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**European Court of Human Rights**

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## **European Court of Human Rights**

The Article 10 in European court of Human rights is concerned with the freedom of expression. It states that every individual has the right to express his/her freedom. A person can deliver his opinion or communicate information without consulting with frontiers and public authority. The Article does not restrict states from demanding the license of Television, Broadcasting or cinema business. The court views that this freedom will lead towards the growth of individual people and development of democratic societies. The Article does not absolutely allow freedom but the state might interfere with regards to some conditions mentioned in paragraph 2 of the article.

This study will discuss the three legal cases of Cynthia, Damian & Tracy against State of Dystopia. Trevor Tate, the cultural minister at government of Dystopia is representing his state.

### **Cynthia vs. State of Dystopia**

**Case Brief:** under this case, Trevor Tate delivers a speech in which he said that government will not incur expenditures over Artistic works that are degenerate, immoral or deviate. Cynthia is a journalist working at Recorder Newspaper of Dystopia. She publishes in the weekly column of newspaper regarding Trevor Tate that he is most immoral and degenerate politician. Trevor Tate has claims against Cynthia in a prosecution and she is impose fine of Euros 20,000.

**Discussion:** In this case I am writing on Behalf of Cynthia. The Article allows full right to Cynthia in publishing his views regarding Trevor Tate as although the Article does not prevent Trevor Tate from acquiring the license of Recorder Newspaper. Firstly, the court will investigate 2 factors from side of Trevor Tate. Firstly, whether Cynthia has acquired publishing rights and

secondly what was the purpose of publishing information and whether it meets the criteria laid out in Paragraph 2 of the Article 10. If Cynthia is not able to deliver the publishing rights than Trevor Tate will be in advantageous position and his claim would stand. In this occasion Cynthia will be liable for fine of 20,000 Euros as she is defeated by Trevor Tate from the law not preventing state to acquire license from the opposing party.

If Cynthia is able to show the publishing rights than the matter will be resolved through second paragraph of article. The 2<sup>nd</sup> paragraph describes some criteria which the information must meet. The information which protects the citizen rights such as prevention of crime, public safety and health protection are allowed to communicate publicly. The information designed to protect other rights and those mandatory for maintaining the power of judiciary is also permissible. In this case it is difficult to assess that whether views of Cynthia falls in any of the category. It is dependent upon the character of Trevor Tate. Trevor Tate might be involved in any illegal activities or done unfairness with the state, hence the court should allow freedom to Cynthia in order to express her views. Cynthia's intention is to protect the rights of citizens and the decision of Trevor Tate over public spending of art might reduce further public expenditures in the future. This signifies that Cynthia's aim was to ensure the smooth running of Art industry in Dystopia rather than blaming Trevor Tate over his intentions. The court should urgently revert back the claim against Cynthia.

**Case Related Example:** The Thorgeir Thorgeirson case in 1992 June, was concerned with the applicant's conviction as he published 2 articles in newspaper regarding alleged police brutality. The court state that the applicant statements will protect other rights and public has the

right to ware with such information.<sup>1</sup> Hence it can be stated that Cynthia's publication was also permissible.

### **Damian Vs State of Dystopia**

**Case Brief:** In this case, Damian draws painting of Trevor Tate in which he was considered as degenerate, immoral and deviate. The public decency law at Dystopia limits Damian over placing such paintings in his Gallery. Damian views that these restrictions will not achieve his objective as lesser people will be targeted.

**Discussion:** The Court has not provided exclusive freedom of expression. In this case, I am writing on behalf of Trevor Tate. The State of Dystopia might intervene regardless of the medium through which the views and information are expressed. Although Damian has adopted the medium through his own gallery but the public decency laws and Article 10 restricts him from placing these portraits in the Gallery.

The license provided by Damian might be discarded by the state because the Public decency laws of Dystopia has imposed restrictions of timing and audience age group that will cannot access to these portraits. According to paragraph 2 of the article, the state might intervene in the sense that Damian's portraits is likely to exploit the individual rights and will create a negative image of Trevor Tate in the public eyes. Secondly, Damian has no evidence of whether Trevor Tate was indulge in sexual poses with religious and historical figures. He is only trying to demonstrate through Paintings rather real pictures. The paintings will also create bad impact on the children thinking as it is considered with sexual poses.

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<sup>1</sup> Thorgeir Thorgeirson v. Iceland, [1992], judgment of 25 June 1992, Series A No. 239 applicant fined for publication in a newspaper of two articles concerning police brutalities; Violation of Article 10

The Article also offers special protection for state officials unless they are well justified. In fact, these state officials face more criticism than faced by general public. In Case of any offence, the law will pose heavy penalties on Trevor Tate rather than private individuals.

**Case Related Example:** The case of Busk Madsen and Pedersen Vs Denmark was concerned with lessons of sex education that were taught in Danish state schools.<sup>2</sup> The above case also demonstrates the similar situation and it might be offensive to some religious Groups and Parents.

One of the cases Karatas Vs Turkey was related with the use of Poems at Work place. The metaphors and the pathos used in the poems were aggressively directing towards the Turkish authorities. The Poem was considered as a sense of violence, revolt and hatred among few readers. The Court resolved the issue under the Article 10 principles that the applicant used the medium of Poetry. This type of Artistic expression was appealing to only few readers. The court further added that Arts work is necessary for a democratic society.<sup>3</sup> In the above case of Damian, she also used the similar form of medium and her intention might be to entertain the audience by drawing portraits of Trevor Tate.

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<sup>2</sup> Kjeldsen, Busk Madsen and Pedersen v. Denmark, [1976], judgment of 7 December, Series A no. 23

<sup>3</sup> Karatas v. Turkey [GC], [1999], ECHR 1999-IV, no. 23168/94 judgment of 8 July

## **Tracey Vs State of Dystopia**

**Case Brief:** In this case, Tracey had applied for the grant to place exhibition of her new video installation. The Department of culture has refused to donate the grant due to recent amendments by Minister Tate and considering the nature of work done by Tracey.

**Discussion:** In this case, I am discussing from State's point of view, although the Court has focused on preserving the cultural heritage of the country, artistic and historical roots of the state. These are necessary values and public authorities are responsible for their promotion and protection. In the above case, it indicates that Tracey should be issued grant for its exhibition if the new video is going to promote cultural values and depending on the nature of video. The Minister views that nature of Tracey's work does not reflect the true values and hence it should not be issued grant.

The court has also stated that artistic work should consider the existence of a single nation rather than dividing nation into different ethnic groups. It also focused that Arts work should reflect the existing culture of the state rather than adopting practices of other nation's cultural values and various religious groups. The Court has also focused on protecting the rights of migrants to maintain their cultural traditions with their countries of origin. Hence, it can be stated that new video launched by Tracey might not reflect the nation's cultural values rather than it might lead the public towards adopting different practices which does not abide by Court laws.

**Case Related Examples:** The case law of Akdas Vs Turkey was concerned with heavy fines imposed on the publisher for publication of novel 'erotic' in Turkish which was written by Guillaume Apollinaire. The court also ordered to seize all the copies of novel. The novel was

written in different languages and different countries. The novel derived the concept of 'European Literary inheritance' and the court views that it did not consider the existence of single nation rather than various religious and cultural communities.<sup>4</sup>

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<sup>4</sup> Akdas v. Turkey, [2010], no. 41056/04, 16 February

## References

*Akdas v. Turkey*, [2010], no. 41056/04, 16 February

*Karatas v. Turkey* [GC], [1999], ECHR 1999-IV, no. 23168/94 judgment of 8 July

*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, [1976], judgment of 7 December, Series A  
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