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ARTICLE

French Criminal Law in Light of the European Court of Human Rights Requirements: Analysis of Some Recent Disputes

Bernadette Aubert*

Institut de sciences criminelles (ISCrim), Faculté de droit et des sciences sociales, Université de Poitiers, Poitiers, France
*Corresponding Author: Bernadette Aubert, Institut de sciences criminelles, 43 place Charles de Gaulle, 86022 Poitiers Cedex, France. E-mail: bernadette.aubert@hotmail.fr

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ABSTRACT

Since the adoption of the European Convention on Human Rights and, above all, since the implementation of the European Court of Human Rights, national criminal law has been constrained. The legal authorities of the Member States must respect a certain number of obligations provided for by the text and interpreted by the European jurisdiction. If this is not the case, the applicants can appeal at the Court of Strasbourg and demand compensation for the violation of their fundamental rights. This is how the European Court, through its many decisions, has enabled a certain harmonization within the Council of Europe, which is now made up of 47 States. France does not escape condemnation. Even if it has sometimes resisted the Court's injunctions, the latter's judgments have nonetheless obliged France to contain its incriminations and to limit the restrictions on the rights of persons placed in detention. Freedom of expression is quite a remarkable illustration of the necessary delimitation of incriminations. While the Court accepts that States retain a margin of appreciation, it exercises an attentive and rigorous eye when States reduce the exercise of this freedom. The balance is always difficult to determine, but it must be right. Concerning the rights of detainees, the Court seems more flexible regarding States and hesitates in its positions. However, even if there is a restriction of freedoms, the incarcerated individuals remain citizens. They must therefore be able to exercise a certain number of rights. This is linked to their status as subjects of law.

Keywords European Court of Human Rights, French criminal code, rights of prisoners, compensation for violations of rights, freedom of expression, margin of appreciation

INTRODUCTION

Almost thirty years ago, in her book entitled *The Criminal Process and Human Rights: Toward a European Consciousness*, Mireille Delmas-Marty (1994) addressed important questions like, for example, what place can human rights have in the

penal, legislative and judicial process? Troublemaker or spur? Both probably to varying degrees, depending on the times, the crimes and the evolution of society.

Today, many supranational texts bind European States.[1] The first of these, the European Convention on Human Rights, signed in Rome on 4 November 1950,[2] was adopted after the abuses committed during the Second World War.

Born from this Convention, the European Court of Human Rights (ECHR), established in 1959, has the task of interpreting the text of the Convention concerning specific disputes.[3] An individual, "the applicant", who considers that some of his rights have not been respected, for example, the right to life, privacy and family, freedom of expression, or seeks protection from torture, also can file a case after exhausting domestic remedies. In a so-called "conviction" judgment, the Court proclaims the violation of the Convention and, sometimes, obliges the State to pay damages to the applicant. Its decision is "binding", "declaratory" and "enforceable" in the sense that the condemned State must fulfill its obligation towards the applicant.[4] France was condemned in 1992 for inhuman and degrading treatment (Article 3), to pay 700,000 French francs for damages and 300,000 for costs and expenses, the person in custody having suffered acts contrary to human dignity (stripped naked, handcuffed to a radiator). France was again condemned in 1995 for violating the presumption of innocence (Article 6) to pay two million French francs for damages. The Minister of the Interior had publicly accused a person of murder and, in doing so, had violated the principle of the presumption of innocence.

However, the Court's decisions are only "declaratory" because the Court does not have the power to oblige the State to modify, if necessary, its legislation in the event of a conviction. In France, even if the resistance is sometimes significant, the decisions of the Court, often eagerly awaited, have regularly led to substantial changes in the law. Two factors invite this: one is political, membership in the Council of Europe and the values advocated by the Convention prevent the maintenance of a standard that would be contrary to it; the other is legal, the primacy of the Convention over domestic law requiring national courts to set aside a domestic rule following an interpretation of the Convention by the ECHR.[5]

This article will focus on the two ends of the criminal process; first, on incrimination, which relates to a prohibition to do or not to do something. Incrimination, therefore, pushes back the boundaries of the freedom to act or not. The delimitation of incrimination is consequently very important since it is a question, in a State of law, of restricting freedoms, for example, the freedom of expression (Article 10 of the European Convention on Human Rights). Then, at the other end of the judicial

[1]They are: the Universal Declaration of Human Rights (1948); the European Convention on Human Rights (1950); the New York Pact (1966); and the Charter of Fundamental Rights of the European Union (2000), which exclusively concerns the European Union. Reference should also be made to monitoring mechanisms, particularly the Committee for the Prevention of Torture.

[2]Entered into force in 1953. Retrieved 10 January 2023 (https://www.echr.coe.int/documents/convention_eng.pdf).

[3]A State can file a case there, but this is very rare.

[4]Article 46 of the European Convention on Human Rights provides that "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

[5]Criminal chamber of the cassation court, France, *Ponsetti*, Case No. 94-85.796, 20 June 1996, B. 268; Aubert (1998:468 ff and references).

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process, there is the execution of the sentence by the individual who has been found guilty. Here again, limits must be set since the person convicted and sentenced to imprisonment remains a citizen who can claim that certain rights be respected. However, he is placed in a situation of dependence on those with authority, which must not be able to abuse it.[6] If France has not always been condemned in the selected disputes, the Court has nevertheless taken the opportunity to specify the room for manoeuvre of the State and the contours of the fundamental rights of individuals. It is necessary to preserve freedom of expression by strictly limiting the use of prohibition (see the next section). It is just as essential to modulate the restrictive measures for detainees in order to respect their fundamental rights (see the "Execution of a sentence of deprivation of liberty *versus* respect for fundamental rights" section).

INCRIMINATION *VERSUS* FREEDOM OF EXPRESSION

The principle of freedom of expression (Article 10 of the European Convention on Human Rights) includes the freedom to hold opinions and receive or impart ideas (Besse 2019). However, the exercise of this right may be limited by measures that the State considers necessary. Several judgments of the Court deserve attention: the first concerns free expression through humour; and the second the right to political expression (for both, see the sections below). Each time, the question is twofold: how far can the protagonists go in their art or activism? From when can the State sanction?

Humour

The facts are quite easy to understand. For example, for his birthday, the uncle of a 3-year-old child wants to give him a "fun" gift. He buys a T-shirt on which he writes on the front, "I am a bomb" (his name is Jihad) and on the back, "Born on 11 September" (the child was actually born on 11 September 2012). The kindergarten is concerned about this child wearing such a T-shirt. It should be noted that several murders had been committed a few months earlier, which were highly publicized. The uncle was prosecuted for "apology of the crime of voluntary attack on life" and sentenced by the Court of Appeal. The criminal chamber rejected his appeal. He then appealed to the ECHR.[7] To state that Article 10 of the European Convention on Human Rights had been violated, the Strasbourg judges considered that freedom of expression applies "not only to 'information' or 'ideas' that are favourably received" or considered inoffensive or indifferent but also to those which offend, shock or worry the State or a fraction of the population. This is what pluralism, tolerance and a spirit of openness demand, without which there is no "democratic society".[8] However, the Court considered that "the right to humour does not allow everything and anyone who avails himself of the freedom of expression

[6]"Prison is the deprivation of the freedom to come and go and nothing else," said the President of the Republic, Valéry Giscard d'Estaing, in 1974 during a visit to a prison establishment in Lyon.

[7]ECHR, Section V, *Z.B. v. France*, Application No. 46883/15, Judgment, 2 September 2021, D. 2021. 1864, interview T. Hochmann. On the judgment, see Marguénaud and Roets (2022:13); Besse (2021:396).

[8]ECHR, *Handsyde v. Royaume-Uni*, Case No. 5493/72, 7 December 1976, § 49.

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assumes, according to the terms of this paragraph, 'duties and responsibilities'".[9] Judges regularly put forward this question of general interest. If this interest exists, State measures must be even more strictly limited; if it does not exist, the State's margin of appreciation is much greater. In this case, the Court considered that there was no subject of general interest, and it inferred from this that Article 10 had not been violated.

Political Expression

The Court must regularly rule on the measurement of political expression. The major question is always that of the exercise of the right that the State may or may not limit. The criterion of "general interest" takes an important place, especially when calling for a boycott.

Following the construction of the wall in Israel and because of the policy carried out by that State against the Palestinians, pro-Palestine activists go to various supermarkets, distribute leaflets and ask customers to boycott products from Israel because this State does not respect the rights of certain categories of people. The group's six members are prosecuted for incitement to hatred and racial discrimination. Released by the Criminal Court, they are condemned on appeal since the incitement to discrimination cannot belong to the domain of freedom of expression. Indeed, the act committed is an act of rejection that results in a difference in the treatment of producers established in Israel, and the freedom of expression does not authorize the commission of an offence. Thus their appeal was dismissed. The group appealed to the ECHR.[10]

The Strasbourg Court, first of all, recalls that if the interference present in the current case is intended to protect the rights of others, it must still be necessary. Referring to the definition of the call for a boycott, the Court specifies that it is a means of expressing dissenting opinions; therefore, it falls under the principle indicated in Article 10 of the European Convention on Human Rights. Thus, it takes a position contrary to the Court of Appeal and the French Criminal Chamber. But it is also a specific modality because the call for a boycott is likely to constitute a call for discrimination against others or even intolerance. To cross this line would mean falling into violence and hatred, which, of course, are contrary to the principle of freedom of expression.

In the present case, the Court considers that this boundary has not been crossed. The expression is political, militant and without excess. In addition, the subject, very contemporary, is of general interest. Therefore, the French State violated Article 10 of the European Convention on Human Rights.

Let us add that it is a very sensitive issue in France. A decree of 9 March 2022 dissolved the association "Comité Action Palestine" and the *de facto* group "Collectif Palestine Vaincra" because of their publications provoking discrimination, hatred or violence against a group of people, in this case, the State of Israel. Seized in summary

[9]ECHR, *Handsyde v. Royaume-Uni*, ibid., § 57.

[10]ECHR, Section V, *Baldassi and Others v. France*, Application No. 15271/16 and six others, 11 June 2020. See Marguénaud and Roets (2020b:753).

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proceedings by the two entities, the Council of State suspended their dissolution pending a decision on the merits (Ordonnances of 29 April 2022, no. 462736 and no. 462982).

EXECUTION OF A SENTENCE OF DEPRIVATION OF LIBERTY *VERSUS* RESPECT FOR FUNDAMENTAL RIGHTS

The European Court has contributed to raising the level of protection of detainees who, even in a more restricted way, must be able to exercise their fundamental rights. Articles 3 (prohibition of torture) and 8 (right to respect for private and family life) are regularly invoked and interpreted.

Managing Difficult Situations in Detention

Relations within a penitentiary establishment are inherently difficult and there are continuous tensions. Therefore, prison staff must exercise composure to reduce the aggressiveness present and to remain measured in using force when necessary. This is the whole point of compliance with Article 3 of the European Convention on Human Rights prohibiting torture or inhuman or degrading treatment, which is applicable in the J.M. case.[11]

Incarcerated, J.M. ardently wishes to be transferred to a centre closer to his family. His request not being accepted, he refuses to return to his cell. During his placement in the disciplinary quarter, he reportedly committed several violent acts. For example, the prisoner burned papers which made the staff fear the start of a fire, and they hosed him down. The next day, he was transferred to another prison establishment. According to the prisoner's words, he was beaten, handcuffed and gagged even though he was no longer aggressive. This version is refuted by the supervisors present during the events. However, other witnesses suggest that the detainee was transferred naked and that he arrived prostrate and injured at the destination centre. For some staff members of the establishment hosting the detainee, everything suggests that the acts committed were disproportionate and did not correspond to the regular use of public force.

The case was referred to the public prosecutor. Two investigations were opened: the criminal investigation was unsuccessful, while the administrative inquiry ends with sanctioning one supervisor and transferring another. Dissatisfied with this result, the detainee concerned filed a complaint and a civil action. An investigation was opened in July 2012 for aggravated violence committed by persons holding public authority. The investigating judge dismissed the case because the offences, in his opinion, were not sufficiently characterized. The Court of Appeal upheld the order, and the appeal was rejected. The detainee then seized the ECHR with a request to declare Article 3 violated by France. Two aspects of Article 3 were examined by the Court: the substantive aspect and the procedural aspect.

It first took up two principles already confirmed in case law. First, to be considered unacceptable, the ill-treatment must have reached a certain "threshold of

[11]ECHR, Section V, *J.M. v. France*, Application No. 71670/14, 5 December 2019. See Marguénaud and Roets (2020a).

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severity", whether physical or psychological. There can therefore be ill-treatment without the intention of humiliation or vexatious intent. Conversely, a humiliating or vexatious action does not require visible consequences such as bodily harm or severe physical or psychological suffering. It is enough that the dignity of the person is violated. Second, using force in a prison must always be "strictly necessary". Admittedly, the potential for violence in these establishments sometimes leads to taking measures to maintain order or contain violence. However, it is still up to the government to prove that these measures were justified and that the victim's story does not hold up. "Any injury occurring [during the period of detention] gives rise to strong presumptions of fact." In the opposite hypothesis, serious presumptions exist that the administration caused the injuries observed. Consequently, several factual elements made it possible to conclude that there had been a violation of Article 3 in its substantive aspect: the detainee's state of distress, the inappropriate use of a fire hose, the numerous bruises and contusions on the body, the transfer carried out while the person was only dressed in a T-shirt and provided with a sheet which may have caused feelings of "arbitrariness, inferiority, humiliation and anguish". Consequently, there was "a serious lack of respect for his human dignity"; it does not matter that the goal sought was not humiliation.

The Court also considered that the authorities in charge of the administrative investigation were not independent, that the criminal investigation was not effective because there was an obvious lack of research in the establishment of evidence, the absence of confrontation between the different protagonists, and a lack of medical expertise, etc.). Consequently, the investigation, which was not effective, led to a violation of Article 3.

The Presence of Detainees at the Funerals of their Loved Ones

Article 8 of the European Convention on Human Rights requires States to respect everyone's right to respect for their private and family life. When the individual is detained, relationships with relatives are often strained. This is why the European Court is sensitive to this issue. If the restriction of freedom inevitably induces distancing, it is necessary to maintain a minimum contact for the happy or unhappy occasions of life. This position taken by the Court has existed for some years; the right to exit has become a principle enshrined in the ECHR. But, in this decision[12] the Court wanted to restrict this right for prisoners again.

This case concerned the death of a relative of the imprisoned individual and whether she could attend his funeral. The protagonist of this case is an activist of the Basque independence organization ETA convicted several times, in 2006 and 2008, for acts of terrorism. She had been sentenced to 17 years of imprisonment with a security period of two-thirds of the sentence. Her father died in Bayonne on 21 January 2014 while she was still imprisoned. She immediately requested leave from the judge, whose mission was to adjust the application of sentences. The inmate did not ask to attend the funeral but wished to pray at the funeral home. She also said that she had a chronic condition that required her to go to the

[12]ECHR, Section V, *Guimon v. France*, Req. No. 48798/14, 11 April 2019. See Herzog-Evans (2019), Marguénaud and Roets (2019:713) and Saulier (2019).

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bathroom frequently. The request was refused because she was detained for serious acts, and it was not easy to organize this release quickly. The ECHR did not accept the request of the detainee either, considering that the refusal of the applicant's request to leave prison under escort to go to meditate on the remains of her father did not exceed the limits of the State's margin of appreciation in this area. Moreover, this decision was not disproportionate to the legitimate aims pursued.[13] Specialists of the Court severely criticized this decision, hoping it would remain isolated. It goes against several previous judgments in which the Court laid down the criteria for determining whether or not the decision was acceptable. It had thus decided that the seriousness of the offence could not be a criterion for refusing leave for the inmate.[14] Even more recently, the Court ruled against a State that refused a prisoner's release because this was not envisaged in the texts applicable to pre-trial detention,[15] the prisoner having, by hypothesis, committed a serious fault. It is difficult to answer precisely. However, what is certain is that this unstable jurisprudence prevents States from reconsidering their very strict positions and prohibits individuals from claiming their rights. It is necessary that the Court be more demanding with States, being more clear in its decisions. Let us hope that the Court's case law stabilizes around more objective criteria such as legality, legitimacy, particularly concerning public safety issues, and necessity in a democratic society.

CONCLUSION

The judicial activity of the ECHR since its creation in 1959 shows how much it has contributed to the improvement of French criminal law, including today's very sensitive areas, such as freedom of expression. It placed the cursor in a balanced way between individual freedom and the tranquility of the social group, colliding with States which would like to limit this freedom drastically. However, it is also true that European case law is sometimes open to criticism, as shown by the last decision in this study in which France was not condemned. It is all the more questionable since, in other judgments, the Court, on the contrary, ruled against the State, which did not respect the detainee's desire to honour her dead father. So, why was the Court timid concerning a very specific situation? Was it a reservation concerning a question that remains a strong element of criminal sovereignty, the imprisoned person having, by hypothesis, committed a serious fault? It is difficult to answer precisely. But what is certain is that this unstable jurisprudence prevents States from reconsidering their very strict positions and prohibits individuals from claiming their rights. It is necessary that the Court be more demanding with States, being more clear in its decisions. Let us hope that the Court's case law stabilizes around more objective criteria such as legality, legitimacy, particularly concerning public safety issues, and necessity in a democratic society.

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[13]Especially Herzog-Evans (2019), Marguénaud and Roets (2019:713) and Saulier (2019).

[14]ECHR, *Mastromattéo v. Italie*, 24 October 2002, Req. 37703/97; ECHR, *Aff Ploski v. Poland*, 12 November 2002.

[15]ECHR, Section V, *Vetsev v. Bulgaria*, Application No. 54558/15, 2 May 2019.

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References

Aubert, Bernadette. 1998. "Le droit international devant la Chambre criminelle: Cinquante ans de jurisprudence." PhD dissertation, UFR de droit et sciences sociales, Université de Poitiers, France.

Besse, Thomas. 2019. "La pénalisation de l'expression publique." Bayonne: Institut Francophone pour la Justice et la Démocratie.

Besse, Thomas. 2021. "On ne plaisante pas avec les attentats." *Légipresse* 2021:396.

Delmas-Marty, Mireille. 1994. *The Criminal Process and Human Rights: Toward a European Consciousness*. Dordrecht: Springer.

Herzog-Evans, Martine. 2019. "Terrorisme et autorisation de sortir sous escorte : La balance de l'article 8 respectée." *AJ Pénal* 2019(6):340.

Marguénaud, Jean-Pierre and Damien Roets. 2019. "Droits de l'Homme. Jurisprudence de la CEDH." *Revue de science criminelle et de droit pénal comparé* 2019(3):701–20.

Marguénaud, Jean-Pierre and Damien Roets. 2020a. "Droits de l'homme Jurisprudence de la CEDH." *Revue de science criminelle et de droit pénal comparé* 2020(1):143–55.

Marguénaud, Jean-Pierre and Damien Roets. 2020b. "Droits de l'Homme. Jurisprudence de la CEDH." *Revue de science criminelle et de droit pénal comparé* 2020(3):731–58.

Marguénaud, Jean-Pierre and Damien Roets. 2022. "Droits de l'homme Jurisprudence de la CEDH: Article 10 – Droit à la liberté d'expression." *Revue de science criminelle et de droit pénal comparé* 2022(1):113–22.

Saulier, M. 2019. "Le droit à la vie familiale du détenu condamné pour faits de terrorisme." *AJ famille* 2019(5):288.

TRANSLATED ABSTRACTS

Abstracto

Desde la adopción del Convenio Europeo de Derechos Humanos y, sobre todo, desde la puesta en marcha del Tribunal Europeo, el derecho penal nacional se ve limitado. Las autoridades de derecho nacional deben respetar un cierto número de obligaciones previstas por el texto e interpretadas por la jurisdicción europea. De no ser así, los demandantes pueden acudir al tribunal de Estrasburgo y exigir una indemnización por la violación de sus derechos fundamentales. Así es como el Tribunal Europeo, a través de sus numerosas decisiones, ha permitido cierta armonización dentro del Consejo de Europa, que hoy está formado por 47 Estados. Francia no escapa a la condena. Aunque en ocasiones se ha resistido a los mandatos del Tribunal, las sentencias de este último han obligado a Francia a contener sus incriminaciones y a limitar las restricciones de los derechos de las personas detenidas. La libertad de expresión es una ilustración bastante notable de la necesaria delimitación de incriminaciones. Si bien la Corte acepta que los Estados conserven un margen de apreciación, ejerce una mirada atenta y rigurosa cuando los Estados reducen el ejercicio de esta libertad. El equilibrio siempre es difícil de determinar, pero debe ser el correcto. En el campo del respeto a los derechos de los detenidos, la Corte parece más flexible con respecto a los Estados y parece vacilar en sus posiciones. Sin embargo, si la regla es, por supuesto, la restricción de las libertades, los individuos encarcelados siguen siendo ciudadanos. Por lo tanto, deben poder ejercer un cierto número de derechos. Esto está ligado a su condición de sujetos de derecho.

Palabras clave Tribunal Europeo de Derechos Humanos, código penal francés, derechos de los presos, compensación por violaciones de derechos, libertad de expresión, margen de apreciación

Abstrait
Depuis l'adoption de la convention européenne des droits de l'homme et, surtout, depuis la mise en œuvre de la Cour européenne, le droit pénal national est contraint. Les autorités de droit interne doivent respecter un certain nombre d'obligations prévues par le texte et interprétées par la juridiction européenne. Si tel n'est pas le cas, les requérants peuvent saisir la juridiction de Strasbourg et exiger la réparation de la violation de leurs droits fondamentaux. C'est ainsi que la Cour européenne, par ses très nombreuses décisions, a permis une certaine harmonisation au sein du Conseil de l'Europe aujourd'hui composé de 47 Etats. La France n'échappe pas à des condamnations. Même si elle a parfois résisté aux injonctions de la Cour, il n'empêche que les arrêts de cette dernière ont obligé la France à contenir ses incriminations et à limiter les restrictions des droits des personnes placées en détention. La liberté d'expression est une illustration tout à fait remarquable de la délimitation nécessaire des incriminations. Si la Cour accepte que les Etats conservent une marge d'appréciation, elle exerce un regard attentif et rigoureux lorsque les Etats réduisent l'exercice de cette liberté. La balance est toujours délicate à déterminer mais elle doit être juste. Dans le domaine du respect des droits des détenus, la Cour parait plus souple à l'égard des Etats et semble hésiter dans ses prises de position. Pourtant, si la règle est bien sûr la restriction des libertés, les individus incarcérés demeurent des citoyens. Ils doivent donc pouvoir exercer un certain nombre de droits. Cela est liée à leur état de sujet de droit.

Mots-clés Cour européenne des droits de l'homme, Code pénal français, droits des détenus, indemnisation pour violation des droits, liberté de expression, marge d'appréciation

抽象的
自欧洲人权公约通过以来，最重要的是，自欧洲法院实施以来，国家刑法受到了限制。 国家法律当局必须尊重文本规定并由欧洲司法管辖区解释的一定数量的义务。 如果情况并非如此，申请人可以向斯特拉斯堡法院提起诉讼，要求对侵犯其基本权利的行为进行赔偿。
这就是欧洲法院如何通过其众多裁决，在今天由 47 个国家组成的欧洲委员会内部实现一定程度的协调。 法国难逃谴责。 即使它有时会抵制法院的禁令，但后者的判决仍然迫使法国控制其罪行并限制对被拘留者权利的限制。 言论自由是对犯罪的必要界定的一个非常显着的例证。 虽然法院承认各国保留一定的判断余地，但当各国减少行使这种自由时，法院会保持谨慎和严格的审视。 平衡总是很难确定，但必须是正确的。 在尊重被拘留者权利方面，法院似乎对国家更加灵活，而且似乎在立场上犹豫不决。 然而，如果规则当然是限制自由，那么被监禁的人仍然是公民。 因此，他们必须能够行使一定数量的权利。 这与他们作为法律主体的地位有关。

关键词: 欧洲人权法院，法国刑法，囚犯的权利，侵权赔偿，的自由 表达，升值幅度

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الملخص

منذ اعتماد الاتفاقية الأوروبية لحقوق الإنسان ، وقبل كل شيء ، منذ تنفيذ المحكمة الأوروبية ، أصبح القانون الجنائي الوطني مقيدا. يجب أن تحترم سلطات القانون الوطني عددا معينا من الالتزامات المنصوص عليها في النص وتفسيرها من قبل الولاية القضائية الأوروبية. إذا لم يكن الأمر كذلك ، يمكن للمتقدمين رفع دعوى أمام محكمة ستراسبورغ والمطالبة بتعويض عن انتهاك حقوقهم الأساسية.

هذه هي الطريقة التي مكنت بها المحكمة الأوروبية ، من خلال قراراتها العديدة ، من تحقيق قدر من التنسيق داخل مجلس أوروبا ، الذي يتألف اليوم من 47 دولة. فرنسا لا تفلت من الإدانة. حتى لو قاومت أحيانا أوامر المحكمة ، إلا أن أحكام هذه الأخيرة ألزمت فرنسا باحتواء التهم الموجهة إليها والحد من القيود المفروضة على حقوق الأشخاص المحتجزين. إن حرية التعبير هي مثال رائع للغاية على التحديد الضروري لحدود التجريم. وبينما تقبل المحكمة أن تحتفظ الدول بهامش تقدير ، فإنها تمارس عينا يقظة وصارمة عندما تحد الدول من ممارسة هذه الحرية. من الصعب دائما تحديد التوازن ولكن يجب أن يكون صحيحا. في مجال احترام حقوق المعتقلين ، تبدو المحكمة أكثر مرونة فيما يتعلق بالدول ويبدو أنها مترددة في مواقفها. ومع ذلك ، إذا كانت القاعدة هي بالطبع تقييد الحريات ، فإن الأفراد المسجونين يظلون مواطنين. لذلك يجب أن يكونوا قادرين على ممارسة عدد معين من الحقوق. وهذا مرتبط بوضع مكأشخاص خاضعين للقانون.

لكلمات المفتاحية المحكمة الأوروبية لحقوق الإنسان؛ القانون الجنائي الفرنسي ؛ حقوق السجناء ؛ التعويض عن انتهاكات الحقوق ؛ الحرية ل, التعبير؛ هامش التقدير

Bernadette Aubert is a lecturer who supervises research at the Faculty of Law of Poitiers, France and directs a Masters programme in Law and Criminal Justice. She has led a session on international cooperation in criminal matters at the National School for the Judiciary and organizes a pleading competition in international criminal law. The common thread of her research is the application of international law (international conventions and case law) by domestic jurisdictions, especially the criminal chamber of the French Court of Cassation. Currently, she is more specifically interested in mass crimes, the usefulness of the trials of their perpetrators and the memory construction that follows.

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