EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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ECHR 215 (2022)
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Court finds violation of Article 10 on account of severity of Jean-Marc Rouillan's prison sentence for radio remarks, without calling into question principle behind penalty imposed for complicity in public defence of terrorism

In today's **Chamber** judgment[1] in the case of Rouillan v. France (application no. 28000/19) 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 on account of the severity of the criminal penalty imposed.

The case concerned the sentencing of Jean-Marc Rouillan, formerly a member of the terrorist group *Action directe*, to a term of 18 months' imprisonment including a suspended portion of 10 months with probation, upon his conviction as an accessory to the offence of publicly defending acts of terrorism for remarks he had made on a radio show in 2016 and which had subsequently been published on a media website.

The Court took the view that the applicant's conviction and sentencing as an accessory to the offence of defending acts of terrorism had amounted to an interference with his right to freedom of expression. It recognised that the interference had been prescribed by law and had pursued the legitimate aim of preventing disorder and crime.

Turning to whether the interference was necessary in a democratic society within the meaning of Article 10 § 2, the Court accepted, first, that the remarks in issue fell to be regarded as an indirect incitement to terrorist violence and saw no reasonable basis on which to depart from the meaning and scope attached to them by a decision of the Criminal Court, whose duly stated reasons had been adopted by the Court of Appeal and the Court of Cassation. The Court further stated that it saw no reasonable ground, in this case, on which to depart from the domestic courts' assessment regarding the principle behind the penalty. It held in this regard that their reasoning as to why the penalty imposed on the applicant had been warranted – based on the need to combat defence of terrorism and on consideration of the offender's personal characteristics – appeared both "relevant" and "sufficient" to justify the interference at issue, which fell to be regarded as responding, in principle, to a pressing social need.

However, after reiterating that the authorities were required, in matters of freedom of expression, to exercise restraint in the use of criminal proceedings and especially in the imposition of a sentence of imprisonment, the Court held that, in the particular circumstances of the case, the reasons relied on by the domestic courts in the balancing exercise which had been theirs to perform were not sufficient to enable it to regard the 18-month prison sentence passed on the applicant – the suspension of 10 months notwithstanding – as proportionate to the legitimate aim pursued. The Court thus concluded that there had been a violation of Article 10 of the Convention on account of the severity of the criminal penalty imposed on the applicant.

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.

COUNCIL OF EUROPE
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Principal facts

The applicant, Jean-Marc Rouillan, is a French national who was born in 1952 and lives in Tourrenquets. Formerly a member of the terrorist group *Action directe*, Mr Rouillan was sentenced to life imprisonment for premeditated murder as a terrorist offence and spent 25 years in prison before being paroled in 2012. He has authored several books and played himself in a 2016 film.

On 23 February 2016 Mr Rouillan granted an interview to two reporters which aired the same day on a political programme produced by a regional monthly magazine in partnership with a local radio station. The interview was also put up on the magazine's website.

Referring in the interview to the perpetrators of the 2015 Paris and Seine-Saint-Denis terrorist attacks, Mr Rouillan stated in particular: "I thought they were very brave, they fought bravely …".

On 7 March 2016 a lawyer representing the victims of the Paris terrorist attacks reported those remarks to the Paris prosecutor.

The Paris prosecutor decided to institute proceedings against the applicant under Article 421-2-5 of the Criminal Code for publicly defending an act of terrorism by means of an online communication service accessible to the public. The French Association of Victims of Terrorism and several victims of the attacks of 13 November 2015 joined the proceedings as civil parties.

On 7 September 2016 the Paris Criminal Court convicted Mr Rouillan as charged and sentenced him to an eight-month term of imprisonment and to pay the sum of one euro (EUR) to the French Association of Victims of Terrorism and EUR 300 to each of the victims of the attacks who had joined the proceedings as civil parties. Having regard to the context – not least the recent terrorist attacks perpetrated in France in 2015 – and the personal characteristics of Mr Rouillan, who had twice been sentenced to life imprisonment for terrorist offences, the court found that the remarks he had made were justificatory of a form of violence and violated the dignity of the victims.

Mr Rouillan, the public prosecution service and the civil parties appealed.

On 16 May 2017 the Paris Court of Appeal reversed the Criminal Court's conviction of the applicant for publicly defending an act of terrorism and convicted him as an accessory to that offence under the statutory provisions for determining liability for press offences. The Court of Appeal also increased the sentence to 18 months' imprisonment including a suspended portion of 10 months with probation. It upheld the order to pay EUR 1 to the French Association of Victims of Terrorism and directed further proceedings concerning the other civil parties in order for them to make a showing of the extent of the direct personal harm they had suffered.

Mr Rouillan appealed to the Court of Cassation and sought a preliminary ruling from the Constitutional Council on the constitutionality of Article 421-2-5 of the Criminal Code, which made it an offence to publicly defend acts of terrorism (*apologie publique d'actes de terrorisme*). By a decision of 18 May 2018 (no. 2018-706 QPC), the Constitutional Council declared the relevant provisions of Article 421-2-5 of the Criminal Code to be consistent with the Constitution.

On 27 November 2018 the Court of Cassation dismissed Mr Rouillan's appeal. It held in particular that the Court of Appeal had made an accurate assessment of the meaning and scope of the applicant's remarks and had necessarily assessed the proportionality of the penalty to the purposes sought to be achieved.

The applicant served the sentence of imprisonment at his home from 9 July 2020 to 12 January 2021.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention, the applicant contended that his conviction and sentencing as an accessory to the offence of publicly defending acts of terrorism had been contrary to that Article.

The application was lodged with the European Court of Human Rights on 20 May 2019.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 10

The Court recognised that the applicant's conviction and sentencing as an accessory to the offence of defending acts of terrorism had amounted to an interference with his right to freedom of expression. It took the view that the interference had been prescribed by law and had been aimed at preventing disorder and crime.

As to whether the interference had been necessary in a democratic society within the meaning of Article 10 § 2, the Court noted, first, that the journalists' questions to the applicant – on topics including the state of emergency declared in France after the terrorist attacks of November 2015, civil liberties and security – had at the time been questions of potential interest to the public that might attract its attention and cause it significant concern. The Court therefore concluded that the applicant's remarks had been made in the context of a debate on a matter of public interest, as the Court of Cassation had in any event pointed out.

Second, the Court observed that the Criminal Court, the Court of Appeal and the Court of Cassation had been in agreement that to characterise the perpetrators of the Paris terrorist attacks as "brave" and assert that they had "fought bravely" had amounted to an incitement to form a favourable view of the perpetrators of terrorist offences. The Court recognised that the applicant's remarks had conveyed a positive image of the perpetrators of terrorist attacks and had been uttered at a time when French society was still reeling from the deadly 2015 attacks and the level of terrorist threat remained high, a threat borne out by several other terrorist attacks which had occurred in France in June and July 2016. The Court further noted that the dissemination of the remarks over the radio and online had been capable of reaching a wide audience.

In these circumstances the Court accepted that the remarks in issue fell to be regarded as an indirect incitement to terrorist violence and saw no reasonable basis on which to depart from the meaning and scope attached to them by a decision of the Criminal Court, whose duly stated reasons had been adopted by the Court of Appeal and the Court of Cassation.

Third, the Court noted that the applicant had been sentenced at first instance to a term of imprisonment of eight months, increased on appeal to 18 months including a suspended portion of 10 months with probation.

The Court underscored that in its decision of 18 May 2018, cited above, the Constitutional Council had taken the view that the sentences prescribed by Article 421-2-5 of the Criminal Code were not "manifestly disproportionate" to the "nature of the conduct criminalised". The Court in this case saw no reasonable ground on which to depart from the domestic courts' assessment regarding the principle behind the penalty. Their reasoning as to why the penalty imposed on the applicant had been warranted – based on the need to combat defence of terrorism and on consideration of the offender's personal characteristics – appeared both "relevant" and "sufficient" to justify the interference at issue, which fell to be regarded as responding, in principle, to a pressing social need.

Lastly, the Court emphasised that the nature and severity of the penalty imposed were factors to be taken into account in assessing the proportionality of the interference. It reiterated in this regard that it was incumbent on national decision-making authorities to exercise restraint in the use of criminal proceedings and especially in the imposition of a sentence of imprisonment, which would have a particularly chilling effect on the exercise of freedom of expression.

The Court was mindful that the context – one of recent and particularly deadly terrorist attacks – had warranted a response from the national authorities that was capable of addressing the threats potentially posed by the applicant's remarks to both national cohesion and public security in France. However, it pointed out that the penalty imposed on the applicant had been a custodial sentence. Specifically, although his 18-month sentence had been suspended for 10 months, the applicant had been made subject to the electronic monitoring regime for six months and three days. In the particular circumstances of the case the Court took the view that the reasons relied on by the domestic courts in the balancing exercise which had been theirs to perform were not sufficient to enable it to regard such a sentence as proportionate to the legitimate aim pursued.

That being so, the Court held that the interference with the applicant's freedom of expression constituted by the sentence of imprisonment imposed on him had not been "necessary in a democratic society".

The Court concluded that there had been a violation of Article 10 of the Convention on account of the severity of the criminal penalty imposed on the applicant.

Just satisfaction (Article 41)

The Court held that the finding of a Convention violation was in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and that France was to pay the applicant EUR 15,000 in respect of costs and expenses.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Denis Lambert (tel.: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.