

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

Bulletin XLVIII: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: January 2015

5 February 2014

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

- **Petropavlovskis v. Latvia**, (application no. 44230/06), 13 January 2015: denial of citizenship did not violate right to freedom of expression;
- **Marian Maciejewski v. Poland**, (application no. 34447/05), 13 January 2015: defamation conviction for allegations of corruption in the administration of justice violated right to freedom of expression;
- **Rubins v. Latvia**, (application no. 79040/12), 13 January 2015: dismissal of head of university department for criticism violated right to freedom of expression;
- **Łozowska v. Poland**, (application no. 62716/09), 13 January 2015: defamation conviction for unfounded accusation of criminal dealings did not violate right to freedom of expression;
- **Mesut Yurtsever and Others v. Turkey**, (application nos. 14946/08, 21030/08, 24309/08, 24505/08, 26964/08, 26966/08, 27088/08, 27090//08, 27092/08, 38752/08, 38778/08, and 38807/08), 20 January 2015: refusal of newspapers to prisoners because prison staff could not understand Kurdish language violated freedom of expression;
- **Pinto Pinheiro Marques v. Portugal**, (application no. 26671/09), 22 January 2015: defamation conviction for criticism of municipal council violated right to freedom of expression;
- **Kincses v. Hungary**, (application no. 66232/10), 27 January 2015: fine imposed on lawyer for calling a judge's professional competence into question did not violate the right to freedom of expression.

These cases concerned the following issues:

- **Petropavlovskis v. Latvia**, (application no. 44230/06), 13 January 2015: denial of citizenship did not violate right to freedom of expression

This concerned a campaigner for the right of the Russian-speaking population in Latvia to be educated in Russian and to preserve State-financed schools with Russian as the sole language of instruction. He applied for Latvian citizenship but his application was refused around the same time as he had been conducting an extensive campaign in the media. He appealed to the European Court of Human Rights that the denial of citizenship violated his right to freedom of expression.

The Court held that his right to freedom of expression had not been violated. The Court disagreed that the denial of citizenship had been intended to silence him: it pointed out that he had continued to campaign and speak out, including through the national media. The Court also noted that he had remained politically active on other matters of public interest, and that he had become an assistant to a member of the European Parliament. Secondly, the Court noted that the applicant had never been given a criminal sanction for expressing his opinion or participating in a demonstration. Thirdly, the Court noted that the Convention did not protect a 'right' to acquire a specific nationality; and that there was nothing in Latvian law to confer such a right on him. Finally, the Court held that the procedure of naturalisation could legitimately include a requirement to demonstrate a certain level of loyalty to the State.

- **Marian Maciejewski v. Poland**, (application no. 34447/05), 13 January 2015: **defamation conviction for allegations of corruption in the administration of justice violated right to freedom of expression**

This concerned a journalist for a national newspaper who had been convicted of defamation for an article on the alleged theft of hunting trophies from the office of a former bailiff. The sub-heading for the article read, "Thieves in the administration of justice", and the article itself referred to the "mafia-like prosecutor-judge association". Among other things, the article described how a prosecutor had mismanaged the investigation against the former bailiff. The domestic court held that both the heading and the reference to mafia were defamatory. The journalist appealed to the European Court of Human Rights.

With regard to the first count of defamation which concerned the phrases "thieves in the administration of justice" and "mafia-like prosecutor-judge association", the Court considered that the factual basis on which these comments were made – namely, the long and drawn-out proceedings – was not contested and that there clearly were irregularities in the functioning of the courts and of the prosecution service. This was an issue of public interest which the media should be allowed to comment on and even use harsh language. Overall, while the article was undoubtedly critical in tone, it did not aim to undermine the public confidence in the integrity of the judicial system.

With regard to the second count of defamation, concerning the allegation that the prosecutor had mishandled the investigation, the Court noted that the domestic courts had left several questions concerning the prosecutor's conduct unanswered and that there had been numerous irregularities in the investigation, which the domestic courts

had disregarded. The journalist had commented on this in good faith and in line with his journalistic code of ethics, and the domestic courts had disregarded this and instead focused purely on whether or not the allegations made were fully 'true'. This violated the journalist's right to freedom of expression.

- **Rubins v. Latvia**, (application no. 79040/12), 13 January 2015: **dismissal of head of university department for criticism violated right to freedom of expression**

This concerned the head of a university department who had been dismissed from his post following an email in which he had voiced criticism of university management. His appeal was dismissed by the domestic courts, and the applicant complained to the European Court of Human Rights.

The European Court held that the dismissal had violated his right to freedom of expression. It noted that the applicant's dismissal was mainly based on an email of 20 March 2010 in which he criticised the Rector and referred to several existing problems at the University. The university had considered that this above email amounted to serious misconduct, a finding that had been upheld by the domestic courts. The Court noted that the email discussed issues of public interest – namely, shortcomings identified by the State Audit Office, and plagiarism. The Court also noted that the applicant had not been insulting in his email, nor had he published any private information that had been damaging to the reputation of the rector. The Court also noted that harshness of the sanction imposed – dismissal.

- **Łozowska v. Poland**, (application no. 62716/09), 13 January 2015: **defamation conviction for unfounded accusation of criminal dealings did not violate right to freedom of expression**

The applicant was a journalist for a regional newspaper who had been convicted of "malicious defamation" for a series of articles in which she speculated on the possible overlap between members of a mafia-like network and persons working for the local justice system. In particular, she had written that a specific judge had been dismissed because of "her shady links with criminal circles, ... [and] of the role she had played in cases in which her spouse had been implicated". Her appeal was dismissed by a single judge – the only one out of the 53-strong panel of judges of appeal who did not have a connection with the judge who had made the complaint of defamation, and therefore was the only one suitable to decide in this case. She appealed to the European Court of Human Rights.

The European Court considered that the impugned remarks addressed issues of general interest and that the former judge's dismissal was not contested. The media had a right to comment on and discuss this, and the wider public has a right to receive this information. However, the Court noted that it had not been proven that the judge had been dismissed because of "dark dealings with criminal circles" on his part. It

furthermore considered that the journalist had extensive knowledge of the workings of the justice system in general, and of the disciplinary proceedings against the judge. She should therefore have shown the greatest rigour and caution before publishing the article. The Court considered furthermore that the journalist, in using the words she did, must have known that her article was likely to harm the judge's reputation. While the Court acknowledged the journalist's right to discuss the issue of the judge's dismissal, as an issue of public interest, it held that there was not enough evidence to accuse the judge of dealings with criminal elements. Therefore, the Court held that the applicant had not acted in accordance with the requirements of professional ethics and good faith.

- **Mesut Yurtsever and Others v. Turkey**, (application nos. 14946/08, 21030/08, 24309/08, 24505/08, 26964/08, 26966/08, 27088/08, 27090//08, 27092/08, 38752/08, 38778/08, and 38807/08), 20 January 2015: **refusal of newspapers to prisoners because prison staff could not understand Kurdish language violated freedom of expression**

This concerned a group of prisoners who had been refused certain newspapers on the grounds that they might be "obscene or likely to endanger the security of the institution". The newspapers were in Kurdish, which prison staff could not read and were therefore unable to determine whether they might fall in one of these categories.

The European Court held that the refusal violated the prisoners' right to freedom of expression. It noted that prisoners in general continue to enjoy all human rights and freedoms, except for the right to liberty. The Court noted furthermore that under Turkish law, prisoners are allowed to receive newspapers except for those deemed obscene or to undermine security. The Court considered that the prisoners had been refused access to the newspapers not because they fell within one of these categories, but because prison staff were unable to assess their content. This meant that there was no clear legal basis for the refusal and that prison staff had excessive discretion in deciding whether or not to provide the newspapers in question.

- **Pinto Pinheiro Marques v. Portugal**, (application no. 26671/09), 22 January 2015: **defamation conviction for criticism of municipal council violated right to freedom of expression**

This concerned a historian who was also the chairman of a cultural association. He wrote an article in a newspaper in which he criticised the municipal council for publishing a book with works of a local poet in apparent breach of a contract with him. He was convicted of 'insult', sentenced to a €2,320 fine and ordered to pay €1,000 in damages to the municipal council. His appeal was dismissed on the grounds that the municipal council's right to protection of its reputation prevailed over the applicant's right to freedom of expression.

The European Court held that the conviction violated the historian's right to freedom of expression. It noted that the domestic courts had convicted the historian under a criminal code provision that prohibits spreading false facts that undermine the honour

of a public authority. The Court held that because the historian had pointed out an error in the publication – namely, they had suggested that the historian had been involved in the book’s publication – he had not spread ‘false facts’ and so the wrong legal code provision had been used against him. This meant that his conviction had no proper basis in domestic law. This alone sufficed to find a violation of the right to freedom of expression. The European Court went to criticise the Portuguese courts for placing the reputational interests of a municipal council above right of the public to discuss issues of legitimate public interests, as well as for the harshness of the financial penalty imposed. The Court held that “the applicant's conviction in a criminal fine was manifestly disproportionate manner and posed an excessive and disproportionate burden, likely to have a chilling effect on the freedom to criticise public institutions”.

- **Kincses v. Hungary**, (application no. 66232/10), 27 January 2015: **fine imposed on lawyer for calling a judge’s professional competence into question did not violate the right to freedom of expression**

This concerned a lawyer who had been fined for criticising the judge sitting on one of his cases. He had filed a motion for bias against the judge alleging his professional incompetence and personal dislike for the respondent party. In the motion, he had stated that, “the judgment reflected the personal opinion of the judge and was not based on any evidence ... we cannot but call into question the professional competence of the sitting judge. His conduct was guided either by sympathy for the plaintiff or a dislike for the respondent.” This earned him disciplinary proceedings and an eventual fine of €570 for infringing the dignity of the judiciary. His appeals were dismissed.

The European Court held that the statements made by the lawyer had indeed belittled the professional competence of the judge and had suggested that the court had circumvented the law. The Court found that the lawyer could have raised the substance of his objection without making these allegations. The Court also noted that the applicant, as a lawyer, was bound by the rules of professional conduct, and that he should be expected to contribute to the proper administration of justice, and thus to maintain public confidence in it. Bearing in mind, finally, that the lawyer was only fined and that no other penalties were imposed, the Court found that the sanction did not violate the right to freedom of expression.

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