

European Court of Human Rights judgments on the right to freedom of expression

Bulletin LVII: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: July 2015

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In July 2015, the European Court of Human Rights decided the following freedom of expression cases:

- ***Morar v. Romania*** (application no. 25217/06), 7 July 2015: criminal defamation conviction and large damage award violated right to freedom of expression;
- ***Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*** (application no. 931/13), 21 July 2015: limitations on publishing freely available tax data did not violate right to freedom of expression;
- ***Akarsubaşı v. Turkey*** (application no. 70396/11), 21 July 2015: fine for participating in peaceful demonstration violated right to freedom of assembly and association.

These cases concerned the following issues:

- ***Morar v. Romania*** (application no. 25217/069, 7 July 2015: criminal defamation conviction and large damage award violated right to freedom of expression

This concerned a Romanian journalist who had been convicted of criminal defamation for a series of articles about a political adviser to a presidential candidate. The journalist had insinuated that the adviser had worked as a spy and a money launderer under the communist-era secret service, the Securitate. The political adviser lodged a complaint and Mr. Morar was sentenced to a suspended fine and also ordered to pay damages and costs totalling US\$26,000.

The European Court of Human Rights held that this conviction violated his right to freedom of expression. It noted that the reports in question concerned subjects of public interest, namely the strategies of different candidates in presidential elections and in particular possible links of the candidates to the communist-era secret police. The Court considered that the political adviser to a presidential candidate, though not a politician himself, was to be regarded as a public figure and should therefore tolerate greater criticism of his actions than an ordinary individual. The Court furthermore held that the

alleged link to the secret service was based on some evidence and that, given the difficulties associated with accessing secret service files, this could not be proven completely. Finally, the Court held that the amount of damages was particularly high; it represented more than fifty times the amount of the average wage at the time, in addition to the very high amount of legal costs that the applicant had to repay.

- ***Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*** (application no. 931/13), 21 July 2015: **limitations on publishing freely available tax data did not violate right to freedom of expression**

This concerned the publishers of a magazine which reported on taxation information, in particular on persons' taxable income and assets. In 2003, the publishers of the magazine started an SMS-service through which people could obtain tax information from a database which held the details of 1.2 million people. This constituted about a third of the country's taxable population. This database had been compiled from publicly available information and had already been published by the magazine in 2002. The Finnish Data Protection Ombudsman brought administrative proceedings against the magazine arguing that the SMS service violated data protection law and in November 2009, the Data Protection Board prohibited the magazine from continuing the SMS service. Following several appeals, including to the European Court of Justice which had held that in principle the publication of publicly available tax data could constitute 'journalism', the Supreme Administrative Court held that providing the entire database could not be regarded as a 'journalistic activity'. It therefore ruled that this publication violated the right to privacy of the individuals whose tax data had been published. It ruled that the publication of smaller selections of data could be lawful. As a result of the ruling, the magazine published significantly reduced taxation data in the autumn of 2009 and has not appeared since then. The SMS-service was shut down. The magazine complained to the European Court of Human Rights that its right to freedom of expression had been violated.

The European Court held that there had been no violation of the right to freedom of expression. On the one hand, the Court considered that taxation data was already a matter of public record in Finland, and that the magazine had received the information legally and directly from the tax authorities. It also considered that the information had been published accurately. The sole issue of concern to the Court was the extent of the data published. The Court reviewed the reasoning of the Finnish Supreme Administrative Court which had held that publishing an entire tax database of 1.2m people was not a 'journalistic activity' and that the 'journalism exception' to data privacy principles did not therefore apply. In its reasoning, the Finnish Supreme Administrative Court attached importance both to the applicant companies' right to freedom of expression as well as to the right to respect for private life of those tax-payers whose taxation information had been published but held that on balance, the right to privacy of the individuals concerned outweighed the freedom of expression rights of the company. The European Court of Human Rights found this reasoning

'convincing'. As regards the sanction imposed, the court considered that the companies could still publish taxation data – just not the entire database as a whole. While the Court acknowledged that the magazine had had to shut down because of this restriction, it regarded this as an economic decision taken by the publishers themselves; it did not regard the sanction as such disproportionate.

Judge Tsotsoria issued a dissenting judgment in which she criticises the Court for upholding an act of censorship, arguing that the states should not restrict the publication of data which is publicly available. She also criticises the Court for “the linking of journalistic activity to the extent of the information published”; put plainly, Judge Tsotsoria argues that the Court should not have said that the publication of an entire database does not constitute journalism.

- ***Akarsubaşı v. Turkey*** (application no. 70396/11), 21 July 2015: **fine for participating in peaceful demonstration violated right to freedom of assembly and association**

This concerned a Turkish civil servant who had taken part in a press conference organised by a trade union following a demonstration. The demonstrators, including the civil servant, had called for a crèche to be set up in their workplace. Mr Akarsubaşı was fined because the demonstration had taken place in front of a court building, where it was not formally allowed to hold press conferences. He complained to the European Court of Human Rights.

The Court held that the conviction violated his right to freedom of assembly and association, protected under Article 11 of the Convention. It noted that the demonstration took place peacefully; that the press statement was read in minutes and that after reading the statement, the demonstrators had dispersed peacefully. There had been no violent acts against the public or against officials entering or leaving the courthouse. There was no deterioration of public equipment or firearms use or similar objects from any member of the group of demonstrators. There were no excesses that would have been obliged the administrative authorities or police to intervene to maintain public order at the courthouse or around, not even on the movement. In short, there had been absolutely no reason for the authorities to convict the applicant; on the contrary, by fining the applicant the authorities had created a 'chilling effect' which might dissuade others from legitimately exercising their rights.

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