European Court of Human Rights: Stern Taulats and Roura Capellera v. Spain

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Shortly after the majority judgment in the case of Sinkova v. Ukraine (see IRIS 2018-5/3), the European Court of Human Rights (ECtHR) has delivered a new judgment in a case of symbolic speech and expressive conduct as part of the right to freedom of expression guaranteed under Article 10 of the European Convention of Human Rights (ECHR). The case concerns the conviction of two Spanish nationals, Enric Stern Taulats and Jaume Roura Capellera, for setting fire to a photograph of the royal couple, turned upside down, at a public demonstration held during the Spanish King's official visit to the Catalan city of Girona in 2007. The ECtHR considered the act at issue as a political statement that did not constitute incitement to hatred or violence: according to the Court, an act of this type should be interpreted as the symbolic expression of dissatisfaction and protest. The ECtHR held that the criminal conviction of the applicants for insult of the Crown was not necessary in a democratic society.

In September 2007, while the King was on an official visit to Girona, the applicants set fire to a large photograph of the royal couple during a public demonstration. As a result, they were sentenced to 15 months' imprisonment for insult to the Crown in application of Article 490 section 3 of the Criminal Code. The penalty was subsequently replaced by a fine of EUR 2 700 each; in the event of failure to pay the fine in whole or in part, the applicants would have to serve a prison term. This judgment was upheld by the Audiencia Nacional, by ten votes to six, and the applicants did indeed pay the fine. However, they lodged an amparo appeal with the Constitutional Court, which concluded, by a majority of seven to four, that the act at issue fell outside the scope of freedom of expression, given that the applicants had been guilty of incitement to hatred and violence against the King and the monarchy. It stated that "burning in public, in the circumstances described, the photograph or image of a person entails incitement to violence against the person and the institution he or she represents, encourages feelings of aggression against the person and expresses a threat".

Relying on Article 10 ECHR, the applicants complained before the ECtHR that the judgment finding them guilty of insult to the Crown amounted to a violation of their right to freedom of expression. On the same grounds, they also complained of a breach of Article 9 ECHR (freedom of thought, conscience and religion) read in conjunction with Article 10 ECHR.

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The ECtHR agreed that the applicants' conviction amounted to an interference with their right to freedom of expression, and it considered that the interference was prescribed by law and pursued the legitimate aim of protecting the reputation or rights of others.

As regards its necessity in a democratic society, the Court noted that the act at issue had been part of a political, rather than a personal critique of the monarchist institution in general, and of the Kingdom of Spain as a nation in particular. The impugned "staged event" had been part of a debate on the independence of Catalonia and the monarchistic structure of the state and a critique of the King as a symbol of the Spanish nation. Burning the picture had not constituted a personal attack on the King of Spain geared to insulting and vilifying his person, but a denunciation of what the King represented as the Head and the symbol of the state apparatus and the forces which, according to the applicants, had occupied Catalonia. This kind of expression falls within the sphere of political criticism or dissidence and corresponds to the expression of rejection of the monarchy as an institution. The ECtHR emphasised that the applicants had used symbolical elements clearly and manifestly linked to their practical political criticism of the Spanish State and its monarchistic form: the effigy of the King of Spain was the symbol of the King as the Head of the state apparatus; using fire and turning the photograph upside down expressed a radical rejection or refusal, and those two elements were used as the manifestation of criticism of a political or other nature; and the size of the photograph appeared to have been intended to ensure the visibility of the act in question, which had taken place in a public square. The applicants' act had therefore been one of the provocative "events" which were increasingly being staged to attract media attention and which merely used a certain permissible degree of provocation to transmit a critical message in the context of freedom of expression.

The ECtHR also found that the applicants' intention had not been to incite anyone to commit acts of violence against the King, even though the "performance" had entailed burning an image of the figurehead of the state. Indeed, an act of this type should be interpreted as the symbolic expression of dissatisfaction and protest. Even though the "staged event" had involved burning an image, it was a means of expressing an opinion in a debate on a public-interest issue, namely the institution of the monarchy. The ECtHR reiterated that freedom of expression extends to "information" and "ideas" that offend, shock or disturb: such are the demands of pluralism, tolerance and broad-mindedness, without which there would be no "democratic society". The ECtHR was not convinced that the impugned act could reasonably be construed as incitement to hatred or violence, neither could it be considered as constituting hate speech, given the irrelevance of Article 17 ECHR (prohibition of abuse of rights) to the present case. Finally, the ECtHR pointed out that the criminal penalty imposed on the applicants - a prison sentence, to be executed in the event of failure to pay the fine - amounted to an interference with freedom of expression which had been neither proportionate to

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the legitimate aim pursued nor necessary in a democratic society. The ECtHR therefore unanimously found a violation of Article 10 ECHR, while it deemed unnecessary any separate consideration of the complaint under Article 9 concerning the same facts. The applicants are to receive EUR 14 400 from the Spanish Government in respect of pecuniary damage and to cover costs and expenses both at domestic level and for the proceedings before the ECtHR.

Arrêt de la Cour européenne des droits de l'homme, troisième section, rendu le 13 mars 2018 dans l'affaire Stern Taulats et Roura Capellera c. Espagne, requêtes n° 51168/15 et n° 51186/15

Judgment by the European Court of Human Rights, Third Section, case of Stern Taulats and Roura Capellera v. Spain, Application Nos. 51168/15 and 51186/15, 13 March 2018

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