

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

Bulletin XLIII: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: OCTOBER 2014

6 November 2014

The European Court of Human Rights decided the following freedom of expression cases during October 2014:

- **Lichtenstrasser v. Austria** (application no. 32413/08), 7 October 2014: dismissal of employee who said he wished to set up own company did not violate right to freedom of expression
- **Gökçe v. Turkey** (application no. 31736/04), 14 October 2014: imprisonment for politician for campaigning outside of election period violated right to freedom of expression
- **Stankiewicz and others v. Poland** (application no. 48723/07), 14 October 2014: defamation conviction for report on corruption violated freedom of expression
- **Erla Hlynsdottir v. Iceland (no. 2)** (application no. 54125/10), 21 October 2014: defamation conviction for report on sexual offences prosecution violated freedom of expression
- **Matúz v. Hungary** (application no. 73751/10), 21 October 2014: dismissal by public broadcasting company of journalist who alleged censorship violated right to freedom of expression
- **Murat Vural v. Turkey** (application no. 9540/07), 21 October 2014: imprisonment of protestor for pouring black paint over statues of Atatürk violated right to freedom of expression
- **Shvydka v. Ukraine** (application no. 17888/12), 30 October 2014: hooliganism conviction for politician who tore ribbon from a wreath violated right to freedom of expression

These cases concerned the following issues:

- **Lichtenstrasser v. Austria** (application no. 32413/08), 7 October 2014: dismissal of employee who said he wished to set up own company did not violate right to freedom of expression

This concerned an individual who had given an interview to a journalist in which he said that it was hard to develop ideas when employed for a company, and that he intended to set up his own company together with a partner to pursue some of his own ideas. His employer read the interview and forced him to resign. The individual then complained that this forced resignation had violated his right to freedom of expression.

The European Court of Human Rights held that the complaint was manifestly ill-founded and declared it inadmissible. It emphasised that while States are under a duty to ensure that employers respect the right to freedom of expression of their employees, at the same time “employees owe to their employer a duty of loyalty, reserve and discretion”. The Court weighed the employee’s right to freedom of expression against the protection of the employer’s reputation and commercial interests and the employee’s duty of loyalty. The Court also took into account that the applicant had not disclosed any information of public interest but only his own personal view on his future career. This meant that the dispute was an ordinary labour contract dispute and the dismissal had not violated the employee’s right to freedom of expression.

- ***Gökçe v. Turkey*** (application no. 31736/04), 14 October 2014: **imprisonment for politician for campaigning outside of election period violated right to freedom of expression**

This concerned an individual who ran for mayor and had issued a press release setting out the main lines of his campaign – but had done so outside the ten day period which the law provided to be the ‘campaigning period’ for local elections. He was convicted and sentenced to three months prison, which was later commuted to a fine of €340 – and when he was unable to pay that, he was forced to serve two weeks in prison.

The European Court of Human Rights held that the applicant’s right to freedom of expression had been violated. It stated that there was no clear rationale behind the ten day limitation and also pointed out that the law had not been applied consistently in other cases. They also pointed out that the imprisonment was by its very nature disproportionate under the circumstances.

- ***Stankiewicz and others v. Poland*** (application no. 48723/07), 14 October 2014: **defamation conviction for report on corruption violated freedom of expression**

This concerned two journalists who had published an article alleging that a highly placed public official in the ministry of health was engaged in corruption. The journalists reported that he had demanded a bribe from representatives of a pharmaceutical company. The official sued the journalists for defamation and they were forced to publish an apology, pay the court fees and reimburse the official his legal costs.

The European Court of Human Rights held that the journalists’ right to freedom of expression had been violated. The Court stated that “in situations where on the one hand a statement of fact is made and insufficient evidence is adduced to prove it, and on

the other the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount.” In the circumstances, the Court found that the journalists had indeed acted professionally and in good faith: they had done extensive research and checked the facts available to them, and the content and the tone of the article they published was on the whole fairly balanced. The journalists had provided as objective a picture as possible of the public official and had offered him to present his version of the relevant events and to comment on the allegations raised against him. The Court also noted that the domestic courts had not taken into account the status of the public official who, because of his position, was required to tolerate criticism of his function; nor had they take into account that the subject matter of the publication concerned an issue of public interest and that the press had an important role to play as “public watchdog”.

- ***Erla Hlynisdottir v. Iceland (no. 2)*** (application no. 54125/10), 21 October 2014: **defamation conviction for report on sexual offences prosecution violated freedom of expression**

This concerned a journalist who had been found liable for defamation concerning an article about a high-profile criminal case involving the director of a rehabilitation centre and his wife, who were suspected of sexual abuse. The director was later convicted of having had sexual relations with patients, while his wife was not indicted. The journalist had reported several statements by a former female patient describing how the director’s wife had been involved in the sexual abuse and criticising the fact that the wife was at the time working as a teaching assistant in a school. The journalist was found to have defamed the wife by including the statement that it was “... not appropriate that the one who hunts for him works in a primary school” – because this had indicated criminal conduct, which had not been proven true.

The European Court of Human Rights held that the conviction for defamation violated the journalist’s right to freedom of expression. The Court observed that the article had been published in the context of a high-profile criminal investigation into accusations of sexual offences which had been the subject of previous TV reports, which clearly related to an issue of serious public concern in Iceland. It observed that the Icelandic courts had attached great importance to the use of the word “hunt” by the journalist, but the European Court disagreed that this would be perceived by the reader as suggesting a criminal act. The Court also took into account that it had been proven in the Icelandic courts that the director’s wife had indeed taken part in sexual activities with patients together with her husband. The court also took into account that the journalist had interviewed several of the accused for the story and had sought to achieve balance in her reporting.

- ***Matúz v. Hungary*** (application no. 73751/10), 21 October 2014: **dismissal by public broadcasting company of journalist who alleged censorship violated right to freedom of expression**

This concerned a journalist who had been employed by the State television company. He was dismissed for breaching a confidentiality clause after he published a book concerning alleged censorship by a director of the company. The applicant challenged his dismissal in the domestic courts, but without success.

The European Court of Human Rights held that the dismissal violated his right to freedom of expression. The Court considered that the book concerned a matter of public interest – allegations of censorship within the State broadcasting company – and no third party had even complained about it. Confidentiality constraints and the obligation of discretion in the context of employment could not be said to apply with equal force to journalists, given that it was in the nature of their functions to impart information and ideas. Furthermore, much of the subject matter of the book was already in the public domain before the book had been published, through a website, and the journalist had published the book in good faith. The Court also observed that the sanction of immediate dismissal had been very severe.

- ***Murat Vural v. Turkey*** (application no. 9540/07), 21 October 2014: imprisonment of protestor for pouring black paint over statues of Atatürk violated right to freedom of expression

This concerned an individual who had been sentenced to thirteen years prison for pouring paint over statues of Mustafa Kemal Atatürk, the founder of the Republic of Turkey, as a political protest. He was freed after eight years, on a conditional basis.

The Court found that the sentence imposed upon Mr Vural was grossly disproportionate to the legitimate aim of protecting the reputation or rights of others under Article 10. The Court held that while Atatürk was an iconic figure in Turkey, the protection of his memory did not warrant any custodial sentence. The Court emphasised that “peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence.”

- ***Shvydka v. Ukraine*** (application no. 17888/12), 30 October 2014: hooliganism conviction for politician who tore ribbon from a wreath violated right to freedom of expression

The case concerned a member of the Ukrainian opposition party who had torn a ribbon from a wreath which had been laid by the President of Ukraine. The applicant was arrested and convicted of petty hooliganism and sentenced to ten days’ administrative detention. She appealed against that conviction on the first day of her detention but the appeal was not heard for a further three weeks.

The Court held that the applicant’s right to freedom of expression had been violated. It noted that the removal of the ribbon from the wreath was an act of political protest, and that the applicant had been punished for her refusal to change her political views and accept that her actions had been wrong. Additionally, the Court noted that the appeal

was only heard after she had served her sentence in full. This had not provided adequate protection against any shortcomings in the first-instance proceedings. The European Court also noted that the toughest possible sanction had been imposed under the law, and stated that “the domestic courts applied to the applicant, a sixty-three-year-old woman with no criminal record, the harshest sanction for what in fact constituted a wrongdoing not involving any violence or danger. In doing so, the court referred to the applicant’s refusal to admit her guilt, thus penalising her reluctance to change her political views. The Court sees no justification for that.”

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



Bulletins are published within the project “Support for Understanding Journalistic Ethics and Freedom of Expression” funded by the U.S. Embassy Podgorica.
