



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

04 December 2008

THIRD SECTION

Application no. 1813/07
by Fredrik VEJDELAND and Others
against Sweden
lodged on 4 January 2007

STATEMENT OF FACTS

THE FACTS

The applicants, Mr Fredrik Vejdeland, Mattias Harlin, Björn Täng and Niklas Lundström, are Swedish nationals who were born in 1978, 1981, 1987 and 1986 respectively. The first applicant lives in Göteborg and the other applicants live in Sundsvall. They were represented before the Court by Mr N. Ugglå, a lawyer practising in Stockholm.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

In December 2004 the applicants, together with three other persons, went to an upper secondary school (*gymnasieskola*) and distributed approximately a hundred leaflets by leaving them in or on the students' lockers. The activity ended when the school's principal intervened and made them leave the school's premises. An organisation called National Youth had produced the leaflets which contained, *inter alia*, the following statements:

Homosexual Propaganda (*Homosexpropaganda*)

Society has in a few decades turned from repudiation of homosexuality and other deviancies (*avarter*) into an embracing of this deviant sexual urge (*böjelse*). Your anti-Swedish teacher knows full well that homosexuality has a morally destructive effect on society (*folkkroppen*) and will willingly try to emphasise it as something that is normal and good.

-- Tell them that HIV and AIDS appeared early with homosexuals and that their promiscuous way of life has been one of the foremost reasons why this modern plague has taken hold.

-- Tell them that the homosexual lobby in its organs is also trying to play down (*avdramatisera*) paedophilia and ask if this sexual deviance (*sexuella avart*) should be legalised.

For distributing the leaflets, the applicants were charged with agitation against a national or ethnic group *et al* (*hets mot folkgrupp*).

The applicants disputed that the text in the leaflets expressed contempt for homosexuals and claimed that, in any event, they had had no intention of expressing contempt for homosexuals as a group. They stated that the purpose of their activity had been to start a debate as regards the lack of objectivity of education in Swedish schools.

On 11 July 2005 the District Court (*tingsrätten*) of Bollnäs found that the statements in the leaflets had clearly gone beyond what could be considered an objective discussion as regards homosexuals as a group and that the applicants had intended to express contempt for homosexuals. It therefore convicted the applicants of agitation against a national or ethnic group *et al*, and sentenced the first and second applicants to two months' imprisonment, the third applicant to a conditional sentence (*villkorlig dom*) combined with a fine, and the fourth applicant to probation (*skyddstillsyn*) combined with 40 hours of community service.

The applicants, as well as the prosecutor, appealed against the judgment to the Court of Appeal (*hovrätten*) for Southern Norrland. The applicants requested the court to reject the charges, or consider the criminal act minor or, at least, lower the punishments. The prosecutor appealed as regards the first three applicants, requesting that the court consider the criminal act to be aggravated or, at least, increase the punishments.

On 14 December 2005 the Court of Appeal, referring to the Supreme Court's judgment of 29 November 2005 in the case NJA 2005 p. 805, rejected the charges against the applicants on the ground that a conviction would amount to a violation of the applicants' right to freedom of expression as guaranteed by the Convention.

The Office of the Prosecutor-General (*Riksåklagaren*) appealed against the judgment to the Supreme Court (*Högsta domstolen*) and requested it to convict the applicants of agitation against a national or ethnic group *et al*, arguing that it would not amount to a violation of Article 10 of the Convention in the circumstances of the present case. The applicants disputed the appeal.

On 6 July 2006 the Supreme Court convicted the applicants of agitation against a national or ethnic group *et al*. The majority of judges (three out of five) first considered that it was decisive for the outcome of the case whether the interference with the applicants' freedom to spread the leaflets could be considered necessary in a democratic society and whether the interference with their freedom of expression could be deemed proportionate to the aim of protecting the group of homosexuals from the violation that the content of the leaflets constituted. The majority then held:

“In the light of the case law of the European Court of Human Rights regarding Article 10, in the interpretation of the expression “contempt” in the provision regarding incitement against a group, a comprehensive assessment of the circumstances of the case should be made where, in particular, the following should be considered. The handing out of the leaflets took place at a school. The accused did

not have free access to the premises which can be considered, from the political actions of outsiders, a relatively sheltered environment. The placement of the leaflets in and on the students' lockers meant that young people received them without having had the possibility to decide whether they wanted to accept them or not. The purpose of the handing out of the leaflets was indeed to initiate a debate between students and teachers on a question of public interest, namely regarding the objectivity of education in Swedish schools, and the purpose was to supply the students with arguments. However, these were formulated in a way that was offensive and disparaging for the group of homosexuals and in violation of the duty, according to Article 10, as far as possible to avoid statements that are unwarrantedly offensive to others, thus constituting an assault on their rights, and without contributing to any form of public debate which could aid the advancement of contacts between people. The purpose of the relevant sections in the leaflets could have been achieved without statements that were offensive for the group of homosexuals. Thus, the situation has in part been different from that in NJA 2005 p. 805 where a pastor, in a sermon, made his statements before his congregation based on certain Bible quotations. The above-mentioned reasons taken together lead to the conclusion that Chapter 16, Article 8 of the Penal Code, interpreted in conformity with the Convention, permits a judgment of conviction, given the present circumstances of this case."

The minority (two judges) found that a conviction of the applicants would not be proportionate to the aims pursued and therefore in violation of Article 10 of the Convention. Hence, the minority wanted to acquit the applicants.

The first three applicants were given conditional sentences combined with fines ranging from SEK 1,800 (approximately EUR 200) to SEK 19,000 (approximately EUR 2,000) and the fourth applicant was sentenced to probation.

B. Relevant domestic law and practice

Chapter 16, Article 8 of the Penal Code (*Brottsbalken*, SFS 1962:700) provides that a person is guilty of agitation against a group when making a statement or otherwise spreading a message that threatens or expresses contempt for an ethnic group or any other group of people including, *inter alia*, due to their sexual orientation. The offence carries a penalty of up to two years' imprisonment. If the offence is considered minor the penalty is a fine, and if it is considered to be aggravated the penalty is imprisonment for no less than six months and no more than four years.

Agitation against homosexuals as a group was made a criminal offence by an amendment of the law that came into effect on 1 January 2003. According to the preparatory works to that amendment, as reproduced in Government Bill 2001/02:59 (pp. 32-33), homosexuals constitute an exposed group often subjected to criminal acts because of their sexual orientation, and national socialist and other racist groups agitate against homosexuals and homosexuality as part of their propaganda. The preparatory works also stated that there were good reasons to assume that the homophobic attitude that had caused certain perpetrators to attack individuals on account of their sexual orientation derived from the hate, threat and inflammatory propaganda against homosexuals as a group that was carried out by the majority of the Nazi and other rightwing extremist groups in the country.

The Supreme Court, in its judgment of 29 November 2005 (case NJA 2005 p. 805) concerning statements made by a pastor during a sermon which were deemed to have expressed contempt for homosexuals as a group within the meaning of Chapter 16, Article 8 of the Penal Code, considered that the legislation was in accordance with the Convention. However, the Supreme Court found that the word “contempt” in the provision regarding incitement against a group had to be interpreted more restrictively than the preparatory works would seem to indicate, in order to achieve an application of the provisions that was in line with the Convention. The Supreme Court then found that an application of the provision that was in line with the Convention would not permit a judgment of conviction against the defendant, given the circumstances of the case, and rejected the charges.

COMPLAINTS

The applicants complain under Article 10 of the Convention that the judgment of the Supreme Court constitutes a violation of their freedom of expression. They further submit that, in violation of Article 7 of the Convention, they were convicted of a crime not prescribed by law. They also claim that, since the Convention is part of Swedish law, and since there has been a violation of Article 10, there has also automatically been a violation of Article 7.

QUESTION TO THE PARTIES

Has there been a violation of the applicants’ right to freedom of expression, in particular their right to impart information and ideas, contrary to Article 10 of the Convention?