

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

Bulletin XXII: ROUND-UP OF JUDGEMENTS: OCTOBER 2013

7 November 2013

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

- ***Cholakov v. Bulgaria*** (application no. 20147/06), 1 October 2013 (conviction of protestor who demonstrated against local corruption violated freedom of expression)
- ***Yalçinkaya and Others v. Turkey*** (application nos. 25764/09, 25773/09, 25786/09, 25793/09, 25804/09, 25811/09, 25815/09, 25928/09, 25936/09, 25944/09, 26233/09, 26242/09, 26245/09, 26249/09, 26252/09, 26254/09, 26719/09, 26726/09 and 27222/09), 1 October 2013 (conviction for praising terrorist leader violated right to freedom of expression)
- ***Ricci v. Italy*** (application no. 30210/06), 8 October 2013 (suspended imprisonment and damage award for broadcasting confidential information violated right to freedom of expression)
- ***Cumhuriyet Vakfı and Others v. Turkey*** (application no. 28255/07), 8 October 2013 (injunction on reprinting words of politician elected as President violated freedom of expression)
- ***Jean-Jacques Morel v. France*** (application no. 25689/10), 10 October 2013 (defamation conviction for local politician who criticised a mayor violated the right to freedom of expression)
- ***Print Zeitungsverlag GmbH v. Austria*** (application no. 26547/07), 10 October 2013 (damage award against newspaper for reprinting gratuitous personal attack on politicians did not violate freedom of expression)
- ***Mehmet Hatip Dicle v. Turkey*** (application no. 9858/04), 15 October 2013 (conviction for criticism of government policy regarding the Kurds violated right to freedom of expression)
- ***Bülent Kaya v. Turkey*** (application no. 52056/08), 22 October 2013 (conviction for slogans shouted during a speech at a rally violated the right to freedom of expression)
- ***Soltész v. Slovakia*** (application no. 11867/09), 22 October 2013 (defamation conviction for repeating statements made by police officer violated right to freedom of expression)

- ***Ristamäki and Korvola v. Finland*** (application no. 66456/09), 29 October 2013 (defamation conviction for reporting on business crime violated the right to freedom of expression)

These judgments concerned the following issues:

- ***Cholakov v. Bulgaria*** (application no. 20147/06), 1 October 2013 **conviction of protestor who demonstrated against local corruption violated freedom of expression**

This concerned an individual who had gotten into a conflict with police officers – for reasons which are unknown – and who had been given a warning to refrain from “performing indecent and inappropriate actions, ... addressing indecent words to representatives of the public authorities, and breaching public order ...”. A week later he was on the street protesting against local corruption. He had chained himself to a metal column and was shouting slogans through a loudspeaker, including “All of them are criminals”; “The prosecutor is a Mafioso”; “The mayor is a Mafioso”; “Political prostitutes” and “A mass of political prostitutes”. When he refused to stop he was arrested, convicted for “minor hooliganism” and sentenced to ten days’ detention.

The European Court held that the conviction and detention violated the right to freedom of expression. It considered that while the interference aimed at preserving the legitimate aims of “public order” and “maintaining the authority of the judiciary”, it had been disproportionate and therefore not “necessary in a democratic society”. It recalled that public officials must tolerate wide criticism of their functioning. The Court noted furthermore that the applicant had attempted to contribute to a public debate on the way the city was governed, in the wake of the local elections. This context rendered the comments of “public interest”. The Court also noted that, despite being provocative, the applicant’s statements were not particularly scandalous, shocking or calumnious, nor was his conduct (chaining himself to a post and his using a loudspeaker). Finally, the court noted that the sentence – ten days’ detention’ was in itself disproportionate in the circumstances.

- ***Yalçınkaya and Others v. Turkey*** (application nos. 25764/09, 25773/09, 25786/09, 25793/09, 25804/09, 25811/09, 25815/09, 25928/09, 25936/09, 25944/09, 26233/09, 26242/09, 26245/09, 26249/09, 26252/09, 26254/09, 26719/09, 26726/09 and 27222/09), 1 October 2013 **conviction for praising terrorist leader violated right to freedom of expression**

This concerned 19 individuals who had written to a local prosecutor regarding the leader of the PKK, Abdullah Öcalan, and who had referred to Öcalan as “sayın”, a term of courtesy. The PKK is regarded a terrorist organisation. They were convicted for praising the leader of a terrorist organisation and sentenced to a fine of 1,500 Turkish liras.

The European Court held that the conviction violated the right to freedom of expression. It considered that other than the use of the word “sayın”, the applicants had not praised Ocalan in any way, nor had they incited the use of violence or terror.

- ***Ricci v. Italy*** (application no. 30210/06), 8 October 2013 **suspended imprisonment and damage award for broadcasting confidential information violated right to freedom of expression**

This concerned the producer and presenter of a satirical TV programme who had obtained confidential tapes of a programme from another broadcaster, RAI, which showed a heated argument

between two guests in a TV show. He had decided to show the tape to expose how RAI deliberately provoked arguments between guests as a way of entertainment. Both civil and criminal proceedings were started against the applicant. In the civil proceedings, RAI sued for disclosure of confidential information and won a €30,000 damage award. A lower court had also imposed a suspended prison sentence in the criminal proceedings, but this was overturned on appeal on technical grounds.

The European Court of Human Rights held that the damages award violated the right to freedom of expression. It considered that the subject of Mr Ricci's programme was an issue of public interest – namely the “real nature” of television in modern society. However, the Court disagreed that it had been necessary for the applicant to broadcast confidential information; he could have started a debate on this issue in other ways. The applicant should have been aware that broadcasting the tape would breach confidentiality and he had therefore violated journalistic ethics. The conviction in itself therefore did not violate the right to freedom of expression. However, the Court found that the sanction of imprisonment, even if overturned on appeal, and the award of financial damages was disproportionate.

- *Cumhuriyet Vakfı and Others v. Turkey* (application no. 28255/07), 8 October 2013 **injunction on reprinting words of politician elected as President violated freedom of expression**

This concerned daily national newspaper Cumhuriyet, its editor-in-chief and its chief editorial writer. In 2007, Cumhuriyet ran a first page advertisement quoting a politician who had stated, “It is the end of the republic in Turkey ... We definitely want to change the secular system –Abdullah Gül.” The quote was followed by a slogan, “Take care of your Republic”, followed by an inset picture of the newspaper. The next day, the newspaper published a short article explaining that the quote had been taken from an interview with a British newspaper. The politician obtained an injunction preventing the newspaper from repeating the quote. The injunction remained in force for nearly a year; when he became President he dropped the proceedings.

The European Court considered that the injunction violated the newspaper's right to freedom of expression. It considered that the scope of the injunction had been potentially extremely wide, as it could be read as forbidding coverage of any political statement whatsoever made by the politician relating to the issue of secularity in Turkey. This meant that the injunction was vulnerable to abuse and that it may have had a chilling effect on the Turkish media as a whole. Furthermore, due to the absence of a time-limit, or any periodic review, the injunction stayed in force for over 10 months, including two stages of the Presidential election. This hindered the newspaper in contributing to public debate at a key point in Turkish political history. Furthermore, the Court considered that the newspaper had not been able to contest the injunction until over a month after it was first granted. Given the fast-paced nature of news, this was not quick enough. Finally, the Court took into account the potentially severe punishment had the injunction been breached (imprisonment between one and six months).

- *Jean-Jacques Morel v. France* (no. 25689/10), 10 October 2013 **defamation conviction for local politician who criticised a mayor violated the right to freedom of expression**

This concerns a municipal councillor who had been convicted for defamation for having criticised, at a press conference, the pay and terms of employment of a public official. The public official had sued for libel.

The European Court of Human Rights held that the conviction for defamation violated the right to freedom of expression. It considered that the subject matter of the remarks concerned an issue of legitimate public interest and noted that the applicant had spoken at a press conference in his capacity as a local councillor. This meant the remarks were clearly 'political speech' which should not be restricted lightly. Furthermore, the applicant had primarily intended to criticise the local mayor's decision to create the post of the public official, rather than criticise the public official himself. While the language used had been somewhat provocative, by referring to the public official's post as a "dummy job", this had not overstepped the boundaries of what was permissible.

- *Print Zeitungsverlag GmbH v. Austria* (application no. 26547/07), 10 October 2013 **damage award against newspaper for reprinting gratuitous personal attack on politicians did not violate freedom of expression**

This concerned a newspaper which had reported on an anonymous letter that had been circulated in a local area and that had been very critical of two local politicians. The letter had stated questions such as, "Would you buy a car from this man" and "Would you stake your money on a promise made by this man", and generally questioned his fitness for public office. As part of the report, the newspaper reprinted the letter. The two politicians sued the newspaper for defamation and won €2,000 damages each.

The European Court of Human Rights considered that the damages award did not violate the newspaper's right to freedom of expression. While the subject matter of the report considered an issue of public interest – upcoming local elections – the Court considered that the anonymous letter constituted a gratuitous attack on the politician's reputation. Reprinting the letter in full therefore overstepped the limits of permissible reporting. The Court also considered that the initial letter had been circulated among only a few hundred people while by reprinting it newspaper had given the letter a much larger audience; and that the damage award had not been disproportionate.

- *Mehmet Hatip Dicle v. Turkey* (no. 9858/04), 15 October 2013 **conviction for criticism of government policy regarding the Kurds violated right to freedom of expression**

This concerns a journalist who was convicted for an article in which he criticised local government policy, denouncing the economic situation and the growth of drug trafficking. He also claimed that the Kurds in the region had been victims of a policy of assimilation and genocide.

The European Court of Human Rights held that the conviction violated the right to freedom of expression. It considered that the article was undeniably virulent in tone, using terms such as "war machine", "burning of villages", "genocide," "murder", "torture" and "oppression". At the same time, the article discussed issues such as the depopulation of the region, low economic development, political violence and repression against the Kurdish population and the proliferation of drug trafficking; and the applicant appealed to his readers for a campaign for peace and freedom. The Court held that while the tone of the article was negative of state policy, it did not incite violence, armed resistance or an uprising. It could also not be considered as "hate speech".

- *Bülent Kaya v. Turkey* (no. 52056/08), 22 October 2013 **conviction for slogans shouted during a speech at a rally violated the right to freedom of expression**

This concerned an individual who was ordered to pay a fine after giving a speech at a rally organised in 2003 by a political party. During his speech, people in the audience shouted slogans in support of

Abdullah Öcalan, a convicted terrorist, including "Long live our leader Abdullah Öcalan", "Tooth for tooth, blood for blood, we are with you Öcalan", and "we do not regret anything, we are supporters of Öcalan". He was convicted of "glorifying crime and a criminal" and fined 2,000 Turkish liras.

The European Court of Human Rights held that the conviction violated the right to freedom of expression. It stated that the applicant's speech did not incite violence or call for an uprising and did not constitute hate speech. While slogans in support of Abdullah Öcalan were chanted by others while the applicant was delivering his speech, the applicant had not prompted this. In any event, the Court noted that these slogans were not likely to have an impact on national security or public order.

- *Soltész v. Slovakia* (application no. 11867/09), 22 October 2013 **defamation conviction for repeating statements made by police officer violated right to freedom of expression**

This concerned a journalist who had published an article about the disappearance of a local businessman and official. He had included in his article statements by the police officer who had been in charge of the investigation, which implied that a local lawyer and entrepreneur had been involved in the disappearance. The lawyer/entrepreneur sued the journalist for defamation.

The European Court of Human Rights held that the conviction for defamation violated the journalist's right to freedom of expression. It considered that the local courts had not taken into account that the allegations concerned an issue of public interest, nor had they considered whether the article had been published in good faith and in keeping with journalistic ethics. The local courts had similarly dismissed the credibility of the police officer as a source of information. They had merely focused on whether, with the benefit of hindsight and several years later, the allegation had been proven to be 'true'. This was not in keeping with requirements under the European Convention. The Court reiterated that the extent to which a journalist can reasonably regard a source of information as reliable is to be determined in the light of the situation, and that on its face a police officer in charge of an investigation is a good source of information.

- *Ristamäki and Korvola v. Finland* (application no. 66456/09), 29 October 2013 **defamation conviction for reporting on business crime violated the right to freedom of expression**

This concerned two broadcast journalists who had been convicted of defamation for a programme on economic crimes in which it had been mentioned that police had investigated the financial activities of a well-known Finnish businessman. The Finnish courts had held that the programme implied that the businessman had been guilty of a crime.

The European Court held that the conviction violated the right to freedom of expression. The Court noted that the programme focused on criticising the lack of co-operation between the police and the tax authorities in two specific cases concerning economic crime, and that reference had been made to the businessman who, at the time, had been on trial for economic offences. The programme aimed to disclose a malfunctioning of the administration, and the major part of the programme focused on the tax authorities. The information that had been broadcast had been factually correct, it had been presented in an objective manner, without any insinuation, and the style of the programme was not provocative or exaggerated. The businessman had already been on the limelight and the issue of business crime was a matter of legitimate public concern. He was merely mentioned in the context of the wider issue and there was no suggestion that he had been guilty.

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