

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

Bulletin XXV: IMMIGRATION AND FREEDOM OF EXPRESSION

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Immigration laws are sometimes used to exclude controversial individuals from entering a country on the grounds that their presence might cause a risk to public order, or because they are otherwise unwanted. A number of cases concerning this issue has reached the European Court of Human Rights. The general rule applied by the Court is that while States have the discretionary power to decide whether to expel a foreigner, this power must be exercised in such a way as not to infringe on their human rights. Furthermore, the Court has made it clear that when an individual is expelled or excluded from a country for alleged national security or public order concerns, there must be a real and not some imagined or remote risk.

The following judgments illustrate how these principles are applied in practice.

- ***Piermont v. France*** (application nos. 15773/89 & 15774/89) 20 March 1995: controversial politician could not be excluded from country for peaceful expression of her views

This concerned a German member of the European Parliament who visited French Polynesia during an election campaign. She took part in a demonstration during which she denounced the continued French presence in the Pacific and nuclear testing in the region by the French. As a result, she was expelled from French Polynesia. She then flew to New Caledonia, which was also in the midst of an election campaign. Upon arrival, she was issued with an order barring her from the territory on the grounds that her presence constituted an immediate risk to public order (forty activists were waiting for her arrival to protest against her presence in the territory). She complained to the European Court of Human Rights that the orders excluding her from French Polynesia and New Caledonia violated her right to freedom of expression.

With regard to the exclusion from French Polynesia, the Court held that while the political climate there was undoubtedly sensitive, this alone could not justify the expulsion. Reiterating the importance of freedom of expression, the Court stated that there must be space for the expression of a variety of viewpoints and ideas in politics. It noted that the right to freedom of expression is especially important for an elected politician. The Court emphasised that the speech given by the applicant was made during a peaceful, authorised demonstration; that she did not call for violence; that no violence followed the demonstration; and that there was no evidence of any unrest whatsoever caused by the speech. Furthermore, the applicant's speech had been in support of anti-

nuclear and independence demands made by several local political parties and had clearly been a contribution to a democratic debate.

As regards the applicant's subsequent expulsion from New Caledonia, the Court acknowledged that political tensions there were even greater than in French Polynesia. However, even considering that the applicant's arrival had been met with demonstrations against her, this in itself did not justify her exclusion from the territory. The Court therefore held that both her expulsion from French Polynesia and her exclusion from New Caledonia violated applicant's right to freedom of expression.

- ***Gerard Adams and Tony Benn v. the United Kingdom*** (application nos. 28979/95 and 30343/96) 13 January 1997: **admissibility decision – politician could be excluded when there was a real and continuous threat of terrorism**

This concerned an Irish politician, president of the political party Sinn Fein, who had been invited to visit the United Kingdom to speak to MPs and journalists by the second applicant, who was an opposition member of parliament. The Irish politician had himself been an MP from 1983 until 1992 and had visited Great Britain on a number of occasions to attend meetings and conferences. However, on this occasion he was barred from visiting the UK. An order excluding him had been issued on the grounds that he had been involved in terrorism and that he might say things that could lead to further terrorist acts being committed. He appealed to the European Commission of Human Rights (one of the predecessor bodies of the current Court of Human Rights).

The Commission considered that the motivation behind the exclusion order had been that the first applicant might "say things which could lead to the instigation of terrorism". The Commission noted furthermore that the first applicant had not denied that he had links to the IRA (a terrorist group in Northern Ireland). The Commission acknowledged the importance of the right to freedom of expression and that this should not be restricted lightly. At the same time, the Commission acknowledged that terrorist acts had been committed in the United Kingdom by Northern Irish terrorists and that at the time the order was made, there was a real and continuous threat of renewed incidents of violence. The Commission noted furthermore that, following the announcement by the IRA of a ceasefire, the exclusion order had been lifted. It therefore concluded that the exclusion order had been necessary for the prevention of terrorism and had not violated the right to freedom of expression.

- ***Women on Waves and Others v. Portugal*** (application no. 31276/05, 3 February 2009: **women's rights activists could not be barred from entering the country without any evidence that they were planning to commit illegal acts**

This concerned three associations who campaigned on reproductive rights. The first, Dutch-based Women on Waves, had been invited by the other two, who were based in Portugal, to visit the country and conduct a campaign. "Women on waves" then chartered a ship and sailed to Portugal, planning to hold a series of meetings on board of the ship to discuss topics such as the prevention of sexually transmitted diseases, family planning and the decriminalisation of abortion. However, the ship was banned from entering Portuguese waters and its entry was blocked by a Portuguese warship on the grounds that the association intended to provide access to abortion procedures and medication that was illegal in Portugal.

The European Court acknowledged the legitimate aims pursued by the Portuguese authorities, namely the prevention of disorder and the protection of health, but it also reiterated that pluralism, tolerance and broadmindedness towards ideas that offended, shocked or disturbed were prerequisites for a “democratic society”. The Court furthermore pointed out that the right to freedom of expression included the choice of the form in which ideas were conveyed, without unreasonable interference by the authorities, particularly in the case of symbolic protest activities. The Court also said that the Portuguese government should respect the right of the women activists involved to demonstrate and express their opinions and emphasised: “it is precisely when presenting ideas that offend, shock and challenge the established order that freedom of expression is the most valuable”. The Court observed that the applicant associations had not trespassed on private land or publicly owned property, and noted that there was no strong evidence that the association intended to deliberately breach Portuguese abortion laws. Insofar as the applicant association did indeed have medication on board that was prohibited in Portugal, this could simply have been seized; there had not been any need to send a warship. The actions of the Portuguese government therefore constituted a violation of the right to freedom of expression.

- ***Cox v. Turkey*** (application no. 2933/03) 20 May 2010: re-entry ban on academic for controversial statements on Kurdish and Armenian issues violated the right to freedom of expression

This concerned a US national who had been a university lecturer in Turkey during the 1980s and who had been expelled for statements she had made on Kurdish and Armenian issues. She returned to the country several years later and was again expelled, this time for handing out leaflets protesting against a film she considered to be offensive to Christians. When she left Turkey for the final time, in 1996, she was banned from the country permanently. In subsequent court proceedings, the ministry of the interior stated that she had been banned because of statements she had made about Turks assimilating Kurds and Armenians, that Turks had forced Armenians out of the country and had committing genocide. This constituted a risk to national security. The Turkish courts upheld this reasoning.

The European Court of Human Rights held that the expulsion violated the applicant’s right to freedom of expression. The Court reiterated that while the right of a foreigner to enter or remain in a country was not as such guaranteed by the Convention, immigration controls had to be exercised consistently with human rights including the right to freedom of expression. The Court noted that there had never been any suggestion that the applicant had committed an offence by voicing controversial opinions on Kurdish and Armenian issues and that no criminal prosecution had ever been brought against her. The Court noted furthermore that the opinions voiced by the applicant related to topics which were the subject of heated international debate. While the applicant’s opinions might be offensive to some in Turkey, a democratic society required tolerance of statements that are controversial. Moreover, the Court observed that there was no evidence of actual harm to Turkey’s national security as a result of the applicant’s statements. It therefore appeared that the expulsion had been designed solely to stifle the spreading of the applicant’s ideas, and this constituted a violation of her right to freedom of expression.

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