



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23131/03
by Mark Anthony NORWOOD
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 16 November 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Sir N. BRATZA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 16 July 2003,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mark Anthony Norwood, is a United Kingdom national who was born in 1962 and lives in a village near Oswestry, Shropshire. He was represented before the Court by Mr K. Lowry-Mullins, a lawyer practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was a Regional Organiser for the British National Party (“BNP”: an extreme right wing political party). Between November 2001 and 9 January 2002 he displayed in the window of his first-floor flat a large poster (60 cm x 38 cm), supplied by the BNP, with a photograph of the Twin Towers in flame, the words “Islam out of Britain – Protect the British People” and a symbol of a crescent and star in a prohibition sign.

The poster was removed by the police following a complaint from a member of the public. The following day a police officer contacted the applicant by telephone and invited him to come to the local police station for an interview. The applicant refused to attend.

The applicant was then charged with an aggravated offence under section 5 of the Public Order Act 1986 (see below), of displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or insulting, within the sight of a person likely to be caused harassment, alarm or distress by it. The applicant pleaded not guilty and argued, in his defence, that the poster referred to Islamic extremism and was not abusive or insulting, and that to convict him would infringe his right to freedom of expression under Article 10 of the Convention. On 13 December 2002 he was convicted of the offence by District Judge Browning at Oswestry Magistrates' Court, and fined GBP 300.

The applicant appealed to the High Court, which dismissed his appeal on 3 July 2003. Lord Justice Auld held that the poster was “a public expression of attack on all Muslims in this country, urging all who might read it that followers of the Islamic religion here should be removed from it and warning that their presence here was a threat or a danger to the British people”.

B. Relevant domestic law

The applicant was charged with the offence of causing alarm or distress contrary to section 5(1)(b) of the Public Order Act 1986, aggravated in the manner provided by sections 28 and 31 of the Crime and Disorder Act 1998 (as amended by section 39 of the Anti-terrorism, Crime and Security Act 2001). Section 5 of the 1986 Act provides:

“(1) A person is guilty of an offence if he; ... (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place ...

(3) It is a defence for the accused to prove – (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or (b) that he was inside a dwelling and had no reason to believe that the words or the behaviour used, or the writing, sign or other visible representation displayed would be heard or seen by a person outside that or any other dwelling, or (c) that his conduct was reasonable”.

The 1986 Act further provides, in section 6(4):

“A person is guilty of an offence under section 5 only if he intends ... the writing, sign or other visible representation to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting ...”

The 1998 Act, as amended, introduced a statutory aggravation to a number of offences, including section 5 of the 1986 Act, carrying with it higher maximum penalties. According to sections 28(1)(b) and 31(1)(c) of the 1998 Act, an offence under section 5 of the 1986 Act is “racially or religiously aggravated” if it is “motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group”.

COMPLAINTS

The applicant contends under Article 10 of the Convention that the criminal proceedings against him violated his right to freedom of expression. He also complains of discrimination contrary to Article 14.

THE LAW

The applicant alleges a breach of Article 10, which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

He submits that free speech includes not only the inoffensive but also the irritating, contentious, eccentric, heretical, unwelcome and provocative,

provided that it does not tend to provoke violence. Criticism of a religion is not to be equated with an attack upon its followers. In any event, the applicant lives in a rural area not greatly afflicted by racial or religious tension, and there was no evidence that a single Muslim had seen the poster.

However, the Court would refer to Article 17 of the Convention which states:

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

The general purpose of Article 17 is to prevent individuals or groups with totalitarian aims from exploiting in their own interests the principles enunciated by the Convention. The Court, and previously, the European Commission of Human Rights, has found in particular that the freedom of expression guaranteed under Article 10 of the Convention may not be invoked in a sense contrary to Article 17 (see, *inter alia*, *W.P. and Others v. Poland*, (dec.), no. 42264/98, 2 September 2004; *Garaudy v. France*, (dec.), no. 65831/01, 24 June 2003; *Schimanek v. Austria*, (dec.) no. 32307/96, 1 February 2000; and also *Glimmerveen and Hagenbeek v. the Netherlands*, nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, Decisions and Reports 18, p. 187).

The poster in question in the present case contained a photograph of the Twin Towers in flame, the words “Islam out of Britain – Protect the British People” and a symbol of a crescent and star in a prohibition sign. The Court notes and agrees with the assessment made by the domestic courts, namely that the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The applicant's display of the poster in his window constituted an act within the meaning of Article 17, which did not, therefore, enjoy the protection of Articles 10 or 14 (see the cases cited above, and also *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 35).

It follows that the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLE
Section Registrar

J.-P. COSTA
President