European Court of Human Rights: Banning of blasphemous video not in breach of freedom of (artistic) expression

IRIS 1997-1:1/8

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On 25 November 1996, the European Court of Human Rights decided in the Wingrove case that the refusal to grant a distribution certificate in respect of a video work considered blasphemous, was not in breach of Article 10 of the European Convention of Human Rights (see also the decision by the European Court of Human Rights in the Case of Otto Preminger vs. Austria of 20 September 1994, Series A vol. 295, IRIS 1995-1: 3).

Nigel Wingrove, a film director residing in London, was refused a certificate by the British Board of Film Classification, because his videofilm "Visions of Ecstasy" was considered as blasphemous. The film evocates the erotic fantasies of a sixteenth century Carmelite nun, St Teresa of Avila, her sexual passions in the film being focused inter alia on the figure of the crucified Christ. As a result of the Board's determination, Wingrove would have committed an offence under the Video Recordings Act 1984 if he were to supply the video in any manner, whether or not for reward. The director's appeal was rejected by the Video Appeals Committee. Wingrove applied to the European Commission of Human Rights, relying on Article 10 of the European Convention for the protection of human rights and fundamental freedoms.

Although the Commission in its report of 10 January 1995 (see IRIS 1995-5: 4) expressed the opinion that there had been a violation of Article 10 of the Convention, the Court comes to the conclusion, by seven votes to two, that there had been no violation of the applicant's freedom of (artistic) expression, the British authorities being fully entitled to consider that the impugned measure was justified as being necessary in a democratic society for the protection of the rights of others. The Court underlined that whereas there is little scope for restrictions on political speech or on debate of questions of public interest, a wider margin of appreciation is available to the national authorities restricting freedom of expression in relation to matters within the sphere of morals or especially, religion. The Court also took into consideration that the English law on blasphemy does not prohibit the expression, in any form, of views hostile to the Christian religion: it is the manner in which these views are advocated which makes them blasphemous.

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On the other hand the Court did not find a counter argument in the fact that legislation on blasphemy exists only in few other European countries and that the application of these laws has become increasingly rare. Furthermore, the Court had no problem with the fact that the English law on blasphemy only extends to the Christian faith. Neither did the Court estimate the measure as disproportionate, although it was recognised that the measures taken by the authorities amounted to a complete ban of the film's distribution. Such a far-reaching measure involving prior restraint, was considered as necessary, because otherwise in practice, the film would escape any form of control by the authorities. The measure in other words had to be far-reaching in order to be effective. Having viewed the film for itself, the Court is satisfied that the decisions by the national authorities cannot be considered to be arbitrary or excessive. The Court ultimatily reached the conclusion that the British authorities did not overstep their margin of appreciation and that the impugned measure against "Visions of Ecstasy" was not a violation of Article 10 of the Convention.

European Court of Human Rights, Case of Wingrove v. the United Kingdom, 25 November 1996, No 19/1995/525/611.

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