

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

Bulletin LXVI: SUMMARY OF EUROPEAN COURT DECISIONS ON THE RIGHT TO FREEDOM OF EXPRESSION: May 2016

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

- ***Salihu and others v. Sweden***, Application no. 33628/15, 10 May 2016 (fine for the purchase of weapons to illustrate a news report did not violate right to freedom of expression)
- ***Fürst-Pfeifer v. Austria***, Applications nos. 33677/10 and 52340/10, 17 May 2016 (report on mental state of court-appointed psychiatrist did not violate right to respect for private life)
- ***Karácsony and Others v. Hungary***, Applications nos. 42461/13 and 44357/13, 17 May 2016 (sanction imposed on MPs for violating parliamentary order without procedural safeguards violated right to freedom of expression)
- ***Nadtoka v. Russia***, application no. 38010/05, 31 May 2016 (conviction for insult for referring to mayor as 'thief' violated right to freedom of expression)

The cases concerned the following issues:

- ***Salihu and others v. Sweden***, Application no. 33628/15, 10 May 2016 (conviction for the purchase of weapons to illustrate a news report did not violate right to freedom of expression)

This concerned a team of journalists who had purchased weapons for a report on how easy it is to buy guns on the black market. Upon purchase they immediately turned the weapons over to the police and the next day they published their article. The police then prosecuted the journalists for weapons offences, and they were convicted and fined between €4,400 and €8,400. The journalists argued that they had not committed a crime, that their actions had been motivated by journalism and that their prosecution was not in the public interest, but their convictions were upheld on appeal. They then appealed to the European Court of Human Rights.

The European Court of Human Rights dismissed the complaint as being manifestly ill-founded. The Court emphasised that the journalists had not been convicted for the expression of their views or for the report they had published, but for buying firearms in contravention of criminal law. The Court considered that the journalists must have known that they were violating the law. While the Court acknowledged that the ease with which weapons could be bought was an issue of public concern, the journalists could have written about this without actually buying a weapon. As to the severity of the sanction, the normal penalty was a prison sentence. This had instead been commuted to a fine because of the journalistic purpose and the special circumstances of the case. The amount of the fines could not be excessive or liable to have a deterrent effect on the exercise of freedom of expression by the applicants or other journalists. Finally, the Court noted that at every instance of the domestic proceedings, the Swedish courts had considered the journalists' right to freedom of expression and had stressed the importance of journalists' role in society.

- ***Fürst-Pfeifer v. Austria***, Applications nos. 33677/10 and 52340/10, 17 May 2016 (report on mental state of court-appointed psychiatrist did not violate right to respect for private life)

This concerned a news article about a psychiatrist who regularly acted as an expert in court proceedings. Headed "Court expert for custody proceedings a case for therapy", the report stated that the psychiatrist suffered from psychological problems such as mood swings and panic attacks, and criticised the fact that she was still active as a court-appointed expert. The article then referred to a psychological expert report about her which had originally been commissioned in 1993 and which had been made public in the context of proceedings she had brought before the civil courts. The psychiatrist brought proceedings against the website for invasion of privacy and defamation. She won at first instance but on appeal, this judgment was overturned, the court holding that while the discussion of her mental state undoubtedly affected her private life the information was true and the article was directly linked to her public function as a court-appointed expert. She then appealed to the European Court of Human Rights on the grounds that the Austrian courts had failed to protect her right to respect for private life.

The Court held that the publication did not violate her right to respect for private life. While it noted that the right to reputation is guaranteed by Article 8 of the Convention, which the State has a positive obligation to protect, the Court observed that this right has to be balanced, among other things, against the freedom of expression guaranteed by Article 10 of the Convention. Furthermore, the most careful scrutiny is required when measures or sanctions imposed on the press are capable of discouraging public debate. Looking at the facts of the case, the Court acknowledged that information about a person's health is an important element of private life. However, the information in the report was taken from the report of a court-appointed expert in public proceedings before a civil court, and the article concerned her public functioning which was a matter

of public interest. The Court observed furthermore that the content of the article was balanced, informing on facts and not only intended to satisfy public curiosity. It had clearly stated that the expert report dated back to court proceedings in 1993 and that the applicant's integrity had not been questioned for more than a decade.

- ***Karácsony and Others v. Hungary***, Applications nos. 42461/13 and 44357/13, 17 May 2016 (sanction imposed on MPs for violating parliamentary order without procedural safeguards violated right to freedom of expression)

This concerned the members of two opposition parties who, during sessions of parliament, had conducted symbolic protests. One set of applicants had placed a wheelbarrow full of soil in front of the prime minister during the final vote of a controversial bill on the transfer of agricultural lands; another had up held billboards saying "FIDESZ [the governing party] You steal, you cheat and you lie" and (during the final vote on a law related to smoking) "Here operates the national tobacco mafia". They were fined between €170 and €600 for disturbing Parliament's work. The fines were proposed by the Speaker of Parliament and adopted by the plenary without a debate. The applicants complained that these fines violated their right to freedom of expression and that they had not had any opportunity to appeal against them. They appealed to the European Court of Human Rights. In September 2014, a chamber of the Court found that the fines violated their right to freedom of expression. The Hungarian government requested that the case be referred to the Court's Grand Chamber.

The Grand Chamber held that the fines violated the right to freedom of expression. While it acknowledged that freedom of parliamentary debate was not absolute, and parliaments are entitled to regulate their own internal affairs, any regulations that are adopted should not be abused to suppress the freedom of expression of MPs, which is at the heart of political debate in a democracy. The Court acknowledged that displaying a placard or banner in Parliament was not a conventional manner for MPs to express their views and that the applicants had disrupted order in Parliament. The Court also noted that the applicants had not been sanctioned for the expression of their opinions, but for the way in which they had done so. However, even if a sanction may have been warranted, this should still be fair and proportionate. The Court observed that there had been no procedural safeguards for the applicants; the speaker had proposed a fine and parliament had voted. The speaker had not stated why the applicants' actions had been considered gravely offensive to parliamentary order. This lack of procedural safeguards meant that the applicants' right to freedom of expression had been violated.

- ***Nadtoka v. Russia***, application no. 38010/05, 31 May 2016 (conviction for insult for referring to mayor as 'thief' violated right to freedom of expression)

This concerned the acting editor-in-chief of the newspaper *Vecherniy*, who had published an article about the mayor of a Russian city, Novocherkassk, alleging corruption. The article referred to the mayor as "some thievish man from Altay who had taken up a comfortably high position". He brought a private prosecution for insult

against the journalist who wrote the article and against Ms Nadtoka. The Russian courts found them both guilty on the grounds that the words used, taken in the context of the article, constituted a clear insult, and find the editor 50,000 rubles (around €1,500). Ms Nadtoka appealed to the European Court of Human Rights.

The European Court found that the conviction and fine violated Ms Nadtoka's right to freedom of expression. It noted that the article had discussed corruption, an issue of public concern, and that the mayor had not complained about the allegations but about the choice of words used by the journalist. The Court reiterated that anyone taking part in a public debate on a matter of general concern was required to respect the reputation and rights of others, but that at the same time, the right to freedom of expression allows recourse to a degree of exaggeration or even provocation. Moreover, the Court held that a mayor, as an elected politician, had to tolerate a greater degree of criticism than ordinary individuals. The Court also observed that the acting editor-in-chief had been convicted as an "accessory to the offence", which was a serious matter. The criminal sanction was liable to have a chilling effect on the exercise of freedom of expression.

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