



Suspended prison sentence imposed on Femen activist for topless protest in a church: violation of Article 10 of the Convention

In today's **Chamber judgment**¹ in the case of [Bouton v. France](#) (application no. 22636/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the criminal conviction of the applicant, a feminist activist who at the time was a member of Femen, for acts of "sexual exposure" (*exhibition sexuelle*) committed in a church (La Madeleine) in Paris during a "performance" by way of protest against the Catholic Church's position on abortion. She received a suspended prison sentence.

The Court began by reiterating that the imposition of a prison sentence for an offence in the area of political speech would be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, as, for example, in the case of hate speech or incitement to violence. The sole aim of the applicant, who had not been accused of any insulting or hateful conduct, had been to contribute to the public debate on women's rights.

The Court found that the criminal sanction imposed on her for the offence of sexual exposure had not sought to punish an attack on freedom of conscience or religion but rather the fact that she had bared her breasts in a public place. While the circumstances related to the place and the symbols she used had to be taken into account, as contextual elements, in order to assess the diverging interests at stake, the Court concluded that the domestic courts had not been required, having regard to the charge, to weigh in the balance the applicant's right to freedom of expression against the right to freedom of conscience and religion under Article 9 of the Convention.

Lastly, while the domestic courts had not ignored the applicant's statements during the criminal investigation, they had confined themselves to examining the fact that she had bared her breasts in a place of worship, without considering the underlying message of her performance or the explanations given by Femen activists about the meaning of their topless protests. In those circumstances the Court found that the grounds given by the domestic courts had not been sufficient for it to consider that the sentence imposed on the applicant, in view of its nature and the severity of its effects, was proportionate to the legitimate aims pursued.

The Court concluded that the domestic courts had not struck a balance, in an appropriate manner, between the interests at stake and that the interference with the applicant's freedom of expression, in the form of a suspended prison sentence, had not been "necessary in a democratic society". There had thus been a violation of Article 10 of the Convention.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, Eloise Bouton, is a French national who was born in 1983 and lives in Bagnolet (France).

At the time of the events in question, Ms Bouton was a member of the Femen movement, an international women's rights organisation set up in Ukraine in 2008 and known for its provocative actions. On 20 December 2013 she staged a protest in the church of La Madeleine in Paris, but not during mass, by standing in front of the high altar while exposing her breasts, revealing slogans daubed across her body, and pretending to carry out an abortion using raw beef liver as a prop. Her performance was brief and she left the church when so requested by the choirmaster. The protest received media coverage, about ten journalists having been present.

In an interview with the magazine *Le Nouvel Observateur* on 23 December 2013, published on the Internet in the form of a letter addressed to the parish priest, Ms Bouton explained the meaning of her action: she had held "two pieces of beef liver in her hands, symbolising the aborted baby Jesus", and painted on her torso and back were "the slogans '344th slut' ... referring to the manifesto of 343 initiated by pro-abortion feminists in 1971 and 'Christmas is canceled' [sic]".

The parish priest filed a criminal complaint and applied to join the proceedings as a civil party. On 7 January 2014, while in police custody, Ms Bouton explained that she had been designated by the Femen movement to stage her protest in France at the same time as similar protests by other Femen activists in various countries. The church of La Madeleine was chosen in France for "its international symbolism". The investigators entered in evidence a publication from the Femen-France website containing photographs with the captions: "Christmas is cancelled from the Vatican to Paris; on the altar of the church of La Madeleine, Holy Mother Eloise has aborted Jesus".

After a hearing on 15 October 2014, the Paris Criminal Court refused, as a preliminary point, to refer to the Court of Cassation a priority question of constitutionality (QPC) raised by the applicant, finding that her complaint of a lack of precision of the concept of sexual exposure under Article 222-32 of the Criminal Code in the light of the principle that only the law could define a crime and prescribe a penalty, was not a serious one, as the Court of Cassation had already held in a judgment of 9 April 2014. On the merits, in a judgment of 17 December 2014 the Criminal Court dismissed the applicant's pleas alleging a failure to define the offence of sexual exposure and a violation of Article 10 of the Convention. It rejected, in particular, the applicant's argument that her action had been exclusively political and fell within the scope of her freedom of expression.

The Criminal Court sentenced the applicant, on the charge of sexual exposure, to a suspended term of one month's imprisonment and, on the civil interests, ordered her to pay the parish representative 2,000 euros (EUR) in respect of non-pecuniary damage and to contribute EUR 1,500 to the other party's costs.

The Paris Court of Appeal upheld the judgment in all respects. The applicant appealed on points of law against that judgment. The Court of Cassation dismissed her appeal.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained of her criminal conviction for acts of sexual exposure committed in a church during a protest which she was conducting as a member of Femen. Relying on Article 7 (no punishment without law), she complained of the vagueness and expansive interpretation of the offence of "sexual exposure".

The application was lodged with the European Court of Human Rights on 31 May 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O’Leary (Ireland), *President*,
Stéphanie Mourou-Vikström (Monaco),
Lado Chanturia (Georgia),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Article 10

As a preliminary point, the Court observed that the decisive question was whether the applicant knew or ought to have known – if need be with appropriate advice – that her acts were such as to engage her criminal liability under Article 222-32 of the Criminal Code.

The Court noted that Article 222-32 did not define the concept of sexual exposure and that the evolution in moral standards had no doubt resulted in some debate in the national courts on the sexual nature of a woman’s bare breasts and on the existence of discrimination between men and women on that account. It observed in this connection that as the Court of Cassation had not referred, for a preliminary ruling, the question whether the offence of sexual exposure was sufficiently precise, the Constitutional Council had been unable to rule on the matter. The Court further noted that the National Advisory Commission on Human Rights had recommended that the scope of the offence be defined in law.

However, in the Court’s view, those factors, which were such as to cast doubt on the quality of the law within the meaning of the Court’s case-law, did not go so far as to call into question the foreseeability of the criminal proceedings against the applicant since, according to the decisions of the French courts at the time of the events, the offence in question, as clearly set out in the Criminal Code, was made out in its material element by the fact of a woman’s breasts being exposed.

The Court concluded that the applicant could reasonably have expected her conduct to entail consequences under the criminal law. Accordingly, the interference with the applicant’s right to freedom of expression could be regarded as sufficiently foreseeable and therefore “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

The Court considered that, in view of its nature as a protest, the applicant’s action had to be regarded as a “performance” falling within the scope of Article 10. The purpose of the applicant’s *mise en scène* had been to convey, in a symbolic place of worship, a message relating to a public and societal debate on the positioning of the Catholic Church on a woman’s right to free disposal of her body, including the right to have an abortion.

In these circumstances, the Court took the view that the applicant’s freedom of expression should have been afforded a sufficient level of protection since the content of her message related to a matter of public interest.

The Court noted that the performance had taken place in a church. It had previously accepted that such conduct could be seen as breaching the rules of acceptable conduct in a place of worship. In the present case, however, the Court was struck by the harsh nature of the sanction imposed on the applicant by the domestic courts. The suspended sentence of one month’s imprisonment was a custodial sentence which would entail her actual imprisonment in the event of a fresh conviction

and which was entered on her criminal record. Added to the severity of the criminal penalty imposed was the relatively high amount of the award of damages to be paid by the applicant.

The Court reiterated that the imposition of a prison sentence for an offence in the area of political speech would be compatible with freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, as, for example, in the case of hate speech or incitement to violence. In the present case, the sole purpose of the action by the applicant, who was not accused of any insulting or hateful conduct, had been to contribute to the public debate on women's rights, more specifically on the right to abortion. She had no previous criminal record and was socially and professionally integrated, earning income, such that the reference to "the personal characteristics of the offender" in the justification for the sentence did not refer to any specific or unfavourable factor.

As regards the justification for the nature and severity of the penalty, the Court observed that, as could be seen from the reasoning of their decisions, the domestic courts had referred to certain principles established by the Court in its case-law under Article 10 of the Convention. They had thus relied, at first instance and on appeal, on the proportionality of the interference "to the pressing social need to protect others from the spectacle in a place of worship of a topless protest which some [might] consider offensive". The Court of Appeal had also held that "what the accused consider[ed] to be her freedom of expression had the effect of seriously interfering with the freedom of thought of others and religious freedom in general". The Court of Cassation then confirmed that analysis, basing its dismissal of the applicant's appeal on the need to reconcile two freedoms protected by the Convention, namely freedom of expression, on the one hand, and freedom of conscience and religion protected by Article 9, on the other, the latter being described in the present case as the right "not to be disturbed in the practice of one's religion".

The Court observed that the criminal sanction imposed on the applicant for the offence of sexual exposure had not been intended to punish an attack on freedom of conscience and religion.

While the circumstances related to the place and the symbols she used had to be taken into account, as contextual elements, in order to assess the diverging interests at stake, the Court concluded that the domestic courts had not been required, having regard to the charge, to weigh in the balance the applicant's right to freedom of expression against the right to freedom of conscience and religion under Article 9 of the Convention. Moreover, while the domestic courts had chosen to examine the issue from the perspective of freedom of religion, the Court noted that they had not examined whether the applicant's action was "gratuitously offensive" to religious beliefs, whether it was insulting or whether it incited disrespect or hatred towards the Catholic Church. Nor had they taken into consideration the fact that the applicant had not staged her protest during a time of worship – no mass being in progress –, that it was not disputed that her action had been brief, without the slogans on her body being shouted out, and that she had left the church as soon as she had been asked to do so.

As regards the review to be carried out by the domestic courts under Article 10 § 2, the Court noted that, while the domestic courts had not ignored the applicant's statements during the criminal investigation, they had confined themselves to examining the fact that she had bared her breasts in a place of worship, without considering the underlying message of her performance. The domestic courts had refused to take into account the meaning of the slogans on the applicant's torso and back, which conveyed a feminist message referring to the 1971 pro-abortion manifesto known as the "manifesto of the 343 sluts". Nor had they taken into consideration the explanations provided by the applicant about the use as a "political banner" of topless protests by the activists of Femen, of which she was a member, or about the place of her action, a place of worship known to the public, chosen with the aim of promoting media coverage of the protest.

The Court found that the grounds given by the domestic courts had not been sufficient for it to consider that they had weighed up the interests at stake in an appropriate manner and in accordance with the criteria established in its case-law.

The reasons given by the domestic courts did not suffice for the Court to regard the sentence imposed on the applicant, having regard to its nature and to its severity and effects, as proportionate to the legitimate aims pursued.

In these circumstances, the Court held that the interference with the applicant's freedom of expression, constituted by the suspended prison sentence imposed on her, had not been "necessary in a democratic society".

There had therefore been a violation of Article 10 of the Convention.

Article 7

Having found a violation of Article 10 of the Convention, the Court took the view that it was not necessary to rule separately, in the circumstances of the present case, on the complaint raised under Article 7.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,800 in costs and expenses.

Separate opinion

Judge Šimáčková expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.