGBT Discrimination

G.L. A.V., and S.L. v. Austria, Appl. Nos. 39392/98, 39829/98 and 45330/99 (2003): The applicants claimed that an Austrian criminal statute prohibiting homosexual acts of adult men with consenting adolescents aged between 14 and 18 violated the right to freedom from discrimination on the basis of sexual orientation (ECHR, art. 14) that interfered with their right to privacy (ECHR, art. 8). The European Court agreed and rejected the Austrian government's claim that the criminal statute was needed to avoid "a dangerous strain" being "placed by homosexual experiences upon the sexual development of young males."

Karner v. Austria, Appl. No. 40016/98 (2003): The applicant claimed that the Austrian Supreme Court's failure to recognize his right to succeed to a tenancy after the death of his male partner amounted to a violation of his right against discrimination on the basis of sexual orientation (ECHR, art. 14) that interfered with this right to privacy (ECHR, art. 8). The applicant had shared an apartment with his gay partner, who subsequently died from AIDS. His partner designated the applicant as his heir.

* Francisco Forrest Martin is a member of the ACLU International Human Rights Task Force.

Under the Austrian Rent Act, domestic partners could succeed to a tenancy after the death of one of the partners. Although recognizing that in certain circumstances that the Austrian government may be seek to protect the "traditional family," the European Court held that discrimination on the basis of sexual orientation in the applicant's case was disproportionate and, hence, a violation of his right against discrimination because the Austrian government had failed to provide any additional justification besides the aim of protecting the "traditional family."

Conditions of Prison Confinement

Mousiel v. France, Appl. No. 67263/01 (2002): The applicant (who had been convicted of armed robbery, kidnapping, and fraud) was suffering from chronic lymphatic leukemia. When his condition worsened, he was taken to a hospital for his chemotherapy sessions. During his transit to the hospital, he was chained. The European Court found that the French authorities had violated his right against inhuman and degrading treatment (ECHR, art. 3) because such security measures were disproportionate to the security risk posed in that there was no significant risk of his absconding or resorting to violence. Furthermore, his continued detention also violated his right to humane treatment.

Death Penalty

Ocalan v. Turkey, Appl. No. 46221/99 (2003): The European Court held that the imposition of the death penalty upon the applicant (the former leader of the Kurdish Workers' Party) violated the right to humane treatment (ECHR, art. 3) on the basis of the Turkish government's failure to try him by an independent and impartial tribunal, its denial of his right to access to a lawyer during police custody, its restrictions on the number and length of lawyer visits, and his inability to have sufficient time to prepare his defense.

Surveillance

Peck v. United Kingdom, Appl. No. 44647/98 (2003): The applicant, who was suffering from depression, attempted suicide by cutting his wrists while walking down a public street. He was unaware that he was being filmed by a closed-circuit television camera installed by the city government. Subsequently, the film was aired on television by the BBC without the applicant's image being sufficiently masked to protect his identity. Later, the applicant made several media appearances in order to protest the publication of this film footage. Notwithstanding the later public appearances, the European Court found a violation of his right to privacy (ECHR, art. 8) because the public disclosure of the film footage far exceeded any exposure to a passerby or to security observation and to a degree surpassing that which the applicant could possibly have foreseen.