

## Bullet Points on the ECHR Article 10 Jurisprudence

The ECHR jurisprudence is full of repeating points of interest. Students should, at a minimum, have a good understanding of the facts of each case on the syllabus coupled with an understanding of the generally (and recurring) statements of principle which appear in the jurisprudence. It would be better to know precisely how these principles applied in a given case, but if you are stuck for time, the particular principles are better than nothing.

- The “heads” of limitation in Article 10 do not end the matter. If, for example, a limitation comes within a particular heading (such as relating to morality etc) this will not justify the limitation – more will be needed (*Sunday Times*). Claims to come under a heading will be strictly construed (*Tammer*)
- There is little scope for restricting public interest or political speech (*Murphy v Ireland*). However a wide margin of appreciation is extended to states where speech is restricted in the interest of public morals especially in the field of religion (*Murphy v Ireland; Otto Preminger*)
- In examining a restriction on the freedom of expression the ECHR will ask whether the need for restrictions has been convincingly established and necessary. In asking the latter question, the Court will examine whether the restrictions are “prescribed by law” whether, a pressing social need exists and will examine whether the restriction is proportionate to the objective pursued (*Tammer*)
- In considering whether restriction is necessary the Court will have regard to other manners in which the information which was spoken may be available. So, in *Fressoz* restriction was unnecessary where information, although disseminated via newspapers, was publicly available. The court will also consider general “necessity”. In *Open Door Counselling* the Court commented that an injunction preventing dissemination of abortion information in Ireland was disproportionate largely on the basis that such information may have been very important to a woman travelling outside of Ireland for an abortion and the ban was overbroad in light of *Attorney General v X* (i.e. covering even the X-class abortions). Moreover, the Court doubted the connection between provision of information and automatic destruction of life of unborn and commented that much of the information was otherwise available in telephone directories and magazines.
- Article 10 protects speech which shocks, offends or disturbs not just that which is favourably received or inoffensive (*Sunday Times; Tammer; Fressoz; Open Door Counselling*)
- Speech will always be viewed in its context. A backdrop of public interest debate over the topic will increase the protection (*Bladet Tromsø; Fressoz*)
- The Press enjoys particular protection as it is incumbent on the press to impart information and ideas to the public who have a right to receive such. (*Sunday Times*). The Press is said to operate the role of “public watchdog” (*Jersild*). This has been said to include the idea that broadcasting or reporting on or repeating offensive comments where done with a view to discussion of matters of public interest is protected – think Louis Theroux...(*Jersild*). The Press is even entitled to a degree of exaggeration and even provocation (*Tammer*). In general a restriction with the Press will only be justified where overriding public interest requires it (*Fressoz*). All this is re-stated in *Bladet Tromsø*.

- Whereas reporting may be sensationalistic on one occasion, the Court will look at previous coverage to gauge public interest nature of speech *Bladet Tromsø*. Students should note that the Irish decision of *Mahon* would seem to be different here – i.e. sensation or attempts to bolster sales does not seem to hit on the protection offered to speech.
- It would seem there is no protection to deny historical fact such as the Holocaust by reason of Article 17 which prohibits the abuse of rights (*Lehideux*). This would not include speech extolling the contributions of historical figures insofar as their contributions were spoken of as going beyond Nazi-esque beliefs but into their wider contributions. (*Lehideux*).
- Whereas speech may open old wounds, speech which causes people to re-investigate their history openly and dispassionately is especially important (*Lehideux*). Holocaust being the exception.
- Speech which is directed to a matter of public concern is particularly protected. This has been held to include speech relating to issues of responsibility in a matter of public concern such as the Thalidomide tragedies (*Sunday Times*).
- The Court will examine whether a public interest concern exists. So where speech about a public figure is about aspects of their private lives unrelated to public duties, less protection will exist (*Tammer*). On the other hand speech related to the general interest was found in *Fressoz* where it related to the salaries of the head of Peugeot in the context of widespread industrial unrest relating to Peugeot's worker's wages.
- Private interest in reputation is important but does not outweigh publication of matters of considerable national and public importance (*Bladet Tromsø*).
- Moreover, press reporting on matters relevant to political leaders is especially important (*Lingens*)
- Where speech concerns value judgments it has been said that it is not compatible with Article 10 for member states to demand truth of their contents to avoid prosecution for such (*Lingens*). Value judgments in relation to public interest matters are important and demanding truth be shown would be too onerous.
- On the other hand, where speech is presented as a factual assertion, the Court will examine the research taken by the speaker to ascertain its truth. If the research is found wanting, restriction on that speech is more likely to be upheld (*Pedersen; Bladet Tromsø*.) Sometimes reliance on third party reports will suffice in particular where reports are prepared in official capacity (*Bladet Tromsø*)
- It seems that speech will be viewed as asserting facts where it directly accuses persons of matters or leaves accusation open as only possible interpretation (*Pedersen*).
- Accusations of a particular person attract less protection if they cannot be shown to be true. Accusations of a class of persons do not suffer from decreased protection in the same way but would still require basis in truth (*Bladet Tromsø*)
- Private political expression is strongly protected (*Bowman v UK*). Persons must not be blocked from airing their views however, to promote equality in elections, some restrictions may be necessary. However, these restrictions cannot be disproportionate and must be applied across the board.