European Court of Human Rights: Bon v Croatia

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights (ECtHR) has once more taken into consideration some specific features of offensive statements distributed over the Internet in a case applying Article 10 of the European Convention on Human Rights (ECHR). The applicant, an environmental activist, was convicted and fined for insulting a local politician, stating in public that the latter had "acted like a real cockroach". The ECtHR found that the criminal conviction for insult violated the activist's right to freedom of expression as guaranteed under Article 10 ECHR. The Court referred to the fact that the insulting statement had been posted on the website of a local NGO, with only a limited impact, and without the activist's knowledge and consent.

The applicant, Ranko Bon, is the president of a regional branch of the Green Party in Croatia. At a round table organised by the National Forum for the Environment, held at the Centre for Journalists in Zagreb in 2009, in front of an audience of approximately fifty people, Bon gave a presentation in which he asserted that there had been an excess of instruments of power in his hometown Motovun. According to Bon there was a democratic deficit, due to the fact that everything was happening "in darkness", behind closed doors, far from the eyes of the public. In that context, he also said that the then head of the Motovun Municipality, S.V., had been acting "like a real cockroach". Bon's speech was recorded without his knowledge and published, without his consent, on the website of an environmental non-governmental organisation (NGO). S.V. subsequently lodged three criminal complaints against Bon accusing him of defamation and insult. Bon was found guilty of insulting S.V., in particular by referring to him as "a real cockroach". This statement was considered to aim at harming S.V.'s honour or reputation. Bon was fined for 3 500 EUR and ordered to bear the costs of proceedings to the amount of 130 EUR. This conviction was confirmed on appeal and the Constitutional Court dismissed Bon's complaints as ill-founded.

Before the ECtHR Bon argued that his criminal conviction had violated his right to freedom of expression guaranteed under Article 10 ECHR. The judgment of the ECtHR focusses on the question as to whether the interference with Bon's right to freedom of expression could be justified as necessary in a democratic society. It qualifies the present case as a conflict between concurrent rights, namely S.V.'s right to reputation, as part of his private life guaranteed under Article 8 ECHR, on the one hand, and Bon's right to freedom of expression on the other. In such a

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context, the ECtHR evaluates whether the domestic courts applied the criteria established in its case-law on the subject, and whether the reasons that led them to take the impugned decisions were sufficient and relevant to justify the interference with the right to freedom of expression. The Court observes that Bon as an environmental activist and the president of a local branch of a political party, had given a presentation at a public gathering of a scientific nature, at which, among other things, the manner of conducting local environmental politics had been discussed. Therefore it considers that the discussion in the present case was clearly one of public interest and the subject of social debate. S.V., as head of the Motovun Municipality, was a public figure and therefore he should have had a higher threshold of tolerance towards any criticism directed at him while conducting local politics. Furthermore the impugned statement had been made only to a limited number of people with a particular interest, while Bon did not have the intention to make his presentation available to the general public. It was without his knowledge or consent that his presentation had been privately recorded and posted on the website of a local NGO, with only a limited impact. The Court further observes that the domestic courts limited their analysis to the fact that Bon had called S.V. “a real cockroach”, without embarking on an analysis of whether Bon’s statement could have been a value judgment not susceptible of proof. The domestic courts also failed to carry out an adequate analysis to assess the context in which the impugned expression had been used, summarily dismissing Bon’s contention that the impugned part of his speech had been purely metaphorical. With regard to the nature and severity of the sanction imposed, the ECtHR notes that Bon was convicted in criminal proceedings and consequently received an entry in his criminal record, while the fine imposed on Bon – approximately 3 500 EUR – was substantial. The sanction imposed had also negative repercussions on Bon’s further engagement as an environmental activist since thereafter he retreated from his local political engagement and from all public activities, whereas S.V. was re-elected at the subsequent local elections. The ECtHR concludes that the domestic courts did not put forward relevant and sufficient reasons for the interference with Bon’s freedom of expression or give due consideration to the principles and criteria laid down in the Court’s case-law for balancing that freedom with another individual’s right to respect for his or her private life. The domestic courts exceeded the margin of appreciation afforded to them and failed to strike a reasonable balance of proportionality between the measures restricting Bon’s right to freedom of expression and the legitimate aim pursued. There has accordingly been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, sitting as a Committee, in the case of Bon v. Croatia, Application no. 26933/15, 18 March 2021

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