

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

Bulletin XXXV: ROUND-UP OF FREEDOM OF EXPRESSION JUDGMENTS: May 2014

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During May 2014, the European Court adopted judgments in the following freedom of expression cases:

- **Taranenko v. Russia** (no. 19554/05), 15 May 2014 (prolonged detention and severe sentencing of participant in non-violent anti-government protest violated right to freedom of expression)
- **Baka v. Hungary** (no. 20261/12), 27 May 2014 (termination of mandate of President of Supreme Court for criticising legislative reforms violated right to freedom of expression)
- **Mustafa Erdoğan and Others v. Turkey** (nos. 346/04 and 39779/04), 27 May 2014 (academic criticism of Turkish judges for dissolving a political party was within acceptable bounds)

The Court also began its consideration of several new applications, including of the Russian blogger and opposition politician Navalnyy's complaint that his conviction for defamation violated his right to freedom of expression.

These cases concern the following issues:

- **Taranenko v. Russia** (no. 19554/05), 15 May 2014 (prolonged detention and severe sentencing of participant in non-violent anti-government protest violated right to freedom of expression)

This concerned the detention and conviction of a student who had been arrested together with a group of people who had occupied the reception area of the President's administration building in Moscow, waved placards and distributed leaflets calling for the President's resignation. The applicant argued that she was not a member of the group of protesters but that she had attended the protest to collect information for her thesis in sociology. Following her arrest, she was held in pre-trial detention for almost one year. She was eventually convicted of participation in mass disorder and received a suspended sentence of three years' imprisonment. The Russian court noted

that it was irrelevant whether she had joined the action for research or other purposes, because she had directly participated in the mass disorder.

The European Court of Human Rights held that the conviction breached her right to freedom of expression, and that her detention pending trial for nearly a year had violated her right to liberty. The Court emphasised that although the protest had involved some disturbance of public order, it had been largely non-violent. The protesters had wanted to draw public attention to their disapproval of the President's policies and their demand for his resignation. Those were questions of public interest, for which there should be space in a democratic society. The Court did note that the protesters had stormed the Presidential administration building and that they had pushed a guard aside. In those circumstances, the arrest of the protesters could have been considered justified by the demands of the protection of public order. However, holding the applicant for nearly a year before her trial and the subsequent imposition of a penalty of three years prison, even suspended, had been clearly disproportionate. The Court noted that the conviction had at least in part been founded on the Russian courts' condemnation of the political message conveyed by the protesters. The unusually severe sanction had a chilling effect on her and other persons taking part in protest actions and was incompatible with democratic values.

- ***Baka v. Hungary*** (no. 20261/12), 27 May 2014 (termination of mandate of President of Supreme Court for criticising legislative reforms violated right to freedom of expression)

This concerned the premature termination of the mandate of the President of the Supreme Court of Justice of Hungary. The applicant had been a judge at the European Court of Human Rights from 1991-2008, and in 2009 he had been elected by the Parliament of Hungary as President of the Supreme Court for a six-year term. As part of this position he was required to express his opinion on parliamentary bills affecting the judiciary. Throughout 2011, he had criticised legislative reforms, including a proposal to reduce the mandatory retirement age for judges. On 1 January 2012, as part of a programme of reforms, the Hungarian Supreme Court was renamed 'Kúria' (the historical Hungarian name for the Supreme Court) and the mandate of the President of the Supreme Court was terminated –three and a half years before its normal date of expiry. According to the criteria for the election of the President of the new Kúria, candidates were required to have at least five years' experience as a judge in Hungary. The time served as a judge in an international court was not counted and this led to the applicant's ineligibility for the post of President of the new Kúria. He was unable to challenge this in the domestic courts and so appealed to the European Court of Human Rights.

The European Court of Human Rights held that the early termination of the applicant's mandate was clearly linked to the criticism he had expressed and violated his right to freedom of expression. The Court noted that the proposals to terminate his mandate as well as the new eligibility criterion for the post of President of the Kúria had all been submitted to Parliament after he had publicly expressed his views on several legislative reforms affecting the judiciary, and had been adopted within an extremely short time. His ability to exercise his functions nor his professional behaviour had been called into question before the Hungarian authorities. The Court therefore agreed that the facts and the sequence of events seen as a whole corroborated the applicant's contention that the early termination of his mandate had been related to the criticisms he had expressed. The reforms

that he had criticised concerned the functioning of the judicial system, the independence and irremovability of judges and the retirement age of judges. These were matters of public interest, and it had been the applicant's duty as President of the National Council of Justice to express his views on them. The Court noted furthermore that the applicant had not been able to challenge the termination of his mandate before the Hungarian courts, which in itself constituted a violation of his right of access to a court.

- ***Mustafa Erdoğan and others v. Turkey*** (nos. 346/04 and 39779/04), 27 May 2014 (academic criticism of Turkish judges for dissolving a political party was within acceptable bounds)

This concerned the complaint by a law professor and the editor and publisher of an academic journal that they were ordered by the Turkish courts to pay damages to three judges of the Constitutional Court for insulting them in a journal article which had criticised a decision dissolving a political party. The article was published in a quarterly law journal in 2001, and had questioned whether, as a matter of law, the conditions for dissolving the political party had been met. The article called the impartiality of the judges into question and insinuated that the judges were incompetent. Three of the judges brought defamation proceedings against the applicants, claiming that the article was a serious personal attack on their honour and integrity, and won damages.

The European Court of Human Rights held that the defamation award violated the right to freedom of expression. It considered that members of the judiciary acting in an official capacity should expect to be subject to wider limits of acceptable criticism than ordinary citizens. While the judiciary must enjoy public confidence, criticism of it can be restrained only when this constitutes an unfounded destructive attack. The Court found that the national courts did not place the language and expressions used in the article in the context and form in which they were expressed. Therefore, whilst some of the remarks made in the article were harsh they were largely value judgments, set out in general terms, with sufficient factual basis. They could not be considered gratuitous personal attacks on the three judges. In addition, the article was published in a quarterly law journal, and had been written in the context of an ongoing public debate on the dissolution of the political party. Neither of these factors had been considered by the national courts. The Court emphasised the importance of academic freedom and the ability of academics to freely express their views, even if controversial or unpopular, in the areas of their research, professional expertise and competence.

Communicated cases:

The Court formally began its consideration of the case of *Navalnyy v. Russia* (Application no. 32058/13). This concerns a Russian opposition politician and blogger who gained prominence by exposing corruption in the Russian ruling party and government. In December 2011, the Russian edition of *Esquire* magazine ran a long interview with Navalnyy in which he described members of the ruling party as "a thief. If you are not a thief, you are at least a crook because you use your name to cover up for other thieves and crooks ...". A member of the ruling party sued Navalnyy for defamation, claiming that he had accused him of theft, and won damages of 30,000 Russian roubles. The Russian Court considered that Navalnyy had no evidence of wrongdoing by any member of the ruling party and that his criticism had overstepped the bounds of acceptable criticism. Navalnyy's appeals were rejected and he brought his case to the European Court of Human Rights. The Russian

government now needs to file its response, and any interested parties (including NGOs) have a period of 12 weeks within which to request permission to submit an intervention in the case.

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