European Court of Human Rights: Case of I.A. v. Turkey

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The European Court of Human Rights in a judgment of 13 September 2005 has come to the conclusion that the Turkish authorities did not violate freedom of expression by convicting a book publisher for publishing insults against “God, the Religion, the Prophet and the Holy Book”. The managing director of the Berfin publishing house in France was sentenced to two years' imprisonment, which was later commuted to a fine.

The European Court in Strasbourg is of the opinion that this interference in the applicant's right to freedom of expression had been prescribed by law (art. 175 §§ 3 and 4 of the Turkish Criminal Code) and had pursued the legitimate aims of preventing disorder and protecting morals and the rights of others. The issue for the Court was to determine whether the conviction of the publisher had been necessary in a democratic society. This involved the balancing of the applicant's right to impart his ideas on religious theory to the public, on the one hand, and the right of others to respect for their freedom of thought, conscience and religion, on the other hand. The Court reiterates that religious people have to tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. A distinction is to be made however between “provocative” opinions and abusive attacks on one's religion. According to the Court, one part of the book indeed contained an abusive attack on the Prophet of Islam, whereas it is asserted that some of the statements and words of the Prophet were “inspired in a surge of exultation, in Aisha's arms... God's messenger broke his fast trough sexual intercourse, after dinner and before prayer”. In the book it is stated that “Mohammed did not forbid sexual intercourse with a dead person or a living animal”. The Court accepts that believers could legitimately feel that these passages of the book constituted an unwarranted and offensive attack on them. Hence, the conviction of the publisher was a measure that was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims. As the book was not seized and the publisher had only to pay an insignificant fine, the Court comes, by four votes to three, to the conclusion that the Turkish authorities did not violate the right to freedom of expression. According to the three dissenting opinions (of the French, Portuguese and Czech judges) the majority of the Court followed its traditional case law on blasphemy leaving a wide margin of appreciation to the Member States. According to the three dissenters, the Court should reconsider its jurisprudence in the case of Otto-Preminger-Institut v. Austria and Wingrove v. United Kingdom, as this approach gave too much support to conformist speech and to the “ *pensée*

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unique ", implying a cold and frightening approach to freedom of expression. The majority of the Court however (the Turkish, Georgian, Hungarian and San Marino judges) argued that the conviction of the book publisher met a pressing social need ie protecting the rights of others. Accordingly there has been no violation of Article 10 of the Convention.

Arrêt de la Cour européenne des Droits de l'Homme (deuxième section), affaire I.A. c. Turquie, requête n° 42571/98 du 13 septembre 2005

Judgment by the European Court of Human Rights (Second Section), case of I.A. v. Turkey, Application no. 42571/98 of 13 September 2005

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