

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

Bulletin LI: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: March 2015

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The European Court of Human Rights decided the following freedom of expression cases in March 2015:

- **Maguire v. United Kingdom** (application no. 58060/13), 3 March 2015: conviction for wearing provocative t-shirt did not violate right to freedom of expression;
- **Almeida Leitão Bento Fernandes v. Portugal** (application no. 25790/11), 12 March 2015: defamation conviction for novel about the author's family did not violate the right to freedom of expression;
- **Öner and Türk v. Turkey** (application no. 51962/12), 31 March 2015: conviction for 'disseminating terrorist propaganda' in speech calling for peaceful solution to Kurdish problem violated right to freedom of expression.

The cases concerned the following issues:

- **Maguire v. United Kingdom** (application no. 58060/13), 3 March 2015: conviction for wearing provocative t-shirt did not violate right to freedom of expression

This concerned an individual who had attended a football match wearing a t-shirt that had the logo of the Irish National Liberation Army, which is a proscribed organisation under the UK's Terrorism Act 2000, along with the slogan "FUCK YOUR POPPY REMEMBER DERRY" (in the United Kingdom, the poppy flower symbolises remembrance of the members of the armed forces who have died in the line of duty and is widely worn around 11 November). The football match was between Rangers Football Club and Celtic Football Club, and previous matches between these clubs had seen sectarian violence between the two clubs' respective rival Protestant and Catholic supporters. After the football match ended, the applicant, together with other Celtic supporters, was convicted of a "breach of the peace" and banned from attending football matches for two years.

The European Court of Human Rights held that the man's right to freedom of expression had not been violated and declared the case inadmissible as being 'manifestly ill-founded'. It accepted that there was a risk of sectarian violence around football matches such as this one, and that the police were best-placed to judge whether or not the wearing of the t-shirt could lead to violence. The Court also noted that the sentence imposed had been light (no prison sentence was imposed). It did not find that the two-year ban was excessive, even taken into account that the applicant was a football fan and holder of a Celtic season ticket.

- **Almeida Leitão Bento Fernandes v. Portugal** (application no. 25790/11), 12 March 2015: **defamation conviction for novel about the author's family did not violate the right to freedom of expression**

This case concerned a novelist who had been convicted of defamation for a book that featured members of her husband's family. The book told the story of a family who came from the north of Portugal and emigrated to the United States. It related events involving prostitution and extramarital affairs. In the preface to her book the novelist thanked the people who had inspired her, while stating that the facts narrated in her novel were the product of her imagination and that any resemblance with actual facts was purely fortuitous. The uncle, aunt, cousin, mother and sister of her husband nevertheless sued, complaining that the novel related their family history and damaged the family's reputation. The novelist was sentenced to a fine of EUR 4,000, and ordered to pay EUR 53,500 in damages.

The Court held that the conviction did not violate the right to freedom of expression. It noted that the persons depicted in the novel were not public figures. This meant that the national authorities were afforded a wide margin of appreciation in assessing the "necessity" of the punishment imposed on the novelist. The Court saw no reason to disagree with the conclusion of the Portuguese courts that the narrative of the novel was indeed defamatory, and noted that the Portuguese courts had, in their judgments, recognised the importance of the right to freedom of expression. The Court also noted that the amount of the fine and damages had been determined by reference to the novelist's own financial situation.

- **Öner and Türk v. Turkey** (application no. 51962/12), 31 March 2015: **conviction for 'disseminating terrorist propaganda' in speech calling for peaceful solution to Kurdish problem violated right to freedom of expression**

The case concerned two individuals who had made speeches during celebrations for the Kurdish New Year (Newroz). In their speech, they had expressed discontent with respect to certain policies of the government, the practices of the security forces, and the detention conditions of the leader of the Kurdish Workers Party, Abdullah Öcalan. They ended their speech with, "The state did not take any steps for democratisation or

to solve the Kurdish problem. We believe in peace and the state should take appropriate steps for solving the Kurdish problem”. They were convicted of “disseminating terrorist propaganda” on behalf of an illegal organisation, the PKK (Kurdish Workers’ Party) and sentenced to one year and eight months’ imprisonment. They appealed and the Court of Cassation upheld the conviction.

The European Court held that the conviction violated the right to freedom of expression. It held that taken as a whole, the speeches did not encourage violence, armed resistance or an uprising. The Court also held that the speeches were not capable of inciting violence by instilling a deep-seated and irrational hatred against identifiable persons, and that they therefore did not constitute hate speech. Finally, the Court held noted that the domestic courts’ judgments did not indicate whether they had examined the proportionality of the sentence and its impact on the right to freedom of expression. For all these reasons, the European Court of Human Rights held that the conviction and sentence was disproportionate and therefore not “necessary in a democratic society”.

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