European Court of Human Rights : Vejdeland and others v. Sweden

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In a judgment of 9 February 2012 the European Court has ruled that Sweden did not violate the right to freedom of expression in a case about 'hate speech'. The criminal conviction of the applicants for distributing leaflets that contained anti-gay offensive statements was considered necessary in a democratic society in order to protect the rights of homosexuals. It is the first time that the Court applies the principles relating to freedom of expression and 'hate speech' in the context of sexual orientation.

In 2004 Mr Vejdeland, together with three other persons, went to an upper secondary school and distributed approximately a hundred leaflets by leaving them in or on the pupils' lockers. The episode ended when the school's principal intervened and made them leave the premises. The originator of the leaflets was an organisation called National Youth. Vejdeland and his companions were charged with agitation against a national or ethnic group (hets mot folkgrupp) because of the offensive and denigrating statements toward homosexuals. Vejdeland disputed that the text in the leaflets expressed hatred against homosexuals and he claimed that, in any event, he had not intended to express contempt for homosexuals as a group; the purpose had been to start a debate about the lack of objectivity in the education dispensed in Swedish schools. Vejdeland and his companions were convicted by the District Court, but the Court of Appeal rejected the charges on the ground that a conviction would amount to a violation of their right to freedom of expression as guaranteed by the European Convention on Human Rights. The Swedish Supreme Court finally overruled this judgment and convicted Vejdeland and the others of agitation against a national or ethnic group. According to the Supreme Court the leaflets were formulated in a way that was offensive and disparaging for homosexuals as a group and in violation of the duty under Article 10 to avoid as far as possible statements that are unwarrantably offensive to others thus constituting an assault on their rights, and without contributing to any form of public debate which could help to further mutual understanding. The purpose of the relevant sections in the leaflets could have been achieved without statements that were offensive to homosexuals as a group. Vejdeland and his companions complained that the judgment of the Supreme Court constituted a violation of their freedom of expression as protected by Article 10 of the Convention.

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The European Court accepted Vejdeland's argument that the leaflets had been distributed with the aim of starting a debate about the lack of objectivity of education in Swedish schools. But the Court also agrees with the Swedish Supreme Court that even if this is an acceptable purpose, regard must be paid to the wording of the leaflets. The Strasbourg Court observes that, according to the leaflets, homosexuality was "a deviant sexual proclivity" that had "a morally destructive effect on the substance of society". The leaflets also alleged that homosexuality was one of the main reasons why HIV and AIDS had gained a foothold and that the "homosexual lobby" tried to play down paedophilia. In the Court's opinion, although these statements did not directly recommend individuals to commit hateful acts, they are serious and prejudicial allegations. The Court reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Indeed, attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner. In this regard, the Court stresses that discrimination based on sexual orientation is as serious as discrimination based on "race, origin or colour". Furthermore, the leaflets were left in the lockers of young people who were at an impressionable and sensitive age and who had no possibility to decline to accept them. The European Court refers to the findings by the Supreme Court stressing that along with freedoms and rights people also have obligations and that one such obligation is, as far as possible, to avoid statements that are unwarrantably offensive to others, constituting an assault on their rights. The statements in the leaflets are considered unnecessarily offensive and the applicants had left the leaflets in or on the pupils' lockers, thereby imposing them on the pupils. The European Court also notes that the applicants were not sentenced to imprisonment, although the crime of which they were convicted carries a penalty of up to two years' imprisonment. Instead, three of them were given suspended sentences combined with fines ranging from approximately EUR 200 to EUR 2,000, and the fourth applicant was sentenced to probation. The Court does not find these penalties excessive in the circumstances. The conviction of Vejdeland and the other applicants and the sentences imposed on them were not considered disproportionate to the legitimate aim pursued and the reasons given by the Swedish Supreme Court in justification of those measures were relevant and sufficient. The interference with the applicants' exercise of their right to freedom of expression could therefore reasonably be regarded by the Swedish authorities as necessary in a democratic society for the protection of the reputation and rights of others. These considerations were sufficient to enable the Court to conclude that the application did not reveal a violation of Article 10 of the Convention. Although the Court unanimously came to this conclusion, the concurring opinions of five of the seven judges indicate that there was still some hesitation on the argumentation why there was no violation of Article 10 and why the distribution and content of the leaflets amounted to a form of 'hate speech'

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against homosexuals.

Judgment by the European Court of Human Rights (Fifth Section), case of Vejdeland and others v. Sweden, No. 1813/07 of 9 February 2012

https://hudoc.echr.coe.int/eng?i=001-109046

Fact sheet produced by the European Court of Human Rights on Hate Speech, February 2012

http://www.echr.coe.int/NR/rdonlyres/D5D909DE-CDAB-4392-A8A0-867A77699169/0/FICHES_Discours_de_haine_EN.pdf

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