



Absolute ban on growing a beard in prison was not justified

In today's **Chamber judgment**¹ in the case of **Biržietis v. Lithuania** (application no. 49304/09) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

Mr Biržietis, the applicant, complained about the prohibition on his growing a beard when serving his prison sentence at the Marijampolė Correctional Facility from 2006 to 2009.

The Court found in particular that the absolute prohibition on growing a beard in the circumstances of Mr Biržietis' case, irrespective of its hygienic, aesthetic or other characteristics, had not been proportionate to the aim, submitted by the Government, of preventing disorder and crime among prisoners. The Government had therefore failed to demonstrate that there was a pressing social need to justify an absolute prohibition on Mr Biržietis deciding to grow a beard while in prison, a decision which had been related to his right to express his personality and identity.

Principal facts

The applicant, Rimantas Biržietis, is a Lithuanian national who was born in 1953 and lives in the village of Patiltė (Utena Region, Lithuania).

Mr Biržietis served a prison sentence at the Marijampolė Correctional Facility from November 2006 to December 2009. During this time he was prohibited from growing a beard by the internal rules of the facility. Those rules – shown to and signed by Mr Biržietis on the first day of his sentence at the facility – placed an absolute prohibition on prisoners growing a beard, irrespective of its length, tidiness or any other considerations and did not allow for any exceptions.

During his detention, he made two requests to the prison authorities to allow him to grow a beard, submitting that he had undergone radiation treatment for tongue cancer and shaving therefore irritated his skin. Both his requests were, however, rejected after a medical examination did not identify any such health problems.

Mr Biržietis therefore brought judicial proceedings in December 2007 to complain about the prohibition. The courts found in his favour at first instance, but this judgment was subsequently overturned in March 2009 by the Supreme Administrative Court. That court notably found that Mr Biržietis had not proven any health-related, religious or other serious reasons that would prevent him from shaving regularly, and that the prohibition could be justified by the prison authorities' need to swiftly identify prisoners.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), Mr Biržietis complained about the prohibition on his growing a beard in prison, alleging that it had caused him feelings of humiliation and distress.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The application was lodged with the European Court of Human Rights on 31 August 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

András **Sajó** (Hungary), *President*,
Vincent A. **de Gaetano** (Malta),
Nona **Tsotsoria** (Georgia),
Krzysztof **Wojtyczek** (Poland),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Gabriele **Kucsko-Stadlmayer** (Austria),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

It was not in dispute between the parties that the prohibition on Mr Biržietis growing a beard while in prison had constituted an interference with his right to respect for his private life. Furthermore, the Court was prepared to accept that that interference had had a legal basis in domestic law, as established in the Internal Rules of the Marijampolė Correctional Facility and as shown to and signed by Mr Biržietis on his first day in that facility.

However, the Court considered that the absolute prohibition on prisoners growing a beard, irrespective of its hygienic, aesthetic or other characteristics, had not been proportionate to the aim, submitted by the Government, of – among other things – preventing disorder and crime among prisoners. Indeed, in a similar complaint² lodged before the Parliamentary Ombudsperson and decided around the same time as Mr Biržietis' complaints had been examined by the Lithuanian courts, the Ombudsperson had concluded that such a prohibition could not be justified by hygiene requirements or by the need to identify prisoners. Lastly, in Mr Biržietis' case the prohibition had not apparently affected other types of facial hair, such as moustaches or sideburns, thus raising concerns that the ban only on beards had been arbitrary.

The Court therefore concluded that the Government had failed to demonstrate that there was a pressing social need to justify an absolute prohibition on Mr Biržietis deciding to grow a beard while in prison, a decision which had been related to his right to express his personality and identity as protected under Article 8 of the Convention. There had therefore been a violation of Article 8 of the Convention.

Article 41 (just satisfaction)

The Court held, unanimously, that the finding of a violation had constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Biržietis.

Separate opinions

Judge Wojtyczek expressed a dissenting opinion and Judge Motoc expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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² See paragraph 19 of the present judgment.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.