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The BNP and the Law and Political Freedom

Alec Samuels

Many minority and political groups tend to be “unpopular”, almost by definition. How far is it possible or, indeed, desirable to impose legal restrictions or disabilities upon them, e.g., the British National Party (“BNP”)? Minority groups subject to proposed or sometimes actual legal restriction are legion, e.g., communists, BNP, Muslim extremists, religious fundamentalists, homosexuals, Freemasons and the hunting fraternity. From time to time the BNP issue arises. Could or should a member or sympathiser of the BNP be refused employment in the public sector, the private sector or particular areas of employment such as schools, the fire service and the police, be refused membership of a trade union or be rendered ineligible for public office, e.g., Member of Parliament, councillor or quango?

The Law

As one would expect, rights to freedom of conscience, opinion, expression and association, and freedom from discrimination are to be found in all the human rights instruments: the Universal Declaration of Human Rights 1948, articles 18, 19 and 20, the International Convention on Civil and Political Rights 1966, articles 18, 19 and 22, the International Convention on Economy, Social and Cultural Rights 1966, the European Convention on Human Rights 1950, articles 9, 10, 11 and 14 and the United Kingdom (“UK”)’s Human Rights Act 1998.

Everybody may hold opinions without interference unless there are implications for national security, public order or public health and morals.

In English law there are a number of restrictions upon unrestrained free speech, e.g., treason, sedition, incitement to disaffection, public order, incitement to crime, incitement to racial hatred, defamation, breach of confidence and obscenity.

Discrimination against specific persons or classifications of persons is statutorily proscribed, e.g., race, sex and disability; age and religion are currently under discussion for possible extension of the UK discrimination legislation.

Freedom of Expression

In Germany a communist language schoolteacher, a civil servant, was dismissed for being a communist and member of the communist party (at that time outlawed). She was a perfectly satisfactory schoolteacher and there was no evidence of indoctrination of children by her. The European Court of Human Rights (“ECHR”) held that she was entitled to freedom of expression and freedom of association under articles 10 and 11, respectively, of the European Convention on Human Rights, and that her dismissal was, therefore, unlawful.¹ In a pluralist, tolerant and broad-minded democratic society views that offend or shock or disturb must be tolerated. As a civil servant, the schoolteacher did owe a duty of loyalty, but there was no evidence of any threat to national security. Her livelihood was at risk. However, there could be cases where a person’s ideology, associations and loyalty to another country over his own could constitute a threat to national security rendering it lawful for the state to take appropriate and proportionate action.

Trade unions enjoy freedom of association, subject to national security.² The right to strike may be lawfully restricted for good reasons, e.g., to protect patients at a hospital.³

Senior local government officers may not engage in active politics as they hold politically restricted posts. This is to ensure political neutrality in their work, e.g., as decision-makers and officers offering advice on policy matters to elected members. They may be passive members of a political party if they wish. The trade union, Unison, objected to the restrictions.⁴ But, the ECHR held that it was legitimate to impose the restrictions in order to protect the rights of elected members and the electors and local democracy in ensuring political neutrality and, accordingly, there was no infringement of the right of expression (article 10) or the right of association (article 11). Civil servants are required to resign if they stand for election to Parliament and senior civil servants are

¹ *Vogt v Germany* (1996) 21 EHRR 205, ECHR. See also *United Communist Party of Turkey v Turkey* (1998) 26 EHRR 21; *Socialist Party v Turkey* (1998) 27 EHRR 51; *Refah Partisi v Turkey* (2002) 35 EHRR 56; *Yazar v Turkey* (2002) 36 EHRR 6; and *Grande Oriente d’Italia de Palazzo Giustiniani v Italy* (2002) 34 EHRR 629 – national requirement to disclose membership of Freemasons unlawful. See also *NF v Italy* (2002) EHRR 106.

² *Council for Civil Service Unions v UK* (1988) 10 EHRR 269. *National Union of Belgian Police v Belgium* (1979) 1 EHRR 578.

³ *Unison v UK* (2002) IRLR 497, ECHR.

⁴ *Ahmed v UK* (2000) 29 EHRR 1, ECHR. *Council for Civil Service Unions v UK* (1988) 10 EHRR 269.

subject to restrictions on expression of views on political issues though such restrictions must be justified as necessary, if challenged.⁵

Protection of Public Morals

A publisher was convicted in England of publishing an obscene publication under the relevant legislation. The publication advocated sexual licentiousness, including illegality, attacked conventional thinking and was directed at schoolchildren. The ECHR held that the seizure of obscene publications was proscribed by law, necessary in a democratic society for the protection of morals, proportionate, within the margin of appreciation of a member state and, accordingly, a lawful restriction upon freedom of expression.⁶

Public Order

Public order must be maintained. A person is entitled to express unorthodox and provocative views in public, provided that there is no intention to incite violence and a police officer does not objectively and reasonably suspect a breach of the peace. The judge in *Redmond-Bates v DPP* said that freedom only to make purely inoffensive utterances would be valueless.⁷ It is the violent thugs who should be arrested. Lawful free speech in a public place could also be contentious, outrageous, unacceptable, disgusting, shocking, disturbing, heretical and unwelcome.

Conclusion

All of us can go along with majority platitudes. One basic test for democracy has long been said to be the way in which an unpopular minority is tolerated. Freedom of expression constitutes an essential foundation of a democratic society.

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⁵ House of Commons Disqualification Act 1975 s1(b). *Jersild v Denmark* (1995) 19 EHRR 1, para 37. *Otto-Preminger Institut v Austria* (1995) 19 EHRR 34, para. 50.

⁶ *Handyside v UK* (1979) 1 EHRR 737, ECHR.

⁷ (1999) 163 JP 789; (1999) Crim LR 998. See also the Public Order Acts 1936-1986-1996 and the Criminal Justice and Public Order Act 1994.