

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

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During February 2014, the European Court adopted judgments and decisions in the following freedom of expression cases:

- ***Pentikäinen v. Finland*** (application no. 11882/10), 4 February 2014 (arrest of photographer along with protesters did not violate right to freedom of expression);
- ***Tešić v. Serbia*** (application nos. 4678/07 and 50591/12), 11 February 2014 (defamation award that constituted the majority of the applicant's income violated the right to freedom of expression);
- ***Jalbă v. Romania*** (application no. 43912/10), 18 February 2014 (publication of false allegations against a civil servant violated right to respect for private life).

These cases concern the following issues:

- ***Pentikäinen v. Finland*** (application no. 11882/10), 4 February 2014: arrest of photographer along with protesters did not violate right to freedom of expression

This concerned a press photographer who had been reporting on a demonstration. Although a separate area had been reserved for the press he decided not to use it and stayed with the demonstrators. When the demonstration turned violent, the police ordered the protesters to disperse. Most left but around 20 protesters remained, as did the photographer. They were all arrested, detained for over 17 hours and prosecuted and found guilty of disobeying police orders. The photographer was not given a penalty, however. The photographer appealed his conviction to the European Court of Human Rights.

The Court held that the photographer's right to freedom of expression had not been violated. It considered that he had been given several opportunities to cover the event adequately. He had not in any way been prevented from taking photographs and he had waived his right to use the separate secured area reserved for the press, deciding instead to stay with the demonstrators even after the orders to disperse. Therefore, the Court judged that his conviction for disobeying police orders was

not related to his journalistic activity, but rather for his refusal to comply with a police order at the very end of the demonstration, when police considered that it had become a riot. The domestic courts had taken into account the photographer's right to freedom of expression and imposed no penalty, and no entry of the conviction was made in his criminal record.

- ***Tešić v. Serbia*** (application nos. 4678/07 and 50591/12), 11 February 2014: **defamation award that constituted the majority of the applicant's income violated the right to freedom of expression**

This concerned a pensioner who had been found guilty of defaming her lawyer and who had been ordered to pay him the equivalent of approximately €4,900 on compensation and costs. The Municipal Court ordered two thirds of the applicant's pension to be transferred to the lawyer's bank account each month, until the sum awarded had been paid in full. This left the applicant approximately €60 a month to live on.

The European Court of Human Rights held that the order violated the right to freedom of expression. The Court considered that while the applicant had not been able to prove the truth of the defamatory statement, it was not a gratuitous personal attack. The statement had concerned the lawyer's competence, and the Court recalled that given the role lawyers play in the proper administration of justice, this was an issue of public concern. The Court furthermore considered that the domestic courts had applied the maximum possible penalty on the pensioner and had ordered her to repay the maximum possible monthly contribution. This was a particularly precarious situation for an elderly person suffering from a number of serious illnesses. Recalling its previous decisions emphasising that defamation awards must take into account the personal circumstances of the person concerned, the Court held that this violated the applicant's right to freedom of expression.

- ***Jalbă v. Romania*** (application no. 43912/10), 18 February 2014: **publication of false allegations against a civil servant violated right to respect for private life**

This concerned a high-ranking civil servant in the office of a local mayor who had been accused of corruption by a local news website. The news website had alleged that he owned a private taxi business, which was incompatible with his status as a civil-servant. The civil servant brought proceedings against the website for defamation, but the domestic courts dismissed the claim holding that the public's right to be informed about the management of public funds was more important than his privacy rights. The civil servant complained to the European Court, arguing that his right to respect for private life had been violated.

The European Court of Human Rights held that the civil servant's right to respect for private life had indeed been violated. It considered that the allegation made was a factual allegation which was either true or untrue. The European Court disagreed with the assessment by the local courts that the allegation was a statement of opinion; it held that whether or not someone owns a business is "not merely a matter for speculation but is a fact capable of being substantiated by relevant evidence". The allegation was serious and damaged the applicant's reputation; it also hindered him in the performance of his duties. The Court reiterated that while civil servants must tolerate greater

criticism of their functioning than ordinary individuals, they can still take action and can sue for the publication of false allegations that damage their reputation. The Court also noted that the news website had not provided the applicant the opportunity to respond to the accusations or that he had been allowed the opportunity to publish a reply.

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