



Court rejects complaint about conviction for homophobic hate speech

In its decision in the case of **Carl Jóhann Lilliendahl v. Iceland** (application no. 29297/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's conviction and fine for homophobic comments he had made in response to an online article.

The Court found that the applicant's comments had amounted to hate speech within the meaning of its case-law. It accepted the Icelandic Supreme Court's finding that the comments had been "serious, severely hurtful and prejudicial", and that the decision which had originally sparked the debate, concerning measures to strengthen education in schools on lesbian, gay, bisexual or transgender matters, had not warranted such a severe reaction.

The domestic courts' decisions in the case, taken after an extensive balancing exercise between the applicant's right to freedom of expression and the rights of gender and sexual minorities, had therefore been reasonable and justified.

Principal facts

The applicant, Carl Jóhann Lilliendahl, is an Icelandic national, who was born in 1946 and lives in Reykjavik.

In April 2015, the local authorities of Hafnarfjörður, a town in Iceland, approved a proposal to strengthen education in elementary and secondary schools on lesbian, gay, bisexual or transgender matters. This was to be done in cooperation with the national LGBT association, *Samtökin '78*.

The decision led to substantial public discussion, on news outlets and social media, which the applicant became involved in. In particular he wrote comments in response to an online article, expressing his disgust and using derogatory words for homosexuality, namely *kynvilla* (sexual deviation) and *kynvillingar* (sexual deviants).

Samtökin '78 reported the applicant's comments to the police. Following an investigation, he was indicted in November 2016 under Article 233 (a) of the General Penal Code which penalises publicly mocking, defaming, denigrating or threatening a person or group of persons for certain characteristics, including their sexual orientation or gender identity.

The applicant was acquitted at first instance, but in December 2017, the Supreme Court overturned the court's judgment and convicted him, fining him 100,000 Icelandic krónur (approximately 800 euros at the time).

The Supreme Court found that the applicant's comments were "serious, severely hurtful and prejudicial", and weighing up the competing rights at play in the case, ruled that it was justified and necessary to curb the applicant's freedom of expression in order to counteract prejudice, hatred and contempt and protect the rights of social groups which have historically been subjected to discrimination.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 June 2018.

Relying on Article 10 (freedom of expression) and Article 14 (prohibition of discrimination), the applicant alleged that his conviction had breached his right to freedom of expression.

The decision was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Robert **Spano** (Iceland),
Egidijus **Kūris** (Lithuania),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

First, the Court found that the applicant's comments had not amounted to the gravest form of "hate speech" as understood in its case-law, which could be excluded from the protection of Article 10 through the application of Article 17 (prohibition of abuse of rights). Although the comments had been highly prejudicial, it was not immediately clear that they had aimed at inciting violence and hatred or destroying the rights and freedoms protected by the Convention.

The Court did however find, like the Supreme Court of Iceland, that the comments had promoted intolerance and hatred of homosexuals. It therefore considered that they had come under the "less grave" form of "hate speech" within the meaning of its case-law, which it had previously held that States were allowed to restrict.

It also agreed with the Supreme Court that Article 233 (a) of the General Penal Code had been worded in a sufficiently clear manner for the applicant to have been able to foresee that it could be applied in his case. The interference with his freedom of expression had therefore been "prescribed by law" and had moreover pursued the legitimate aim of "protecting the rights of others".

As to the proportionality of the interference, the Court concluded that the Supreme Court's assessment of the nature and severity of the comments had not been manifestly unreasonable. Nor had the penalty it had imposed, a fine rather than a sentence of imprisonment, been excessive.

Indeed, the Supreme Court had extensively weighed the competing interests at stake, namely the applicant's right to freedom of expression against the rights of homosexual persons to private life.

The Court therefore found that the applicant's complaint under Article 10 was manifestly ill-founded and rejected it as inadmissible.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.