

European Court of Human Rights judgments on the right to freedom of expression

Bulletin XLIV: BANNING JOURNALISTS FROM THE PROFESSION

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The European Court of Human Rights has dealt with a small number of cases which concerned the question whether a journalist can ever be banned from the profession – for example, for repeated acts of defamation or invasion of privacy. In none of the cases before it has the Court upheld such a ban, which it has described as extremely severe and a form of “prior restraint” which can be justified only in extreme circumstances. It has emphasised that prohibiting a journalist from working is a serious sanction in terms not only of its impact on the journalist concerned but also because of the wider chilling effect that such a sanction has on society.

Prohibition of practicing a certain profession, activity or duty is a security measure which can be imposed to a criminal offender in Montenegro as well, if it is reasonably believed that her/his further exercise of that duty would be dangerous (Art. 67, 73, CC).

The main cases considered by the Court are the following:

- ***De Becker v. Belgium*** (application no. 214/5), 27 March 1962: a lifetime ban on a journalist for collaborating with the enemy during wartime was a disproportionate interference with his right to freedom of expression
- ***Kaperzyński v. Poland*** (application no. 43206/07), 3 April 2012: prohibition of working as a journalist for two years for refusing to publish reply violated right to freedom of expression
- ***Cumpănă and Mazăre v. Romania*** (application no. 33348/96), 17 December 2004: prohibition on newspaper reporter and editor from working as journalists violated right to freedom of expression
- ***De Becker v. Belgium*** (application no. 214/5), 27 March 1962: a lifetime ban on a journalist for collaborating with the enemy during wartime was a disproportionate interference with his right to freedom of expression

This was the very first freedom of expression case considered by the Court. It concerned a journalist who had been sentenced to death for collaborating with the German authorities during the Second World War. The sentence was commuted and the journalist was released, but he was banned for life from participating in the publication of a newspaper.

The European Court of Human Rights decided to strike the case off its list because by the time the case came to it, Belgium had changed its laws and the question had become academic. However, the European Commission on Human Rights – one of the predecessor bodies of the current Court, which ruled on cases during the initial stage of proceedings, issued a formal report stating that a lifelong ban violated the right to freedom of expression. The Commission attached great importance to the extreme circumstances of that particular case. When the ban was imposed Belgium was just emerging from five years of war and enemy occupation, and the journalist had committed treason. In those circumstances, a temporary ban might be justified. However, the Commission considered that over time, as society emerged from the fog of war and attitudes changed, the ban should be reconsidered.

- ***Kaperzyński v. Poland*** (application no. 43206/07), 3 April 2012: prohibition of working as a journalist for two years for refusing to publish reply violated right to freedom of expression

This concerned the criminal conviction of a journalist for not having published a reply by a local mayor to an article which had been critical of the local sewage system. The journalist had written that the sanitary situation in the city posed significant public health risks and was a matter of public concern. He reported that the municipal authorities were dealing with the problems in a slow and incompetent manner because they were more interested in saving money; and that despite having been in office for two terms, the mayor had failed to deal with the issue. The mayor demanded a reply which the journalist refused, without stating reasons. The mayor lodged a complaint and the journalist was eventually sentenced to a suspended prison term and was prohibiting from working as a journalist for two years.

The European Court held that while the journalist had failed in his professional duties by not stating any reasons for his refusal to publish the mayor's reply, the sanction of denying him the right to work as a journalist had a deterrent effect on public debate.

The Court held:

“[A] criminal sentence depriving a media professional of the right to exercise his or her profession must be seen as very harsh. Moreover, it heightens the above mentioned danger of creating a chilling effect on the exercise of public debate. Such a conviction imposed on a journalist can only be said to have, potentially, an enormous dissuasive effect for an open and unhindered public debate on matters of public interest...” (par. 74)

- ***Cumpăna and Mazăre v. Romania*** (application no. 33348/96), 17 December 2004: prohibition on newspaper reporter and editor from working as journalists violated right to freedom of expression

This case concerned two journalists who had questioned the legality of a contract between a city council and a contractor for parking services. One of the individuals named was a judge who had been employed by the council as a legal expert, and she sued for defamation. She won and the journalists were, amongst other things, prohibited from working as journalists for one year. The

journalists appealed to the European Court of Human Rights which held that this violated their right to freedom of expression. With regard to the prohibition in particular, the Court held:

“Although the Contracting States are permitted, or even obliged, by their positive obligations under Article 8 of the Convention to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals’ reputations, they must not do so in a manner that unduly deters the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power. Investigative journalists are liable to be inhibited from reporting on matters of general public interest – such as suspected irregularities in the award of public contracts to commercial entities – if they run the risk, as one of the standard sanctions imposable for unjustified attacks on the reputation of private individuals, of being sentenced to ... a prohibition on the exercise of their profession.

The chilling effect that the fear of such sanctions has on the exercise of journalistic freedom of expression is evident. This effect, which works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed ...

The Court reiterates that prior restraints on the activities of journalists call for the most careful scrutiny on its part and are justified only in exceptional circumstances ... The Court considers that ... the sanction ... was particularly severe and could not in any circumstances have been justified by the mere risk of the applicants’ reoffending ...

The Court considers that by prohibiting the applicants from working as journalists as a preventive measure of general scope, albeit subject to a time-limit, the domestic courts contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society.” (paragraphs 113, 114, 118, 119)

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