

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

Bulletin LVI: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: June 2015

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In June 2015, the European Court of Human Rights decided the following freedom of expression cases:

- ***Erla Hlynsdottir (no. 3) v. Iceland*** (application no. 54145/10), 2 June 2015: defamation conviction for reporting on criminal proceedings violated the right to freedom of expression;
- ***Delfi v. Estonia*** (application no. 64569/09), 16 June 2015: commercial news website liable for comments left by readers;
- ***Mehdiyev v. Azerbaijan*** (application no. 59075/09), 18 June 2015: failure by authorities to investigate violence against journalist violated right to be free from inhuman and degrading treatment;
- ***Niskasaari and Otavamedia Oy v. Finland*** (application no. 32297/10), 23 June 2015: defamation conviction in dispute between two journalists violated right to freedom of expression;
- ***Özçelebi v. Turkey*** (application no. 34823/05), 23 June 2015: conviction for insulting founder of Turkish nation violated right to freedom of expression;
- ***Peruzzi v. Italy*** (application no. 39294/09), 30 June 2015: defamation conviction for baseless allegations of judicial bias did not violate right to freedom of expression.

These cases concerned the following issues:

- ***Erla Hlynsdottir (no. 3) v. Iceland*** (application no. 54145/10), 2 June 2015: **defamation conviction for reporting on criminal proceedings violated the right to freedom of expression**

This concerned a newspaper journalist who had reported on ongoing criminal proceedings against a man suspected of importing a large quantity of cocaine into Iceland. One of her reports carried the headline, "Scared cocaine smugglers"; and another reported that the cocaine in question had been hidden in a car. Following his acquittal, the accused brought defamation proceedings against the journalist and her

newspaper. Although the first-instance court initially found for the journalist, the Supreme Court overturned this acquittal and ordered the journalist to pay compensation to the accused.

The European Court of Human Rights held that the defamation conviction violated the journalist's right to freedom of expression. While it agreed that the words "cocaine smugglers" in the newspaper's headline and the statement in the article in question insinuated that the defendant in the trial was guilty of the offence of which he was accused, the Court noted a large number of counter-veiling factors: the criminal case in question had been one of the largest cocaine smuggling cases in Iceland and reporting on it was of clear public interest; the journalist had made it clear that the proceedings were pending and that no finding of guilt had been made; the journalist had relied for her reporting on the official indictment, which was an official source on which she could rely; and the context of the article made it clear that the accusations reported by the journalist came from the Public Prosecutor. All in all, the Court found that the journalist had acted in good faith and in keeping with the diligence expected of a responsible journalist reporting on a matter of public interest.

- ***Delfi v. Estonia*** (application no. 64569/09), 16 June 2015: **commercial news website liable for comments left by readers**

This concerned one of the largest news websites in Estonia, which had reported on the breaking up of ice roads – winter roads over frozen sea ice – by a ferry company, as a result of which drivers were forced to use ferries instead of being able to drive to islands. The report attracted a lot of comments by readers, some of which were aimed at the owner of the ferry company and were anti-semitic in nature. The Grand Chamber ruled that Delfi was responsible for the comments in question. A more detailed overview of this judgment is available in HRA previous bulletin, at: <http://www.hraction.org/wp-content/uploads/Bulletin-LV-liability-for-user-comments.pdf>.

- ***Mehdiyev v. Azerbaijan*** (application no. 59075/09), 18 June 2015: **failure by authorities to investigate violence against journalist violated right to be free from inhuman and degrading treatment**

This concerned a journalist who had been arrested and beaten up by police after he published articles in which he criticised the local authorities in his region. When he complained to the police about his treatment, he was arrested for using loud and abusive language in public and sentenced to administrative detention for obstructing the police. He was then examined by a doctor but was not provided with a medical report. According to the applicant, he was deprived of food and water and received no bedding during his detention. No action was taken against those who had beaten him.

The European Court of Human Rights held that Article 3 of the European Convention on Human Rights had been violated because the national authorities had failed to conduct an effective official investigation into the journalist's claim of mistreatment. The Court noted that the complaints which the applicant had lodged with the domestic bodies had not led to any criminal inquiries and no action had been taken by the domestic courts even though sufficient information regarding the identity of the alleged perpetrators and the date, place and nature of the alleged ill-treatment had been provided. However, this lack of any action by the domestic authorities meant that the European Court was unable to ascertain whether the journalist's maltreatment had been due to his professional work, and so it was unable to find a violation of the right to freedom of expression.

- ***Niskasaari and Otavamedia Oy v. Finland*** (application no. 32297/10), 23 June 2015: **defamation conviction in dispute between two journalists violated right to freedom of expression**

This concerned a journalist working for a major weekly magazine who had criticised the manner in which two TV documentaries had been made. The documentaries concerned the issues of mould-infested houses and the protection of forests. The journalist alleged that some statistics in the documentaries were fabricated and that a researcher's testimony which one of the TV reporters knew to be false had nonetheless been included in one of the documentaries. The TV reporter brought a claim for damages against the journalist and the magazine and won 6000 euros in damages. The journalist and the magazine appealed to the European Court of Human Rights.

The Court held that the defamation conviction violated the right to freedom of expression. It considered that the reports in question could be classified as investigative journalism on a matter of legitimate public interest. Both parties to the dispute were professional journalists who were relatively well-known to the general public, and the magazine had published follow-up discussions including a response by the TV reporter and a page-long counter-reply by the magazine's journalist. The Court noted that different statistical information existed as far as the conserved forest area in Finland was concerned and that it could not therefore be said that the figures given by the complainant were fabricated. The Court considered furthermore that the TV reporter who had brought the defamation claim was himself a journalist and so could expect to be the subject of robust scrutiny, comment and criticism regarding his professional conduct. Finally, the Court also took into account the severity of the sanction imposed.

- ***Özçelebi v. Turkey*** (application no. 34823/05), 23 June 2015: **conviction for insulting founder of Turkish nation violated right to freedom of expression**

This concerned a Turkish navy commander who had used a slang word for 'head' in reference to photographs and a statue of Atatürk, the founder of the modern nation of Turkey. He was charged to have said to a non-commissioned officer, while pointing to

images of Atatürk exhibited on a wall: “While you were at it, you might have chosen a bigger picture of his mug.” He was sentenced to one year’s imprisonment, the Court holding that he had intended to insult the memory of Atatürk. Following various appeals and legal proceedings which lasted nearly sixteen years, this sentence was finally quashed and the commander was sentenced to a suspended fine, pending for a period of three years.

The European Court of Human Rights held that the conviction violated the commander's right to freedom of expression. The Turkish courts had not specified how the use of the slang word was insulting to the memory of Atatürk, and had not taken into account that the words had been spoken in a confined space and before a small circle of people. There was no indication that he had any intention or demonstrated a willingness to make them public. Finally, the Court noted that the legal proceedings had lasted nearly sixteen years and while his sentence of imprisonment had been commuted to a fine, this was kept hanging over his head and had a serious chilling effect on his right to freedom of expression. In all, the conviction was therefore not “necessary in a democratic society”.

- ***Peruzzi v. Italy*** (application no. 39294/09), 30 June 2015: **defamation conviction for baseless allegations of judicial bias did not violate right to freedom of expression**

This concerned an Italian lawyer who had written a letter to the “Supreme Council of the Judiciary” of Italy complaining of the conduct of a district court judge. He followed this up with a letter to several judges of the same court to which he appended the letter to the Supreme Council, but without mentioning the judge by name. This letter detailed decisions adopted by the judge in question in the context of a set of inheritance proceedings, and it also specified alleged unacceptable conduct, including “wilfully committing errors with malice or gross negligence or through lack of commitment”. The judge launched proceedings against the lawyer for defamation and insult. The lawyer was sentenced to four months’ imprisonment for defamation and insult; on appeal this was replaced with a fine of 400 euros. The lawyer was additionally ordered to pay 15,000 euros (EUR) in compensation.

The European Court held that this did not violate the lawyer's right to freedom of expression. It noted that the letter had been personal and aimed at one judge in particular. The first part of the letter, in which the lawyer alleged that the judge had adopted unjust and arbitrary decisions, did not amount to excessive criticism since the remarks constituted value judgments that had some factual basis – particularly taking into account that the lawyer had represented one of the parties in the inheritance proceedings in question. However, the second criticism, that the judge was “biased” and had committed errors “wilfully ... with malice or gross negligence or through lack of commitment”, implied that the judge had disregarded his ethical obligations or had even committed a criminal offence (the adoption by a judge of a decision he or she knew to be

erroneous could constitute an abuse of official authority). There was no evidence of this and the lawyer had circulated the letter without awaiting the outcome of the case he had brought against the judge before the Supreme Council of the Judiciary. The Court also noted that the letter had been sent to numerous judges at the district court, and that this had been bound to undermine the judge's reputation and professional image. The Court finally took into account that the custodial sentence originally imposed had been replaced on appeal by a fine and a damage award which could not be regarded as excessive. Therefore, and taking into account the need to maintain the authority and impartiality of the judiciary, the European Court found that the defamation judgment did not violate the right to freedom of expression.

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



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