European Court of Human Rights: Case of Nikula v. Finland

In 1996, Anne Nikula, a lawyer living in Helsinki, lodged an application against Finland with the European Court of Human Rights, alleging that her freedom of expression had been violated by her conviction for defamation for having criticised the public prosecutor in her own capacity as defence counsel. In a memorial which the applicant read out before the court, the public prosecutor, Mr. T., was criticised for "role manipulation and unlawful presentation of evidence". After a private prosecution was initiated by Mr. T., Nikula was convicted in 1994 of public defamation committed without better knowledge. The Supreme Court upheld the criminal conviction in 1996, but restricted the sanction to the payment of damages and costs only.

In its judgment of 21 March 2002, the European Court of Human Rights reiterated that the special status of Sciences lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Given the key role of lawyers in this field, it is legitimate to expect them to maintain public confidence in the administration of justice. However, the Court referred as well to the possibility that an interference with the counsel’s freedom of expression in the course of a trial could raise an issue under Article 6 of the Convention with regard to the right of an accused client to receive a fair trial. According to the Court, the "equality of arms" principle and more generally, the principle of a fair trial, militate in favour of free and even forceful argumentation between the parties, although this should not lead to unlimited freedom of expression for a defence counsel.

In evaluating the legitimacy of the applicant’s conviction, the Court - referring to the Interights Amicus Curiae report - reiterated the distinction between the role of the prosecutor as the opponent of the accused, and that of the judge. This should provide increased protection for statements whereby an accused person criticises a prosecutor, as opposed to verbally attacking the judge or the court as a whole. The Court also noted that the applicant’s submissions were confined to the courtroom, as opposed to criticism of a judge or prosecutor voiced in the media. More substantially, the Court underlined that the threat of an ex post facto review of a counsel’s criticism of the public prosecutor is difficult to reconcile with defence counsels’ duty to defend their clients’ interests zealously. The assessment of a defence argument should not be influenced by the potential chilling effect of a criminal sanction or an obligation to pay compensation for harm suffered or costs incurred. According to the Court, it is only in exceptional cases that a restriction even by way of a lenient criminal sanction - of a defence counsel’s freedom of expression can be accepted as necessary in a democratic society. In the Court’s view, such reasons were not shown to exist in the Nikula case. Therefore, the restriction on Ms. Nikula’s freedom of expression failed to answer any pressing social need. The Court held, by five votes to two, that there had been a violation of Article 10 of the Convention.

• Judgment by the European Court of Human Rights (Fourth Section), Case of Nikula v. Finland, Application no. 31611/96 of 21 March 2002
  http://merlin.obs.coe.int/redirect.php?id=32
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• Amicus Curiae brief submitted to the European Court of Human Rights by Interights, the International Centre for the Legal Protection of Human Rights, pursuant to Rule 61 of the Rules of the Court, 26 March 2002
  http://merlin.obs.coe.int/redirect.php?id=984
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