

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

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During July 2014, the European Court adopted judgments in the following freedom of expression cases:

- **A.B. v. Switzerland**, application no. 56925/08, 1 July 2014 (conviction for publication of documents from judicial investigation violated right to freedom of expression)
- **Şik v. Turkey and Nedim Şener v. Turkey**, application nos. 53413/11 and 38270/11, 8 July 2014 (detention of journalists who had written about the investigation into an attempted coup d'état violated the right to freedom of expression)
- **Axel Springer v. Germany (No. 2)**, application no. 48311/10, 10 July 2014 (prohibition on publishing allegations made by a politician about the federal chancellor violated right to freedom of expression)

These cases concern the following issues:

- **A.B. v. Switzerland**, application no. 56925/08, 1 July 2014 (conviction for publication of documents from judicial investigation violated right to freedom of expression)

This concerned a journalist who had reported on the criminal proceedings against someone who had run over and killed three pedestrians and injured eight others. The report described the defendant's background, gave a summary of the questions asked by the police and the investigating judge and the defendant's replies and was illustrated by a number of photographs of letters that had been sent to the investigating judge. The journalist was convicted of publishing confidential documents and fined €2667. He appealed to the European Court of Human Rights.

The European Court of Human Rights held that the conviction violated the right to freedom of expression. It recalled that the public has a right to be informed of criminal proceedings. The Court considered that the domestic courts had confined itself to finding that both the premature disclosure of the statements and the letters from the accused to the judge had damaged the right of the defendant to be presumed innocent and to have a fair trial. However, the main hearings in the trial had not taken place until two years later, and the documents discussed in the article were by then considered to be of secondary importance. Furthermore, the Court found it important that the trial was conducted before professional judges, not a lay jury. In these circumstances, the Court did not agree that publication of the materials could have influenced the defendant's trial. The Court also noted that the defendant could himself have sued for invasion of privacy, but had not done so.

- ***Nedim Şener v. Turkey and Şik v. Turkey***, application nos. 38270/11 and 53413/11, 8 July 2014 (detention of journalists who had written about the investigation into an attempted coup d'état violated the right to freedom of expression)

This concerned two investigative journalists who had been detained for more than a year on suspicion of aiding and abetting an organisation named 'Ergenekon', whose members had been suspected of plotting a military coup d'état. The journalists had written books in which they accused the government of infiltrating Islamist extremists into the State apparatus, and that the trial against the Ergenekon leaders had been diverted from its proper purpose by these same Islamist leaders. They had not been informed of the evidence against them because of the authorities' refusal to allow them to consult the case file for reasons of confidentiality. They finally claimed that their detention pending trial, for more than a year, and the investigations carried out prevented them from working as investigative journalists and required them to censor themselves.

The European Court of Human Rights held that the journalists' right to freedom of expression had been violated as well as their right to liberty. The Court observed that the offence of "bringing pressure to bear on the judicial authorities in charge of a criminal investigation" had been central to the accusations against the applicants. However, this was not one of the offences which, under the Turkish penal code, warranted pre-trial detention and it was therefore doubtful whether the detention of the two had been lawful. The journalists had lodged several requests for bail, all of which had been denied without any specific reasons being given. The Court also observed that the accusations against the journalists had been based mainly on documents and computer files that had been seized from third parties, and the prosecution authorities had not disclosed these to the lawyers for the journalists for reasons of 'confidentiality'. This made it impossible for the journalists to challenge the lawfulness of their detention.

Finally, the Court observed that by detaining the journalists for such a long time, without justification, the Turkish authorities had exerted a 'chilling effect' on the journalists' right to freedom of expression. The imprisonment of the two journalists had created a climate of self-censorship for any investigative journalist wanting to research and comment on the conduct and actions of State authorities. As well as violating the journalists' right to liberty, the authorities had therefore also violated the right to freedom of expression.

- ***Axel Springer v. Germany (No. 2)***, application no. 48311/10, 10 July 2014 (prohibition on publishing allegations made by a politician about the federal chancellor violated right to freedom of expression)

This concerned a ban on the publication by the daily newspaper, *Bild*, of allegations made by a senior opposition politician regarding the former German Chancellor, Gerhard Schröder. The opposition politician had alleged that Schröder had called early elections because he knew that his party would do badly and that he would lose the chancellorship, but he had a lucrative position coming up on the board of a German-Russian joint venture to build a gas pipeline – a deal which he himself had negotiated with the Russian President, Putin. *Bild* had included these allegations in an article. Schröder considered the allegation to be defamatory and obtained a court order banning any further publication. *Bild* complained to the European Court of Human Rights.

The European Court of Human Rights held that Bild's right to freedom of expression had been violated. The Court noted that the allegation regarding Mr Schröder's private business was clearly connected to his conduct as Federal Chancellor and his controversial appointment to a German-Russian gas consortium shortly after he ceased to hold office as Chancellor. The allegation had been made by a senior opposition politician, as part of a political debate on an issue of public interest. While the German courts had criticised *Bild* for being one-sided in its comments and not reflecting Schröder's side of the story, the European Court of Human Rights held that this had not been necessary. As the former Chancellor, one of the highest political offices in Germany, Schröder had to show a much greater degree of tolerance than a private citizen. The Court also remarked that it was an important function for the press to be able to report on political debate. To punish the media for reporting statements made by another person would seriously hamper its ability to report the news. The Court also stated that a newspaper could not be required to verify systematically the merits of every comment made by one politician about another, when such comments concerned an issue of

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