

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

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The European Court of Human Rights has considered numerous cases in which it had to judge whether a conviction for publishing an insult violated the right to freedom of expression. In considering these cases, it takes into account several factors, including the following:

- That the right to freedom of expression protects statements that offend as well as inoffensive language;
- Whether or not the statement constitutes a gratuitous personal attack; and
- The importance of debate on issues of public interest

In its decisions, the Court found that exaggerated language may be justified when used to describe politicians who themselves are prone to making exaggerated remarks. In other cases, exaggerated or insulting language has been approved when it clearly related to a topic of public interest and the language was relevant in that context. However, the Court has consistently disapproved of what it calls ‘gratuitous’ insults. The Court has also consistently disapproved of needless attacks on the judiciary, reflecting the protective stance of the European Convention towards upholding the dignity of the judiciary.

Bulletin 16 summarised the European Court of Human Rights’ case law on insult and the right to freedom of expression. The following judgments provide further examples of how the European Court of Human Rights has ruled in these matters.

- ***Rujak v. Croatia*** (application no. 57942/10), 2 October 2012: vulgar insults that do not contribute to debate on an issue of public interest are not protected under the right to freedom of expression

This concerned a soldier who had been convicted for insult for shouting, during an argument with other soldiers, “I fuck your baptised mother!”; “I fuck your Ustaše mother!”. He appealed to the European Court of Human Rights arguing that the conviction constituted a violation of his right to freedom of expression. The Court held that it did not, stating that the language used was not protected under the European Convention on Human Rights. The Court stated:

“While assertions of fact and statements of value or feeling are [potentially protected under the Convention] because, for instance, they express an individual’s beliefs or identity, or contribute to the formation of public opinion, it is open to question whether there is a good reason for protecting

expression of insults ... [T]he concept of “expression” in Article 10 concerns mainly the expression of opinion and receiving and imparting information and ideas, including critical remarks and observations ... Certain classes of speech, such as lewd and obscene speech have no essential role in the expression of ideas. An offensive statement may fall outside the protection of freedom of expression where the sole intent of the offensive statement is to insult ... In view of the fact that the applicant’s statement mostly concerned vulgar and offensive language, the Court is not persuaded that, by making the offending statements, the applicant was trying to “impart information or ideas”. Rather, from the context in which those statements were made, it appears that the applicant’s only intention was to insult his fellow soldiers and his superiors. The Court considers that such “expression” falls outside the protection of [the right to freedom of expression] because it amounted to wanton denigration and its sole intent was to insult.”

- **Krutil v. Germany** (application no. 71750/01), admissibility decision of 20 March 2003: conviction for comparing a journalist to Goebbels, head of Nazi regime propaganda during second world war, did not violate right to freedom of expression

The applicant had compared a German journalist to Mr. Goebbels, the head of the German Nazi regime’s propaganda department. He had written that a report written by the other journalist was “a piece of crap [Schweinerei] and deception [Hinterfotzigkeit] without parallel. If he had not been not left-wing, it could be argued that even [German Nazi-era propaganda minister] Goebbels would not have done better.” He was convicted of insult and complained to the European Court of Human Rights that this conviction violated his right to freedom of expression. The European Court held that it did not. It stated that, “whatever the intentions of the applicant or the author of the article, there is no doubt that to compare a journalist with a person like Goebbels undermines his honour and goes beyond the limits of acceptable criticism, even within a debate between two players in public life ...” The Court also considered it important that the applicant had only been sentenced to payment of a relatively low fine (900 Deutschmark) and damages (1200 Dutschmark), the amounts of which had been set taking the applicant’s income into account.

- **Giniewski v. France** (application no. 64016/00), 31 January 2006: conviction for religious insult following publication of critical analysis of catholic doctrine violated the right to freedom of expression

This concerned a newspaper which had published an article analysing a particular Catholic church doctrine and its possible links with the origins of the Holocaust. The article stated that “[m]any Christians have acknowledged that scriptural anti-Judaism and the doctrine of the ‘fulfilment’ [accomplissement] of the Old Covenant in the New led to anti-Semitism and prepared the ground in which the idea and implementation [accomplissement] of Auschwitz took seed.” They were found guilty of publishing insulting statements against the Christian community and ordered to pay damages to a Christian organisation, “General Alliance against Racism and for Respect for the French and Christian Identity”. The Court held that the conviction violated the right to freedom of expression. It considered that it had contributed to a debate on the various possible reasons behind the extermination of Jews in Europe, and that this was an issue of public interest in a democratic society. It considered furthermore that the article did not contain attacks on religious beliefs as such, but that it proposed a critical analysis. Finally, the Court considered that the article had not been “gratuitously offensive” or insulting; and that it had not incited hatred.

- ***Alfantakis v. Greece*** (application no. 49330/07), 11 February 2010: conviction for insulting a public prosecutor violated right to freedom of expression

This concerned a Greek lawyer who, during a television interview, stated that he had “laughed” on reading the report of public prosecutor concerning his client. He described the report as a “literary opinion showing contempt for his client”. The public prosecutor sued for insult and a court ordered the lawyer to pay damages of about €12,000. The lawyer appealed to the European Court of Human Rights arguing that this violated his right to freedom of expression.

Considering that the lawyer’s comments had been directed at a prosecutor – a member of the national legal service – the European Court considered that they created a risk of undermining the authority of the judiciary and public confidence in the proper administration of justice. The Court recalled furthermore that although lawyers are entitled to comment on issues concerning the judiciary, they are expected to observe certain limits. However, the Court also noted that the Greek courts had exaggerated the meaning of the lawyer’s words, and that they had failed to take into account that the lawyer had made his comments in the course of his duty to defend his client. The Greek courts had also failed to take into account the fact that the comments had been broadcast on live television and could therefore not be rephrased. It therefore held that the conviction violated the right to freedom of expression.

- ***Andreescu v. Romania*** (application no. 19452/02), 8 June 2010: conviction and high fine for uttering suspicion regarding a public official’s link with communist security service violated the right to freedom of expression

This concerned a conviction for insult of a human rights activist who had, during a press conference, alleged that a member of the Consiliul Național pentru Studierea Arhivelor Securității (National Council for the Study of the Archives of the Securitate - CNSAS) had also been a collaborator with the reviled communist “Securitate” security service. He was sued for insult and convicted to payment of a criminal fine of 5 million Lei together with a 50 million Lei in damages (more than 50 times the average national salary at the time). He appealed to the European Court of Human Rights.

The Court held that the conviction violated the right to freedom of expression. It considered that the applicant’s speech had been made in the specific context of a national debate on the issue of citizens’ access to the personal files kept on them by the Securitate, and the inefficiency of the national agency tasked with regulating this. His remarks had been a mix of value judgments and factual elements and he had stated that he was voicing suspicions rather than certainties. These suspicions had a basis in undisputed facts. The Court therefore considered that it was clear that the remarks had been made in good faith and in an attempt to inform the public. The Court finally noted furthermore that the extremely high level of damages could deter the media and others from commenting on issues and debates of public interest.

- ***Hoffer and Annen v. Germany*** (application no. 397/07 and 2322/07), 13 January 2011: insult conviction for comparing doctor to holocaust perpetrator did not violate freedom of expression

This concerned a protestor who had produced and handed out anti-abortion leaflets comparing doctors who carry out abortions to perpetrators of the holocaust. The leaflet stated, “Stop the

murder of children in their mother's womb on the premises of the Northern medical centre ... then: Holocaust - today: Babycaust". The director of a medical centre where the leaflets had been handed out sued for insult and won a judgment ordering the applicant to pay 1800 Deutschmarks in damages. The applicant appealed to the European Court of Human Rights arguing that his right to freedom of expression had been violated.

The Court held that the conviction did not violate the right to freedom of expression. It considered that while the leaflet addressed questions of public interest and that while a certain degree of exaggeration is allowed, the comparison of a doctor with a perpetrator of the holocaust was a very serious attack, particularly in the German context. The Court considered that the applicant could have been expected to express his criticism in a way which was less detrimental to the physician's honour.

- ***Otto-Preminger-Institut v. Austria*** (application no. 13470/87), 20 September 1994: **banning of a film that was insulting to Christians did not violate the right to freedom of expression**

This concerned the banning in Austria of a film which presents the Christian God the Father as old, infirm and ineffective, Jesus Christ as a 'mummy's boy' of low intelligence and the Virgin Mary as unprincipled. All of them are portrayed as conspiring with the Devil to punish mankind for its immorality. In one scene God kisses the devil whilst in other scenes, God, the Virgin Mary and Christ are applauding the Devil. The film was banned on the grounds that it insulted Christians.

The European Court of Human Rights held that the ban did not violate the right to freedom of expression. It stated that,

"[W]hoever exercises the [right to freedom of expression] undertakes "duties and responsibilities". Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs."

The Court noted that especially on the issue of morals, State have a significant margin of appreciation in deciding what is and what is not acceptable in their societies. What may be acceptable in a very liberal country may not be acceptable elsewhere. The Court stated:

"The Court cannot disregard the fact that the Roman Catholic religion is the religion of the overwhelming majority of Tyroleans. In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner. It is in the first place for the national authorities, who are better placed than the international judge, to assess the need for such a measure in the light of the situation obtaining locally at a given time. In all the circumstances of the present case, the Court does not consider that the Austrian authorities can be regarded as having overstepped their margin of appreciation in this respect."

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