

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

### Bulletin LXV: SUMMARY OF EUROPEAN COURT DECISIONS ON THE RIGHT TO FREEDOM OF EXPRESSION: April 2016

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During April 2016, the European Court of Human Rights decided two cases involving the right to freedom of expression:

- *X v. San Marino*, Application no. 76795/13, 19 April 2016 (newspaper report alleging fraud and irregular use of state property by policeman did not violate right to reputation)
- *Novikova and others v. Russia*, Applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, 26 April 2016 (conviction for unauthorised protests violated the right to freedom of expression)

The two cases concerned the following issues:

- *X v. San Marino*, Application no. 76795/13, 19 April 2016 (newspaper report alleging fraud and irregular use of state property by policeman did not violate right to reputation)

This concerned a police superintendent who had lodged a criminal complaint for defamation against a newspaper, a journalist, and a local official who had given an interview to the newspaper in which he had claimed that the superintendent had fraudulently obtained benefits as well as the use of a State apartment. The interview and several follow-up reports questioned his morality, hypothesised as to whether he also enjoyed other benefits, and posed questions regarding the superintendent's possible involvement in other minor frauds. The final report also focused on the superintendent's job as a policeman. According to the applicant, it was written in a way as to bring him into disrepute. He wrote to the newspaper and gave a lengthy rebuttal, arguing that the story was incorrect, which the newspaper published in its entirety together with a response from the journalist. The superintendent then filed a claim for defamation and criminal proceedings were instituted. However, the investigating judge – the Commissario della Legge, hereinafter “the Commissario” – recommended that these proceedings should be discontinued. The Commissario held that the reports were not offensive, that the report concerned issues of public interest, and that the applicant had indeed lived in an apartment that belonged to the State and that he should have returned it when the police unit to which he belonged was disbanded. Moreover, the Commissario took into account that applicant had been given a right of reply, and that this had been published in its entirety. The superintendent then appealed to a Court, which however agreed with the Commissario. The

superintendent then appealed to the European Court of Human Rights, arguing that his right to reputation had been violated.

The Court held that the applicant's complaint was manifestly ill-founded, and therefore inadmissible. It considered that the articles in question concerned matters of public interest, in so far as they dealt with the use of public property and the involvement of a policeman and the public authorities. Journalists were entitled to bring this to the public's attention. The content of the articles had been true – indeed the applicant had admitted to living in the apartment in question and the attempt to recover the property had been confirmed by the authorities – and the domestic courts had established that the articles had not been “intended to offend anyone's honour”. Moreover, the applicant had been given a right of reply which had been faithfully reproduced. Even assuming that some statements in the article were potentially provocative, the Court reiterated that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation. The Court added that it did not appear that there was any manifestly insulting language in the reports. The domestic courts had taken great care in balancing the right to reputation against the right to freedom of expression and had given sufficient reasons for their decision.

- ***Novikova and others v. Russia***, Applications nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, 26 April 2016 (conviction for unauthorised protests violated the right to freedom of expression)

This concerned a group of people who had each staged solo demonstrations in front of the Duma, the Russian parliament building, protesting at issues ranging from the abuse of psychiatry to corruption. They were all arrested by police and convicted of holding unauthorised public events; one demonstrator who had protested during a visit by the Russian President, Putin, to his village was convicted of “minor hooliganism”. They all appealed to the European Court of Human Rights arguing that their convictions violated the right to freedom of expression.

The European Court held that the convictions all violated the right to freedom of expression (because this concerned ‘solo’ demonstrations, the Court did not see this as a freedom of assembly case). The Court considered that the solo demonstrations had constituted a form of political expression, and took note of the fact that the protestors had not obstructed traffic and had been non-violent. Although the protestors had been joined by a few other people, at no point had there been more than six persons at any one of the protests. This meant there was no need for any police security or measures to direct traffic. The Court found therefore that the authorities should have showed a degree of tolerance towards the demonstrators, for example by letting the applicants complete their demonstrations, instead of arresting them. Furthermore, there had been absolutely no justification for the arrest and conviction of the demonstrators.

***Prepared by Peter Noorlander, Director of Media Legal Defence Initiative, London in cooperation with HRA***



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