

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

Bulletin XXX: ROUND-UP OF JUDGEMENTS: JANUARY 2014

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During January 2014, the European Court adopted judgments and decisions in the following freedom of expression cases:

- ***Ringier Axel Springer Slovakia, a.s. v. Slovakia no. 2*** (application no. 21666/09), 7 January 2014 (failure by domestic courts to consider the right to freedom of expression in a defamation case violated the right to freedom of expression);
- ***Ringier Axel Springer Slovakia, a.s. v. Slovakia no. 3*** (application no. 37986/09), 7 January 2014 (failure by domestic courts to consider the right to freedom of expression in a defamation case violated the right to freedom of expression);
- ***Ruusunen v. Finland*** (application no. 73579/10) and ***Ojala and Etukeno Oy v. Finland*** (application no. 69939/10), 14 January 2014 (book that contained intimate details of the relationship between a single mother and the Finnish prime minister violated right to privacy);
- ***Lavric v. Romania*** (application no. 22231/05), 14 January 2014 (baseless newspaper allegations of impropriety by a prosecutor violated the right to respect for reputation);
- ***Tierbefreier e.V. v. Germany*** (application no. 45192/09), 16 January 2014 (injunction on use of undercover footage by animal protesters did not violate right to freedom of expression);
- ***Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*** (application no. 21377/03), 21 January 2014 (closure of publishing company without sufficient ground violated right to freedom of expression);
- ***De Lesquen du Plessis-Casso v. France no. 2*** (application no. 34400/10), 30 January 2014 (defamation conviction for baseless allegations against a town mayor did not violate right to freedom of expression).

These cases concern the following issues:

- ***Ringier Axel Springer Slovakia, a.s. v. Slovakia no. 2*** (no. 21666/09), 7 January 2014: failure by domestic courts to consider the right to freedom of expression in a defamation case violated the right to freedom of expression

This concerned an article about a car driver who had hit a pedestrian, who later died. The pedestrian was the son of a chief prosecutor and the driver was detained following the incident. The article focused on the long time the Slovakian courts were taking to address the driver's request for bail. The article also mentioned the name of the chief prosecutor and that of his son. The prosecutor sued the publishers for libel, submitting that the article had caused him pain and distress. He succeeded and the newspaper was ordered to apologise and pay damages of 100,000 Slovak korunas (the equivalent of around 2,600 euros (EUR) at that time). The publishers appealed to the European Court of Human Rights.

The Court held that there had been a violation of the right to freedom of expression. It noted that the Slovakian courts had focused only on the facts that the accident constituted a tragedy for the family and that the disclosure of their identity together with a description of the accident had revived the family's suffering. The domestic courts had failed to take into account the overall content of the article, in particular the question marks around the prolonged detention of the driver. Furthermore, the European Court noted that the Slovakian Constitutional Court had dismissed the newspaper's appeal stating that it could only consider violations of procedural rules, and not review whether lower courts had sufficiently protected the newspaper's right to freedom of expression. Neither the Constitutional Court nor the lower courts in Slovakia had given any consideration to the question whether the article had been published in good faith, or to the overall public interest in the publication of the article. The domestic courts had thus failed to fulfil their duties under the European Convention on Human Rights.

- ***Ringier Axel Springer Slovakia, a.s. v. Slovakia no. 3*** (no. 37986/09), 7 January 2014: failure by domestic courts to consider the right to freedom of expression in a defamation case violated the right to freedom of expression

This concerned a series of articles about a contestant on the TV quiz "Who Wants To Be A Millionaire?". The articles stated that there had been a dispute between the organisers of the quiz and the contestant, the organisers claiming that the contestant had cheated; and the contestant claiming that the EUR 50,000 question had been ambiguous, and that he had in fact answered it correctly. After publication of the articles, the contestant sued the publishers for defamation, claiming that it was wrong to say he was a cheat and that a criminal investigation had been started against him. The courts agreed and the publishers were ordered to publish an apology and pay the contestant the equivalent of EUR 1,450 in damages. The publishers appealed to the European Court of Human Rights.

The Court held that there had been a violation of the right to freedom of expression. It noted that the domestic courts had failed to take into consideration whether the articles related to a matter of public interest; whether they had been published in good faith; or any other criteria relevant to the

assessment of the publishers' compliance with its "duties and responsibilities" under the right to freedom of expression. The Court noted furthermore the failure of the Slovakian Constitutional Court to consider whether the applicant's right to freedom of expression had been violated. The domestic courts had thus failed to fulfil their duties under the European Convention on Human Rights.

- ***Ruusunen v. Finland*** (no. 73579/10) and ***Ojala and Etukeno Oy v. Finland*** (no. 69939/10), 14 January 2014: **book that contained intimate details of the relationship between a single mother and the Finnish prime minister violated right to privacy**

This concerned the publication of a book by a single mother who had had a relationship with Finland's prime minister, Matti Vanhanen (Ruusunen was the book's author; Ojala the publisher; and Etukeno Oy was the publishing company). The book, which was published whilst Vanhanen was still Prime Minister, detailed how their relationship had developed; their different lifestyles; Vanhanen's children; as well as details of their sex life. Upon publication of the book, the public prosecutor brought charges for breaching the privacy of the prime minister. The Finnish courts agreed that the book's references to their sex life had unlawfully violated the Prime Minister's right to privacy and imposed a fine as well as a forfeit of part of the book's proceedings. The book's author and publishers appealed to the European Court of Human Rights.

The European Court held that there been no violation of the right to freedom of expression. It agreed that there was certainly a public interest in the subject matter of the book, stating that,

"...the former Prime Minister had been a public figure at the time when the book was published. He was thus expected to tolerate a greater degree of public scrutiny which may have a negative impact upon his honour and reputation than a completely private person."

However, the Court disagreed that publication of sexual aspects of their relationship was in the public interest. Ruusunen had argued that inclusion of these details had been necessary since readers would be guessing if they had been left out. The European Court disagreed, noting that the Finnish courts had carried out a full balancing of the applicant's right to freedom of expression with the Prime Minister's right to privacy.

- ***Lavric v. Romania*** (no. 22231/05), 14 January 2014: **baseless newspaper allegations of impropriety by a prosecutor violated the right to respect for reputation**

This concerned a prosecutor who had been subject to disciplinary proceedings. A newspaper had commented on these proceedings whilst they were ongoing, alleging that the prosecutor had falsified indictments; had "cheated" and that innocent people had been imprisoned as a result. After the disciplinary proceedings had been concluded the prosecutor sued for defamation. At first instance she won a judgment finding the journalist guilty of defamation and ordering him to pay a fine; but on appeal, the journalist was acquitted. The prosecutor appealed to the European Court of Human Rights arguing that her right to respect for privacy and reputation had been violated.

The European Court found that there had been a violation of the right to respect for privacy and reputation. It stated the allegations made were allegations of serious misconduct that went beyond mere statements of opinion. These were statements of fact, for which the journalist had absolutely no proof. The journalist had simply reproduced rumours and allegations made by someone else. As such the journalist had not acted with the professional care required of him and had overstepped the limits of professional conduct.

- ***Tierbefreier e.V. v. Germany*** (no. 45192/09), 16 January 2014: **injunction on use of undercover footage by animal protesters did not violate right to freedom of expression**

This case concerned an injunction preventing an association of animal rights activists from publishing footage which had been secretly filmed on the premises of a company that performs experiments on animals for the pharmaceutical industry. The footage had been taken from documentary films which had been shown by several TV networks; but the association's compilation of the footage – a film of about 20 minutes with the title "Poisoning for profit" – was ordered to be withdrawn from its website. The association appealed to the European Court of Human Rights.

The European Court found that there had been no violation of the right to freedom of expression. It considered, first, that the domestic courts had carefully examined whether the injunction would violate the applicant association's right to freedom of expression. The domestic courts had acknowledged that the film material related to an issue of public interest, which called for special protection under the right to freedom of expression. However, the German courts had also considered that the way the animals were being treated was not illegal, and that further dissemination of the material by the association would seriously violate the company's rights. The association had previously violated the company's rights and made personal attacks against the company's executives, which had also been taken into account when the injunction was granted. The European Court noted that domestic courts had applied the appropriate standards and saw no reason to disagree with their assessment.

- ***Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*** (no. 21377/03), 21 January 2014: **closure of publishing company without sufficient ground violated right to freedom of expression**

This case concerned the dissolution in 2001 of the publishing company, "Mesopotamia Publishing". Following police searches of three of its local branch offices and the confiscation of allegedly illegal publications, including material allegedly used for propaganda in favour of the illegal Kurdistan Workers' Party, a court ordered the dissolution of Mesopotamia Publishing on the basis that its activities were against public order. All appeals to have it reinstated were futile. The company complained to the European Court of Human Rights.

The European Court held that there had been a violation of the right to freedom of expression. It noted that while the company had ostensibly been dissolved for engaging in activities "against public order", it was unclear which of its activities were of such a nature. While searches had been conducted in some of the company's offices and materials had been confiscated, subsequent criminal proceedings against the company had been discontinued. No criminal convictions had ever

been delivered in respect of Mesopotamia Publishing. There being no evidence that the company had ever engaged in any activities against public order, the Court therefore held that its dissolution breached its right to freedom of expression.

- ***De Lesquen du Plessis-Casso v. France no. 2*** (no. 34400/10), 30 January 2014: **defamation conviction for baseless allegations against a town mayor did not violate right to freedom of expression**

This concerned the conviction for defamation of a local councillor for comments addressed to his mayor in an open letter which had been published on the Internet. In response to an invitation to attend a ceremony to pay tribute to French army soldiers during the Algerian war, the councillor had alleged that the mayor had waited until the end of the war to request French nationality, so that he could avoid military service in Algeria. The mayor sued for defamation and won. The councillor appealed to the European Court of Human Rights.

The European Court held that the defamation conviction did not violate the right to freedom of expression. It stated that while the remarks had been made in the context of a debate on a matter of public interest, and that political speech should not be restricted lightly, the applicant had produced absolutely no evidence for the truth of the allegations he had made. Accordingly, he had overstepped the permissible limits of the right to freedom of expression.

Prepared by Peter Noorlander, Director of Media Legal Defence Initiative, London in cooperation with HRA



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