

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

Bulletin LIII: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: April 2015

4 April 2015

The European Court of Human Rights decided the following freedom of expression cases during April 2015:

- **Morice v. France** (application no. 29369/10), 23 April 2015, Grand Chamber: defamation conviction for lawyer who criticised judges violated freedom of expression;
- **Martin v. Hungary** (application no. 69582/13), 7 April 2015, admissibility decision: disciplinary proceedings against lawyer for offensive criticism of judge did not violate right to freedom of expression;
- **Armellini and others v. Austria** (application no. 14134/07), 16 April 2015: defamation conviction for unfounded match fixing allegations did not violate right to freedom of expression.

These cases concerned the following issues:

- **Morice v. France** (application no. 29369/10), 23 April 2015, Grand Chamber: **defamation conviction for lawyer who criticised judges violated freedom of expression**

This concerned the conviction of a lawyer for defamation for remarks that he had made about two investigating judges who had been removed from the investigation into the murder of a French judge in Djibouti. The lawyer had been acting for the widow of the murdered judge, and he had criticized the judges for not having handed evidence from the investigation over to the judge who took over from them. He also criticized the judges for being too close to the investigators in Djibouti, which tainted their independence. One of the two judges he criticized also sat in another controversial case in which Mr Morice was involved as well. He also complained about the conduct of the judge in that case. Mr Morice complained to the Minister of Justice about the Djibouti case and the national newspaper, *Le Monde*, published on the matter. *Le Monde* cited Morice as saying that the behaviour of the investigative judges had been “completely at odds with the principles of impartiality and fairness” and that there had been extensive “connivance between the prosecutor [in Djibouti] and the French judges”. The judges

filed a criminal complaint against the publication director of *Le Monde*, the journalist who had written the article and Mr Morice, accusing them of defamation. Mr Morice was found guilty of complicity in that offence and ordered to pay a fine of €4,000; € 1,000 to one of the judges for costs; and €7,500 in damages to each of the judges. He was also ordered to publish a notice in *Le Monde* newspaper. A subsequent appeal to the European Court of Human Rights was dismissed, and Mr Morice requested that the case be referred to the Court's 'Grand Chamber' for a review.

The Grand Chamber held that the defamation conviction constituted a violation of Mr Morice's rights. The Court noted that as a lawyer, Mr Morice had the right to defend his clients through the press – although it held that there was a clear distinction between words spoken by a lawyer inside the courtroom, which had a very high degree of protection, and outside the court room where such heightened protection did not apply. The Court noted that Mr Morice relied furthermore on his right, as a citizen, to contribute to a debate on a matter of public interest. While his role in this was not as a journalist, to whom the Court accords a high degree of protection, the national authorities nevertheless have a duty to protect debate on matters of public interest. The Court also noted that Mr Morice had a strong factual basis for his comments. Mr Morice had acted in his capacity as lawyer in two high-profile cases in which Judge M. was an investigating judge and in both of them shortcomings had been identified by the appellate courts, leading to the judge's withdrawal of the cases. As to Mr Morice's remarks, they had a close connection with the facts of the case and had been neither misleading nor gratuitous.

The Grand Chamber noted furthermore that the case had generated intense media attention. The domestic courts had taken this as proof of personal animosity between Mr Morice and one of the two judges. The Grand Chamber disagreed with this assessment and held instead that while the remarks reflected some hostility, they concerned alleged shortcomings in a judicial investigation – a matter to which a lawyer should be able to draw the public's attention.

The Court stated that generally, judges should tolerate criticism. The limits of acceptable criticism *vis-à-vis* members of the judiciary, part of a fundamental institution of the State, are wider than in the case of ordinary citizens. At the same time, the Court emphasised the need to maintain the authority of the judiciary and to ensure relations based on mutual consideration and respect between the different protagonists of the justice system.

Finally, the Court took into account the nature and severity of the sanctions imposed. It reiterated that even a relatively small fine would still have a chilling effect on the exercise of freedom of expression. Imposing a sanction on a lawyer might also have certain repercussions, particularly as regards their image or the confidence placed in them by the public and their clients.

Taking all this into account, the court held that the defamation judgment against Mr Morice was a disproportionate interference with his right to freedom of expression.

- **Martin v. Hungary** (application no. 69582/13), 7 April 2015, admissibility decision: **disciplinary proceedings against lawyer for offensive criticism of judge did not violate right to freedom of expression**

This concerned a lawyer for a company involved in a medical malpractice case. He filed an appeal in the decision at first instance had gone against the company, and wrote in the appeal filing that “in its judgment, the court ‘dreamt’ that there were pains and swellings in the plaintiff’s limbs... again, the judge dreamt about something in the judgment and in the expert opinion that is not there... the judge, severely biased against the respondents and their legal representative disregarded the expert opinion.” He subsequently added that the mistakes that he perceived in the judgment could not be explained as a mistake of an inexperienced judge, because the judge in question had many years’ experience. In a separate case presided over by the same judge, he asked for the judge to be excluded on grounds of bias, stating that he “had demonstrated unlawful kindness” towards the plaintiffs because the judge personally disliked the lawyer. Several weeks later, the lawyer complained to the President of the Regional Court about the judge, suspecting him of criminal conduct. As a consequence, criminal investigations were opened against the judge. They were eventually discontinued. The judge then filed a complaint about the lawyer with the local bar association. The disciplinary board fined him €400 on the grounds that the lawyer had, through his various statements, conducted a personal attack against the judge and denied him the requisite respect. His appeals were dismissed, the courts holding that the lawyer’s disrespectful tone was capable of undermining the authority of the judiciary. He then appealed to the European Court of Human Rights, arguing that the fine violated his right to freedom of expression.

The European Court of Human Rights held that the lawyer’s complaint was manifestly ill-founded and declared it inadmissible. It agreed with the domestic courts that the lawyer’s statements had been offensive in tone and disrespectful by accusing him of having incorporated imaginary elements in a judgment. The lawyer could have easily raised the substance of his criticism without using offensive language. Furthermore, the Court noted that a relatively light fine was imposed in the course of disciplinary proceedings, which were not made public and had no consequences on his right to exercise his profession. The Court agreed that the reasons given by the domestic courts in support of their decisions had been “relevant and sufficient” and that the fine imposed was not disproportionate to the legitimate aim pursued, namely, the maintenance of the authority of the judiciary.

- **Armellini and others v. Austria** (application no. 14134/07), 16 April 2015: **defamation conviction for unfounded match fixing allegations did not violate right to freedom of expression**

This concerned two journalists who had published an article in a regional newspaper alleging that a number of football players had been bribed by the betting mafia to 'fix' the results of matches. The players concerned filed a criminal complaint and the journalists were prosecuted and convicted of defamation. They were sentenced to a suspended fine. Furthermore, the company that owned the newspaper was ordered to pay damages of €12,000 to each of the plaintiffs. All domestic appeals were dismissed and the journalists complained to the European Court of Human Rights.

The European Court of Human Rights noted that the article concerned an issue of considerable public interest, namely manipulation of sports games and fraud connected with this. At the same time, the Court observed that the journalists did not discuss this in a general manner but directly attacked three individual football players whom they accused of match fixing. The Court noted that the accusations were very serious and had not only damaged the personal and professional reputation of the football players but may also have had important financial repercussions for them. The Court held that the journalists should have had a solid factual basis for the accusations, but that they did not. They had also failed to get a sufficient response from the players themselves. Finally, the Court observed that the journalists themselves had only been given a suspended fine and that the company had been order to pay damages. Neither the amount of the fine nor the damages were deemed disproportionate. For these reasons, the Court held that the conviction did not violate the right to freedom of expression.

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