

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

Bulletin LIV: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: May 2015

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In May 2015, the European Court of Human Rights decided one judgment concerning the ill-treatment of a journalist, and one concerning the duty on a State to protect protesters when violence is expected:

- ***Identoba and Others v. Georgia*** (application no. 73235/12), 12 May 2015: failure by police to prevent and investigate homophobic attacks against protesters violated protesters' rights; and
- ***Emin Huseynov v. Azerbaijan*** (application no. 59135/09), 7 May 2015: beating of head of journalists' association violated right to be free from inhuman and degrading treatment

These cases concerned the following issues:

- ***Identoba and Others v. Georgia*** (application no. 73235/12), 12 May 2015: failure by police to prevent and investigate homophobic attacks against protesters violated protesters' rights

This concerned members of a Georgian NGO that had been set up to protect the rights of Lesbian, Gay, Bi- and Transsexual (LGBT) people. They had organised a peaceful demonstration to mark the International Day against Homophobia which was attended by approximately 30 people. During the event, the protesters were insulted, threatened and assaulted by a larger group of counter-demonstrators who were members of two religious groups. The counter-demonstrators shouted insults at the marchers – calling them among other things “perverts” and “sinners” –, blocked their passage and attacked the marchers, leaving three of them with injuries. The police remained relatively passive in the face of the violence and said that it was not their duty to intervene. Four of the applicants were eventually arrested and briefly detained and driven around in a police car – allegedly for their own safety. Following the events, the applicants filed several criminal complaints, requesting in particular that criminal investigations be launched into the attacks against them as well as against the police who had failed to protect them. Two investigations into the injuries sustained by two of the applicants were opened in 2012 and remained pending. The applicants complained to the European Court that the acts of the police, and the failure to conclude the investigations, were a violation of their rights.

The European Court of Human Rights considered the case under Article 3, which protects against torture and degrading treatment, as well as under Article 11, which protects the right to

freedom of assembly. The applicants' claim under Article 10, on the right to freedom of expression, was deemed to be included in their claim under Article 11. As regards the right to be free from degrading treatment, the Court took into the very precarious situation of LGBT people in the country. It noted that the death threats and violence against the protesters had been motivated by a clear homophobic bias, demonstrated by the particularly insulting and threatening language used by the two religious groups. The aim of this had been to frighten the applicants so that they would desist from their public expression of support for the LGBT community. The applicants' feelings of distress had been exacerbated by the fact that the police protection which had been promised to them had not been provided. This meant that the fear, anxiety and insecurity experienced by the applicants was so severe as to be regarded 'degrading treatment' under Article 3 of the Convention, read together with Article 14 which provides a right to be free from discrimination.

The Court held that because the organiser of the march had warned the police about the likelihood of violence against the protesters, the police had been under a duty to provide protection. They had clearly failed to do this; and by the time they finally did take action, the applicants had already been bullied, insulted and assaulted. Furthermore, instead of restraining the counter-demonstrators and protecting the demonstrators, the police arrested some of the demonstrators. Following the incident, the police also failed to carry out an effective investigation into the violence. Instead of investigating the complaints that had been lodged by the applicants, the police only investigated two cases concerning physical injuries that had been suffered by two demonstrators, and which had resulted in administrative sanctions and a fine of EUR45 on two of the assailants.

The Court held that the police should instead have taken all reasonable steps to unmask possible homophobic motives for the events in question. In the absence of such an investigation, similar attacks would happen again and again. This would be tantamount to official acquiescence or even connivance in hate crimes. Moreover, it would be difficult for the State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy. In the light of these considerations, the Court found a violation of Article 3.

The Court also held that the disruption of the applicants' protest violated their right to freedom of assembly, which included a right to freedom of expression.

- ***Emin Huseynov v. Azerbaijan*** (application no. 59135/09), 7 May 2015: **beating of head of journalists' association violated right to be free from inhuman and degrading treatment**

This concerned the head of the Azeri Institute for Reporters' Freedom and Safety, Emin Huseynov. In 2008, he attended a party at a café to celebrate Che Guevara's birthday. Shortly after the event began, police officers entered the café, suspended the party and announced that they would take the participants to the police station. Mr Huseynov identified himself to the police as a journalist and phoned a media agency to inform them of the police presence at the café. He was then punched and put in a police car and taken to the police station. At the police station he was threatened, pushed around and then struck on the back of his neck. He passed out and was taken to hospital by ambulance where he was diagnosed with a traumatic brain injury and admitted to the intensive care unit. The police started an investigation into the

incident but did not begin criminal proceedings on the grounds that the injury was linked to a pre-existing medical condition and nothing to do with any alleged maltreatment by the police (and which the police denied to have inflicted). He complained to the European Court of Human Rights that the beating and subsequent failure to institute proceedings against the police had violated his rights.

The European Court of Human Rights noted that when an individual was in good health when taken into police custody but injured at the time of release, the State needed to offer a plausible explanation of how the injuries had occurred. In this case, Mr Huseynov was apparently in good health when he arrived at the café and yet he left the police station in an ambulance and was unconscious when admitted to the hospital's intensive care unit. The Government had failed to explain why the police examiner had come to a different conclusion from the doctor who had admitted the applicant into intensive care. The Court also noted that several witnesses had stated that Mr Huseynov was in excellent health when arrested, and who had also heard the abuse at the police station. The Court therefore held that it was more than likely that the injuries had been inflicted by the police. They were so serious as to constitute inhuman and degrading treatment, in violation of Article 3 of the Convention.

The Court also noted that the applicant's complaint against the police had been investigated by an officer from the same police station where the abuse had occurred, and that a spokesman for the Ministry of Internal Affairs had told the media that Mr Huseynov had not been ill-treated even before the investigation was concluded. The investigation had therefore not been independent or impartial. The Court also noted that the authorities had decided not to pursue criminal proceedings in July 2008, but Mr Huseynov only learnt of this decision in March 2009. The Court therefore concluded that there had been no effective investigation of Mr Huseynov's allegation of ill-treatment, in further violation of Article 3.

Finally, as regards the arrest of the attendees at the birthday party, the Court noted that there had been no evidence that any of them had committed an offence. The Government claimed that the police had gone to the café following a complaint from neighbours but failed to produce any evidence or proof that the police had received a complaint. This meant that the arrest had been arbitrary and unlawful, in violation of Article 5 of the Convention (which protects the right to liberty); and that this had also violated the right to freedom of assembly protected under Article 11.

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