European Court of Human Rights: Case of Féret v. Belgium

IRIS 2009-8:1/1

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In an interesting but highly controversial judgment, the European Court focused on the limits of freedom of expression in a case of incitement to hatred and discrimination ("hate speech"). The Court held by four votes to three that there had been no violation of Article 10 of the European Convention of Human Rights in respect of the conviction of the chairman of the Belgian political party "Front National", Mr. Daniel Féret. Mr. Féret was convicted by a Belgian criminal court for publicly inciting to racism, hatred and discrimination, following complaints concerning leaflets distributed by the Front National during election campaigns.

Between July 1999 and October 2001, the distribution of leaflets and posters by the Front National led to complaints by individuals and associations for incitement to hatred, discrimination and violence, filed under the law of 30 July 1981, which penalised certain acts and expressions inspired by racism or xenophobia. Mr. Féret was the editor in chief of the party's publications and was a member of the Belgian House of Representatives at the time. His parliamentary immunity however was waived at the request of the Public Prosecutor and in November 2002 criminal proceedings were brought against Féret as author and editor-in-chief of the offending leaflets, which were also distributed on the Internet on the website of Féret and Front National.

In 2006, the Brussels Court of Appeal found that the offending conduct on the part of Mr. Féret had not fallen within his parliamentary activity and that the leaflets contained passages that represented a clear and deliberate incitement to discrimination, segregation or hatred, for reasons of race, colour or national or ethnic origin. The court sentenced Mr. Féret to 250 hours of community service related to the integration of immigrants, commutable to a 10-month prison sentence. It declared him ineligible to stand for parliament for ten years and ordered him to pay EUR 1 to each of the civil parties.

Relying on Article 10 of the European Convention on Human Rights, Féret applied to the European Court of Human Rights alleging that the conviction for the content of his political party's leaflets represented an excessive restriction on his right to freedom of expression. The European Court however disagreed with this assumption, as it considered that the sanction by the Belgian authorities was prescribed by law sufficiently precisely and was necessary in a democratic society for the protection of public order and for the protection of the reputation and the

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rights of others, thereby meeting the requirements of Article 10 § 2 of the Convention. The European Court observed that the leaflets presented immigrant communities as criminally-minded and keen to exploit the benefits they derived from living in Belgium and that they also sought to make fun of the immigrants concerned, with the inevitable risk of arousing, particularly among less knowledgeable members of the public, feelings of distrust, rejection or even hatred towards foreigners. Although the Court recognised that freedom of expression is especially important for elected representatives of the people, it reiterated that it was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance. The impact of racist and xenophobic discourse was magnified by the electoral context, in which arguments naturally become more forceful. To recommend solutions to immigration-related problems by advocating racial discrimination was likely to cause social tension and undermine trust in democratic institutions. In the present case there had been a compelling social need to protect the rights of the immigrant community, as the Belgian courts had done. With regard to the penalty imposed on Mr. Féret, the European Court noted that the Belgian authorities had preferred a 10-year period of ineligibility to stand for parliament rather than a penal sanction, in accordance with the Court's principle of restraint in criminal proceedings. The Court thus found that there had been no violation of Article 10 of the Convention. The Court furthermore found that Article 17 of the Convention (abuse clause) was not applicable in this case. Three dissenting judges disagreed with the findings of the Court on the non-violation of Article 10, arguing that the leaflets were in essence part of a sharp political debate during election time. The dissenting judges expressed the opinion that the leaflets did not incite to violence nor to any concrete discriminatory act and that criminal convictions in the domain of freedom of political debate and hate speech should only be considered as necessary in a democratic society in cases of direct incitement to violence or discriminatory acts. They argued that the reference to a potential impact of the leaflets in terms of incitement to discrimination or hatred does not sufficiently justify an interference with freedom of expression. The dissenting judges also emphasised the disproportionate character of the sanction of 250 hours of community service or a 10-month suspended prison sentence, together with the Belgian Court's decision declaring Mr. Féret's ineligibility to stand for parliament for a period of ten years. The majority of the European Court however could not be persuaded by the dissenting judges' arguments: the four judges of the majority were of the opinion that the Belgian authorities acted within the scope of the justified limitations restricting freedom of political expression, as the litigious leaflets contained, in the eyes if the Court, incitement to hatred and discrimination based on nationality or ethnic origin.

Arrêt de la Cour européenne des droits de l'homme (deuxième section), affaire Féret c. Belgique , requête n°15615/07 du 16 juillet 2009

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Judgment by the European Court of Human Rights (Second Section), case of Féret v. Belgium, Application no. 15615/07 of 16 July 2009

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