

## SINGAPORE

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1. What were the most important courts decisions on FoE in 2015 in your country/region in terms of their legal reasoning, legal outcome, and/or precedent setting?

There are three main judgments on FoE issued last year that were of particular significance:

- *Public Prosecutor v Amos Yee Pang Sang*: The Accused, Amos Yee (aged 16 years old) was charged under Section 298 of the Penal Code which criminalises the uttering of words with the deliberate intent of wounding the religious or racial feelings of any persons. Amos had uploaded a video that accused Lee Kuan Yew, the former Prime Minister of Singapore of being power-hungry and compared him with Christianity. Amos also faced a charge under Section 292(1)(a) of the Penal Code for transmitting by electronic means obscene materials. Amos had created a blog post, entitled “Lee Kuan Yew buttfucking Margaret Thatcher”, and uploaded a Photoshop photo of such an imagery. Amos was sentenced to a total of four weeks’ imprisonment. This case had garnered significant international attention, in part due to the tender age of the Accused. The UN Human Rights Office for instance, expressed its concern about the case, and called for the immediate release of Amos in line with the UN Convention on the Rights of the Child, which Singapore is a signatory to.
- *Lee Hsien Loong v Ngerng Yi Ling Roy*: The Defendant, Roy Ngerng, had written a blogpost where he compared the Prime Minister of Singapore, Mr. Lee Hsien Loong who is also the Chairman of GIC Private Limited (“GIC”) (which manages Singapore’s sovereign wealth fund), with the leaders of City Harvest Church who were at that point of time being tried for criminal misappropriation. The Court found that the said Article, when read as a whole conveyed the meaning that Lee Hsien Loong is guilty of criminal misappropriation. The allegation that there is a lack of transparency in the manner which the Central Provident Fund monies were being invested implies that Lee Hsien Loong, as the Prime Minister of Singapore and the Chairman of GIC, is not willing to be transparent about the finances of the Government and GIC because he wants to conceal the evidence of the criminal misappropriation, just like in the City Harvest Church’s case. The Court ordered Roy to pay \$150,000 in damages. The case is significant for two main reasons. First, many have argued that the use of defamation suits by members of the government leaders is a tool to stifle legitimate debate on matters of public interest (i.e. the management of public social security system). Roy’s case is but another example of such use of defamation suits to “stifle” alternative voices. Second, the high quantum of damages, which Roy has to pay, highlights the judiciary approach in consistently awarding high quantum of damages where the defamatory statement concerns members of the government (i.e. between \$100,000 - \$300,000). In comparison, when the defamatory statements

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concern a Plaintiff who is not a member of the Singapore Government or public leaders, the damages awarded are usually below \$100,000.

- *Au Wai Pang v Attorney General and another matter*: The Accused, Au Wai Pang, also known as Alex Au, is a relatively prominent local socio-political commentator who publishes commentary at yawningbread.wordpress.com.<sup>2</sup> Alex had written an article titled “377 wheels come off Supreme Court’s best laid plans”. Essentially, the said article had questioned the timing of the Court’s hearing of a case regarding the constitutionality of the law criminalising homosexuality and the composition of the bench hearing that case. The Court found him guilty of “scandalizing the court” as the said article alleged a vested and improper interest on the part of the Chief Justice in upholding the constitutionality of the homosexuality law and also alleged that one of the judge was complicit in this illicit plan. Thereby, the said Article had posed a real risk of undermining public confidence in the administration of justice, and Alex was convicted of contempt of court, and ordered to pay a fine of \$8000.

2. How would you describe the overall judicial environment as far as the protection of FoE is concerned?

In general, it seems that the judiciary affords only a relatively weak protection of FoE. Under Article 14 of the Constitution, every citizen of Singapore has the right to freedom of speech and expression, but Parliament may be law impose restrictions on such a right if it considers such restrictions as necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence.

In interpreting the constitutional right of FoE, the Courts have affirmed the need to interpret the restrictions which Parliament may impose in a “generous and not a pedantic” manner,<sup>3</sup> **thus giving great deference towards the legislative branch in imposing restrictions to the right of FoE.**

For instance, the Singapore Courts have been less unwillingly to interpret the Article 14 as permitting Parliament to impose only *reasonable restrictions* to the constitutional right of FoE.

3. What should we watch out for in 2016? What are the key cases on the agenda?

Currently, there is a sedition case going through the Courts. The case involves the Accused, Yang Kaiheng, who faces seven charges under the Sedition Act. Kaiheng was accused of publishing articles on the now defunct, The Real Singapore website (a socio-political website), articles, that has a tendency to “promote feelings of ill-will and hostility between different races or classes of the population of Singapore”. He was charged together with

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<sup>2</sup> The judgment for this case was issued in 2014.

<sup>3</sup> See the judgment of *Chee Siok Chin and Others v Minister for Home Affairs and Another*, especially at para 49 (link: <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/12786-chee-siok-chin-and-others-v-minister-for-home-affairs-and-another-2006-1-slr-582-2005-sghc-216>)

another co-accused, Ai Takagi. However, Ai Takagi pleaded guilty, and was sentenced to 10 months imprisonment. Kai Heng chose to claim trial instead.

The problem many have with the Sedition Act is that the definition of what constitutes “seditious” is defined very broadly. Under Section 3 of the Sedition Act, a seditious tendency is a tendency:-

- (a) to bring into hatred or contempt or to excite disaffection against the Government;
- (b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore;
- (d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore;
- (e) to promote feelings of ill-will and hostility between different races or classes of the population of Singapore.

Some argue that the above terms are relatively vague. By merely requiring the raising of discontent without requiring a limiting factor of a risk of violence for instance, might unduly fetter and limit the constitutional right of FoE.

#### In terms of trends:

4. Over time (1 to 3 years) and across judgments, are there general themes emerging, for instance with regard to: nature of the charges, legal reasoning, outcomes, other? 5. Over time, can you determine whether FoE jurisprudence (overall or on specific themes) is showing a gradual or sudden change, moving in a certain direction?

Both questions may be answered together. While the Courts have increasingly recognised the need to balance the interest of protecting FoE with ensuring that legitimate state and public interest are protected, there remains a tendency of the Court to not rule in favour of protecting the right of FoE. Thus far, not a single law imposing restrictions to FoE has been struck down as violating Article 14 of the Constitution. Constitutional Law Professor Jack Lee for example, argues that the our judiciary is one that is unduly deferential to Parliament.<sup>4</sup> As a result, the judiciary is less willing to closely scrutinise laws that impose restrictions to the right of FoE, preferring to give Parliament great discretion and latitude to determine where the proper boundaries of the right of FoE should be. Overall, the judiciary’s protection of the right of FoE still remains relatively weak.

#### In terms of global norms:

Finally, we would be grateful if you could reflect on the following question, which will be discussed throughout the Conference:

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<sup>4</sup> See: <https://singaporepubliclaw.com/2015/03/11/protecting-human-rights-singapore/#more-316>

6. Would you argue that there are global common norms on freedom of expression? If so, which norms are evident to you? (For this purpose, we are defining norms as per Sikkink's definition: *standard of appropriate behavior for actors with a given common identity, e.g. States*)

Yes, there are observable global norms on FoE such as the right being one of the most fundamental human right. That said, that there is also a growing consensus that the right of FoE is not an absolute one, especially in European countries where there is a rise of extreme right-wing parties. The difficulty lies in articulating what constitutes reasonable and acceptable limits to the right of FoE. Increasingly, more are willing to accept that hate speech or speech which causes individuals to be at risk of being subjected to violence are reasonable limits to the right of FoE.