

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

Bulletin XXII: ROUND-UP OF JUDGEMENTS: 1-15 SEPTEMBER 2013

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During September 2013, the European Court adopted judgments and decisions in the following freedom of expression cases:

- **Ümit Bilgiç v. Turkey** (Application no. 22398/05), 3 September 2013 (detention in psychiatric hospital for insulting judges violated the right to freedom of expression and the right to liberty)
- **Welsh and Silva Canha v. Portugal** (Application no. 16812/11), 17 September 2013 (defamation of directors of satirical magazine for allegations of corruption against politician violated the right to freedom of expression)
- **Stojanović v. Croatia** (Application no. 23160/09), 19 September 2013 (interviewee only responsible for defamatory statements actually made, not those that were attributed to him)
- **Hannover v. Germany** (no. 3) (Application no. 8772/10), 19 September 2013 (publication of a photograph of a public figure to illustrate an article on an issue of general interest did not violate the right to respect for private life)
- **Belpietro v. Italy** (application no. 43612/10), 24 September 2013 (suspended imprisonment and order to pay damages for defamation violated the right to freedom of expression)

These judgments concerned the following issues:

- **Ümit Bilgiç v. Turkey** (Application no. 22398/05), 3 September 2013 **detention in psychiatric hospital for insulting judges violated the right to freedom of expression and the right to liberty**

This concerned the conviction for contempt of court of an individual who had written letters accusing local judges of bias in proceedings against him, and alleging that they conspired against him with prosecutors. He was found guilty and sentenced to be detained in a psychiatric hospital.

The European Court of Human Rights considered that his detention violated the right to freedom of expression as well as the right to liberty. The Court recalled that the judiciary, as the guarantor of justice, needs the public's trust and may therefore be protected against insult; and while individual judges may be criticised for the exercise of their duties they may be protected against unnecessarily harsh verbal attacks. At the same time, the Court recalled that in the context of criminal proceedings

there must be room for the parties in proceedings to state their case, and that there should also be room for a free and energetic exchange of views. The Court noted that in this case, the applicant had written letters that were particularly virulent and offensive, and that he had accused judges of bias and corruption. This went beyond a simple criticism of the administration of justice. While the letters had not been published, and while the Court noted that the applicant did suffer from a psychiatric disorder, the Court therefore considered that in principle some form of sanction against the applicant might have been justified. However, the severity of the sanction eventually imposed – detention in a psychiatric institution – was disproportionate and constituted a violation of the applicant's rights.

- **Welsh and Silva Canha v. Portugal** (no. 16812/11), 17 September 2013 **defamation of directors of satirical magazine for allegations of corruption against politician violated the right to freedom of expression**

This concerned a series of articles published by the applicants, the deputy director and director of a satirical newspaper, concerning illegal actions related to the purchase of land by a local politician. The politician lodged a criminal complaint for defamation against them, and the applicants were convicted on the grounds that they had not been able to prove the truth of the allegations.

Considering the case, the European Court of Human Rights recalled that restrictions on political speech should be interpreted strictly, even more so when the comments made concern a well-known elected politician. It recalled furthermore that freedom of expression allows a certain amount of exaggeration and hyperbole – particularly with regard to satirical magazines. While journalists are obliged to act in good faith and strive to provide accurate information, the Court noted that in this case it was undisputed that the basic facts that had led to the allegations were true. Since a criminal prosecution into the alleged illegal conduct against the politician was ongoing, there was clearly a basis in fact for the allegations that the journalists made. The journalists had also given the politician the opportunity to respond to the allegations on several occasions and he had not made use of it. The Court therefore held that the defamation conviction constituted a violation of the right to freedom of expression.

- **Stojanović v. Croatia** (Application no. 23160/09), 19 September 2013 **interviewee only responsible for defamatory statements actually made, not those that were attributed to him**

This case concerned two articles for which the applicant was convicted of defamation and ordered to pay damages. The first article featured an interview with the applicant in which he criticised the Minister of Health; in the second, a telephone conversation between the applicant and another politician was reported in which he refused to withdraw the allegations. The minister brought a defamation action against the publishing company as well as against the applicant, complaining that the headline of the first article had harmed his reputation, as had statements reported in the second article. The first article had reported that the applicant had said that the minister sat on ten supervisory boards and was highly paid for this. In the second article, the applicant was reported to have said that the minister had threatened him and said he would not become a professor “as long as I am the Minister”. The applicant denied having made the statements.

The European Court of Human Rights considered both articles separately. Regarding the first, it held that the applicant – an interviewee – could not be held responsible for the headline that had been placed above the interview. Any liability for this would be on the magazine's editor; the conviction for defamation relating to the first article therefore violated his right to freedom of expression.

As regards the second article, the Court considered that the applicant had indeed referred to the minister's membership of several advisory boards and that he had no evidence for the allegation that the minister derived financial benefit from this. The defamation conviction related to this statement therefore did not violate applicant's right to freedom of expression. However, as regards the second statement, there was no evidence that the applicant had used the words "as long as I am the Minister", as had been reported in the article. He could not therefore be convicted for this statement.

- **Hannover v. Germany** (*no. 3*) (application no. 8772/10), 19 September 2013 **publication of a photograph of a public figure to illustrate an article on an issue of general interest did not violate the right to respect for private life**

This concerned a complaint lodged by Princess Caroline von Hannover relating to the publication of a photograph of her and her husband taken without their knowledge. The photograph had been used to illustrate an article about the trend amongst the very rich towards letting out their holiday homes, as was the case with Von Hannover's home, which was also available for rent. Caroline von Hannover sought injunctions against the publication of these photographs but were denied by the German courts on the basis that Von Hannover was a public figure and that the report could generate a discussion on a matter of general interest. Therefore, the photograph could legitimately be used to illustrate the article. The German courts also emphasised that the photograph itself did not intrude on the Von Hannover's privacy: it had not been taken in an intrusive manner.

Von Hannover complained to the European Court of Human Rights that the publication had violated her right to respect for private life. The European Court of Human Rights first recalled the relevant criteria for balancing the right to respect for private life against the right to freedom of expression: whether the publication concerned a debate of general interest; how well known the person concerned was; the subject of the report; the prior conduct of the person concerned; the content, form and consequences of the publication and, in the case of photographs, the circumstances in which they were taken. The Court noted that the photograph had been used to illustrate an article on an issue of general interest (the trend among celebrities towards letting out their holiday homes). The Court also noted that the article itself did not contain information concerning the private life of the applicant or her husband, but focused on practical aspects relating to the villa and its letting. The Court considered that it could not be said that the article had merely been a pretext for publishing the photograph in question or that the connection between the article and the photograph had been contrived. The Court also pointed out that the applicant and her husband were to be regarded as public figures who could not claim protection of their private lives in the same way as individuals unknown to the public. Noting that the German courts had taken into consideration all the essential criteria, the Court therefore concluded that there had been no violation of the right to respect for private life.

- **Belpietro v. Italy** (application no. 43612/10), 24 September 2013 **suspended imprisonment and order to pay damages for defamation violated the right to freedom of expression; while the article had been written by a member of the Italian Senate, this did not absolve the applicant from the duty to check the veracity of claims made**

This concerned the defamation conviction of the publisher of a national newspaper for an article, published by an Italian Senator, which referred to a "war" between judges and prosecutors on the one hand and the police on the other hand, in the effort to combat the Mafia. The newspaper article accused judges and prosecutors of using political strategies. Two prosecutors alleged that the article

harmed their reputation and lodged a complaint for defamation. Proceedings were instituted and the applicant was eventually sentenced to a suspended term of four months' imprisonment and ordered to pay damages.

The European Court of Human Rights first recalled its general principles: the press must be able to provide information and ideas on all matters of general interest, including those related to the justice system. However, while the limits of acceptable criticism may be wider in relation to public officials than to private individuals the Court also considered that public officials need to enjoy the confidence of the public without being unduly disturbed. The Court noted that this was particularly so for public officials who work in the justice system.

The Court noted that the article clearly concerned an issue of very high public interest; but it also noted that the allegations made in the article were very serious and were not supported by objective evidence. While the article had been written by a member of the Italian Senate, this did not absolve the applicant – the newspaper's publisher – from the duty to check the veracity of claims made. The Court also considered that the article had been accompanied by an illustration that had reinforced the claim made in the article. The Court therefore did not find that the conviction for defamation as such violated the right to freedom of expression. However, it found that the sentence of imprisonment, even if suspended, together with the requirement to pay substantial damages, was disproportionate and had a serious chilling effect on the right to freedom of expression. Therefore, the Court found that the case constituted a violation of the right to freedom of expression.

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