

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

Bulletin XVII: ROUND-UP OF JUDGEMENTS FROM APRIL 2013

26 May 2013

During April 2013, the European Court adopted judgments in the following media freedom and freedom of expression cases:

- **Resnik v. Russia** (no. 4977/05), 4 April 2013 (defamation conviction of lawyer for criticising conduct of prison officers violated the right to freedom of expression);
- **Saint Paul SA v. Luxembourg** (no. 26419/10) 18 April 2013 (search of premises of media company breached right to freedom of expression and right to privacy); and
- **Animal Defenders International v. United Kingdom** (no. 48876/08) 22 April 2013 (ban on political broadcast advertisements does not violate the right to freedom of expression)

The judgments concerned the following issues.

- **Resnik v. Russia** (no. 4977/05), 4 April 2013: defamation conviction of lawyer for criticising conduct of prison officers violated the right to freedom of expression

This concerned defamation proceedings against the president of the Moscow City Bar for critical statements on a live TV show about the conduct of male prison warders who had searched the female lawyer representing the prominent businessman Mikhail Khodorkovskiy. Mr Reznik had appeared on a TV talk show, together with a representative of the Ministry of Justice, and stated that there had been no grounds for carrying out a search and criticised the fact that it had been carried out by male prison warders “rummaging about the body” of the female lawyer. The remand centre and two of its warders lodged defamation proceedings against Mr Reznik, claiming that he had made false statements about them, and that they had not carried out a search but had merely inspected the lawyer’s documents. The Moscow City Court granted their claim and ordered Mr Reznik to pay compensation, while the TV channel was ordered to broadcast a rectification.

The European Court of Human Rights held that the defamation finding violated Mr Reznik’s right to freedom of expression. It considered that the statement had been made as part of a live TV debate, on a matter which had sparked great public interest around the country. The Court was not convinced by the Russian Government’s argument that, being a lawyer, Mr Reznik should have

shown particular meticulousness in his choice of words. The Court emphasised that lawyers have the right to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds. Mr Reznik had spoken to a lay audience of television viewers, not to legal experts. The word “search”, with which the Moscow City Court had found fault – holding that the prison officers had carried out an “inspection” with Ms A. rather than having searched her – was, in everyday language, an appropriate description of the procedure to which Ms A. had been subjected. Moreover, the TV talk show between Mr Reznik and the Ministry representative had encouraged a frank exchange of views so that the opinions expressed would counterbalance each other. As the discussion had been broadcast live, Mr Reznik had had no possibility to reformulate his words before they were made public. Furthermore, the representative of the Ministry of Justice had been given the floor after Mr Reznik and thus could have dispelled any allegation which he considered to be untrue. The Court considered furthermore that Reznik had not identified the prison officers concerned.

- *Saint Paul SA v. Luxembourg* (no. 26419/10) 18 April 2013: search of premises of media company breached right to freedom of expression and right to privacy

This concerned a newspaper which had published an article about families losing custody of their children. The article was signed by “Domingos Martins”, but this name did not appear on the list of Luxembourg press council journalists, although there was a journalist named “Alberto De Araujo Domingos Martins”. A defamation complaint was made and a criminal investigation was opened. In March 2009 a search warrant was issued to obtain documents in relation to these offences, including in relation to the identification of the author of the article.

The European Court of Human Rights held that the search warrant violated the right to privacy as well as the right to freedom of expression. It stated that Article 8 of the European Convention on Human Rights protects privacy not only of individuals, but extends also to offices and business premises. It considered that the stated purpose of the search – to identify the author of the article – was questionable: the author of the article was easily identifiable. The Court also considered that there was a real danger that the search would be used to obtain information about the journalist’s sources. This was in violation of the right to freedom of expression.

- *Animal Defenders International v. United Kingdom* (no. 48876/08) 22 April 2013: ban on political broadcast advertisements does not violate the right to freedom of expression

This concerned a complaint by a non-governmental organisation that it had been denied the possibility to advertise on TV or radio. The organisation had wanted to screen a TV advertisement with images of a girl in chains in an animal cage followed by a chimpanzee in the same position. The Broadcast Advertising Clearance Centre, the body responsible for clearing advertisements, refused to clear the advert because it judged ADI’s objectives to be political in nature. The BACC decision was upheld on in the domestic courts.

The European Court of Human Rights held that the refusal did not violate the right to freedom of expression. It considered, on the one hand, the applicant NGO’s right to impart information and ideas of general interest which the public is entitled to receive, and, on the other hand, the authorities’ desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media. The European Court took strong

account of the fact that the complex regulatory regime governing political broadcasting in the United Kingdom had been subjected to detailed review by both parliament and the courts. There had been extensive pre-legislative review of the ban on political advertising, while the proportionality of the ban was examined in detail in the High Court and the House of Lords.

The European Court found that the UK had demonstrated that there was a need to regulate political advertisements in broadcasting. It found that the broadcast media is highly influential, and its impact is immediate and powerful. Broadcast advertising was expensive, and if political ads were allowed only rich and wealthy NGOs would be able to have access to broadcast adverts, creating inequality which would be unfair.

The Court also noted that the ban only applied to advertising and that NGOs still had access to alternative media, both broadcast (through election broadcasts, radio and television discussion programmes of a political nature or adverts on radio and television on non-political matters) and non-broadcast (print media, the internet and social media, demonstrations, posters and flyers). The Court finally considered that there was no European consensus on how to regulate paid political advertising in broadcasting, which meant that the UK Government had more room for manoeuvre when deciding on these matters.

It should be noted that the judgment was not unanimous: Judges Ziemele, Sajó, Kalaydjieva, Vučinić and De Gaetano expressed a joint dissenting opinion and Judge Tulkens expressed a dissenting opinion, joined by Judges Spielmann and Laffranque.

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Bulletins are published within the project “Monitoring of Journalistic Self-Regulatory Bodies in Montenegro” funded by the British Embassy Podgorica.
