Information Note on the Court's case-law No. 161

March 2013

Eon v. France - 26118/10

Judgment 14.3.2013 [Section V]

Article 10

Article 10-1

Freedom of expression

Conviction of political activist for insulting French President by waving a satirical placard: *violation*

Facts – During a visit by the President of France in 2008, the applicant waved a small placard reading "*Casse toi pov'con*" ("Get lost, you sad prick") as the President's party was about to pass by. This was an allusion to a much publicised phrase uttered by the President himself. The phrase had given rise to extensive comment and media coverage and had been widely circulated on the Internet and used as a slogan at demonstrations. The applicant was immediately stopped by the police and was later prosecuted by the public prosecutor for insulting the President. He was found guilty and fined thirty euros, a penalty which was suspended. An appeal on points of law by the applicant was dismissed.

Law – Article 10

(a) *Admissibility (no significant disadvantage)* – The severity of a violation should be assessed taking account of both the applicant's subjective perception and what was objectively at stake in a particular case. The subjective importance of the matter appeared clear to the applicant, who had pursued the proceedings to the end, even after he had been refused legal aid for lack of serious grounds. As to what had been objectively at stake, the case had received widespread media coverage and concerned the issue of whether insulting the head of State should remain a criminal offence, a matter that was regularly debated in Parliament. As to whether respect for human rights as defined in the Convention and the Protocols thereto required an examination of the application on the merits, the Court noted that the case concerned an issue of some significance, both at national level and in terms of the Convention.

Conclusion: preliminary objection dismissed (six votes to one).

(b) *Merits* – The applicant's conviction had amounted to "interference by public authority" with his right to freedom of expression. The interference had been prescribed by law and had pursued the legitimate aim of protecting the reputation of others.

The phrase "*Casse toi pov'con*" appearing on a placard waved by the applicant as the President's party was passing along the public highway was, in literal terms, offensive to the President. However, the phrase should be examined within the overall context of the case, particularly with regard to the status of the person to whom it was addressed, the applicant's own position, its form and the context of repetition of a previous statement.

The Court noted firstly that the restriction on the applicant's freedom of expression had no connection with the interests of freedom of the press. Accordingly, it did not consider it appropriate to examine the present case in the light of the *Colombani and Others* case, in which it had found that, unlike the position under the ordinary law of defamation, the applicants had been unable to rely on a defence of justification – that is to say, proving the truth of the allegation – to escape criminal liability, a peculiarity which in the Court's view went beyond what was required to protect a person's reputation and rights, even when that person was a head of State or government. In the present case the applicant, who had been accused of using an insulting phrase, had not claimed that the head of State had acted or spoken offensively towards him, and the phrase in question had been an insult rather than an allegation. As a result, he could not have relied on a defence of either provocation or justification. Furthermore, it should be noted that, as under the ordinary law, the domestic courts had examined whether the applicant had acted in good faith, which might have served as justification for his acts, but had ruled out this possibility in view of his political activism and the premeditated nature of the phrase he had used. Lastly, the prosecution had been initiated not by the President himself but by the public prosecutor's office, in accordance with the relevant domestic law. In the light of these factors, the Court considered that it was not necessary to determine whether the criminal classification of the applicant's acts was compatible with the Convention, even if this was regarded as a special measure, since it had not had any particular effects or conferred privileged status on the head of State concerned *vis-à-vis* the right to convey information and opinions concerning him.

Nevertheless, the repetition of the phrase uttered by the President had not targeted the latter's private life or honour; nor had it simply amounted to a gratuitous personal attack against him. The applicant was an activist and former elected representative who had fought a long-running campaign in support of a family of illegal immigrants, who had been deported several days before the head of State's visit.

The Court further noted that by echoing an abrupt phrase that had been used by the President himself and had attracted extensive media coverage and widespread public comment, much of it humorous in tone, the applicant had chosen to express his criticism through the medium of irreverent satire. The Court had observed on several occasions that satire was a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aimed to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care. Imposing a criminal penalty for conduct such as that of the applicant in the present case could have a chilling effect on satirical forms of expression relating to topical issues. Such forms of expression could themselves play a very important role in the free discussion of questions of public interest, without which there was no democratic society. Accordingly, the competent authorities' recourse to a criminal penalty had been disproportionate to the aim pursued and unnecessary in a democratic society.

Conclusion: violation (six votes to one).

Article 41: finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

(See *Colombani and Others v. France*, no. 51279/99, 25 June 2002, Information Note no. 43)

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