European Court of Human Rights: Case of A. v. United Kingdom

Although the case of A. v. United Kingdom is not an Article 10 case, the judgment of the European Court of Human Rights of 17 December 2002 can be considered as an important confirmation of the principle of freedom of speech and political debate. The case concerns the question of whether the statements of a Member of Parliament (MP) in the House of Commons are protected by parliamentary privilege under Article 9 of the Bill of Rights 1689. During a parliamentary debate on housing policy in 1996, an MP made offensive and derogatory remarks about the behaviour of A. and her children. The MP called the family of A. "neighbours from hell", a phrase which was also quoted in the newspapers. Following the MP’s speech and hostile reports in the press, A. received hate-mail addressed to her and she was also stopped in the street and subjected to offensive language. A. was re-housed by the housing association as a matter of urgency and her children were obliged to change schools. A letter of complaint to the relevant MP (which was forwarded to the Office of the Parliamentary Speaker) and a letter to the then Prime Minister, Mr. John Major, did not result in effective measures being taken against the MP. A. was informed about the absolute character of parliamentary privilege.

In Strasbourg, the applicant complained that the absolute nature of the privilege that protected statements about her made by the MP in Parliament violated, in particular, her right of access to the courts under Article 6 para. 1 of the European Convention. The European Court of Human Rights recognised the legitimate aim of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. The Court emphasised that in a democracy, Parliament or such comparable bodies are the essential fora for political debate. The Court was of the opinion that the absolute immunity enjoyed by MPs is designed to protect the interests of Parliament as a whole, as opposed to those of individual MPs: "in all the circumstances of this case, the application of a rule of absolute Parliamentary immunity cannot be said to exceed the margin of appreciation allowed to States in limiting an individual’s right of access to court" (para. 87). The Court emphasised, however, that no immunity attaches to statements made outside of Parliament, or to an MP’s press releases, even if their content repeats statements made during the parliamentary debate itself.

The judgment reads: "[T]he Court agrees with the applicant’s submissions to the effect that the allegations made about her in the MP’s speech were extremely serious and clearly unnecessary in the context of a debate about municipal housing policy. The MP’s repeated reference to the applicant’s name and address was particularly regrettable. The Court considers that the unfortunate consequences of the MP’s comments for the lives of the applicant and her children were entirely foreseeable. However, these factors cannot alter the Court’s conclusion as to the proportionality of the parliamentary immunity at issue [...]. There has, accordingly, been no violation of Article 6 para. 1 of the Convention as regards the parliamentary immunity enjoyed by the MP" (paras. 88 and 89). The absence of legal aid for defamation proceedings in the United Kingdom was not considered to be a violation of Article 6 para. 1 of the Convention either. The applicant was deemed to have had sufficient possibilities to bring defamation proceedings in respect of the non-privileged press releases.

The Court also took into consideration the domestic law of the eight States that have made a third-party intervention in the case. Each of these laws makes provision for such an immunity, although the precise details of the immunities concerned vary. The Court believed that the rule of parliamentary immunity, which is consistent with - and reflects - generally-recognised rules within the signatory States, the Council of Europe and the European Union, cannot in principle be regarded as imposing a disproportionate restriction on the right of access to the courts, as embodied in Article 6 para. 1. The Court found no violation of Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) or Article 14 (prohibition of discrimination).

• Judgment by the European Court of Human Rights (Second Section), Case of A v. United Kingdom, Application no. 35373/97 of 17 December 2002
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