

SUBSTANCE

Freedom of expression - article 9

Restrictions to the right to freedom of speech must not only be provided by law and written precisely but must also serve a legitimate purpose (*Lohé Issa Konaté v Burkina Faso*, application 004/2013, judgment, 5 December 2014 para 132). The restriction must also be necessary in a democratic society and proportionate.

In *Konaté* the Court held that freedom of expression in a democratic society must be subjected to a lesser degree of interference when it occurs within the context of public debate relating to public figures. Public figures should therefore necessarily face high degrees of criticism than private citizens else public debate would be stifled. A criminal sentence for criticising public officials is therefore a violation of the right to freedom of expression (para 155).

The Court noted in *Konaté* that criminal sanctions may only be imposed as restriction to freedom of expression in exceptional circumstances such as incitement to commit international crimes, public incitement of hatred or threat of violence against a person or group on the basis of among others colour, race, religion or nationality (para 165). Other sanctions such as fines should also be proportionate, failing which they will amount to a violation of the right to freedom of expression (para 166).

In a separate opinion, Judges Thompson, Akufo, Ngoepe and Tambala indicated that even though they agree with the majority in *Konaté* case they would rule that there should be no criminal defamation and crimes such as hate speech and inciting of violence are dealt with in other general criminal statutes (*Konaté*, Separate opinion: Thompson, Akuffo, Ngoepe, Tambala, para 4).

The French version of the *Zongo* judgment indicates that the lack of diligent investigation of the alleged extra-judicial execution of Mr Zongo and his companions intimidated other journalists in violation of article 9 of the Charter read together with article 66(2)(c) of the Revised ECOWAS Treaty (*Ayants Droit de Feus Norbert Zongo, Abdoulaye Nikiema, Dit Ablasse, Ernest Zongo et Blaise Iboudo et le Mouvement Burkinabé des Droits de l'Homme et des Peuples v Burkina Faso*, para 186-187). The English version of the judgment held that the applicants did not show any proof that the media had been unable to exercise their freedom of expression (*Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Iboudo & The Burkinabe human and peoples' rights movement v Burkina Faso*, application 013/2011, judgment, 28 March 2014, paras 186-187). However, in the order the majority of the Court finds a violation of article 9(2) of the Charter read with article 66(2)(c) of the Revised ECOWAS Treaty.