

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

Bulletin XXXVII: ROUND-UP OF JUDGEMENTS: JUNE 2014

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

- **Schuman v. Poland**, application no. 52517/13, 3 June 2014 (defamation conviction for false allegations did not violate the right to freedom of expression)
- **Sylka v. Poland**, application no. 19219/07, 3 June 2014 (discontinuation of proceedings against applicant for insulting police officers meant he had not suffered a real disadvantage and his complaint to the European Court was inadmissible)
- **Couderc and Hachette Filipacchi v. France**, application no. 40454/07, 12 June 2014 (privacy award against magazine for publishing article regarding the illegitimate son of the Prince of Monaco violated the right to freedom of expression)
- **Aslan and Sezen v. Turkey**, application nos. 43217/04, 15066/05, 17 June 2014 (conviction of journalists for reporting statement by member of a terrorist organisation violated the right to freedom of expression)
- **Belek and Öztürk v. Turkey**, application nos. 10752/09, 4375/09, 4327/09, 4323/09, 28616/08, 28470/08, 17 June 2014 (conviction of journalists for reporting statement by member of a terrorist organisation violated the right to freedom of expression)
- **Roşianu v. Romania**, application no. 27329/06, 24 June 2014 (refusal by a mayor to provide information to journalist violated right to freedom of expression)
- **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)

These cases concern the following issues:

- **Schuman v. Poland**, application no. 52517/13, 3 June 2014 (defamation conviction for false allegations did not violate the right to freedom of expression)

This concerned the editor of a news website which had reported that a local politician who was also the head of a local sports club had used the grounds of the club for his private business, earning him nearly €68,000. The councillor sued for defamation, saying that he had only earned a very small amount: €68. The domestic courts agreed that the report on the website had made it seem as though a major offence had been committed, which was false and misleading. It awarded the councillor damages. The journalist appealed to the European Court of Human Rights.

The European Court of Human Rights dismissed the application as 'manifestly ill-founded', holding that the Polish courts had been correct in their assessment of the case. By inflating the amount that had been earned, the website had presented a misleading report of what happened.

- ***Sylka v. Poland***, application no. 19219/07, 3 June 2014 (discontinuation of proceedings against applicant for insulting police officers meant he had not suffered a real disadvantage and his complaint to the European Court was inadmissible)

This concerned a man who had been stopped by police for driving without a seatbelt. He insulted the police officers. He was fined for not wearing a seatbelt, and the police officers also took proceedings against him for insult. These proceedings were discontinued and the applicant was put on probation for a year. He was also ordered to pay €125 to a charity and €25 in court costs. He appealed to the European Court of Human Rights.

The European Court of Human Rights noted that the European Convention had been amended to allow the Court to declare inadmissible any application when the applicant has not suffered "a significant disadvantage". The Court noted that the proceedings against the applicant had been discontinued and that the financial penalty imposed had been light. This meant the applicant had not suffered a "significant disadvantage". The Court also noted that the case did not concern an important point of principle, nor was there any other compelling reason to consider the case. It therefore declared it inadmissible.

- ***Couderc and Hachette Filipacchi v. France***, application no. 40454/07, 12 June 2014 (privacy award against magazine for publishing article regarding the illegitimate son of the Prince of Monaco violated the right to freedom of expression)

This concerned a magazine, which had published an article about a woman who claimed that the reigning Prince of Monaco was the father of her son. The information came from the woman, who had contacted the media when the Prince would not acknowledge that he was the father. The article was accompanied with photographs of the Prince together with the child and was also published in a German magazine. An English newspaper had already reported on the story. The Prince sued for invasion of privacy and won damages of €50,000. The court also ordered details of the judgment to be printed in a full-page feature on the front cover of the magazine. The Prince subsequently admitted that the child was his.

The Prince also sued for invasion of privacy in the German courts, but his claim there was dismissed on the grounds that the public's right to be informed regarding a possible male heir to

the throne of Monaco outweighed any privacy interests. The German courts also considered that it was for the child's mother and not for the Prince, who had not acknowledged paternity, to decide whether the disclosure of the child's existence was a private matter.

The European Court of Human Rights held that the judgment by the French courts violated the magazine's right to freedom of expression. It considered that the issue of a possible heir was a matter of public importance, and, like the German courts, it also held that the case was not simply one between the Prince and the magazine but also concerned the mother and her child, and the child's right to have his identity recognised. The mother had provided information to the press and had played a pivotal role in the publication of the article in question. The Court noted that the mother had a legitimate claim to publicity, particularly given that the Prince had not recognised the child, and the Prince should not be able to stop by claiming his own right to privacy. The photographs that accompanied the article had been taken with the Prince's consent, in the mother's apartment. Furthermore, the Court considered that because English and French magazines had also reported the story, the information could no longer be regarded as confidential. Finally, the Court took into consideration that no defamatory allegations had been made and that the Prince had not contested the truth of the issue – namely, that the child was his.

- ***Aslan and Sezen v. Turkey***, application nos. 43217/04, 15066/05, 17 June 2014 (conviction of journalists for reporting statement by member of a terrorist organisation violated the right to freedom of expression)

This concerned the owner and editor-in-chief of a magazine which had published an article reporting on a clash between the Turkish army and the Workers' Party of Kurdistan (PKK), an illegal armed organisation in Turkey, and another article in which it quoted one of the representatives of the PKK. The Turkish State Security Court ordered the seizure of the magazine and the owner and editor were prosecuted and fined. The magazine was ordered to be closed for a day in respect of the first article, and a further week in respect of the second article.

The European Court of Human Rights held that the articles did not incite hatred or constituted a call to arms, and that they did not endorse any terrorist policies. The conviction for merely reproducing the statements of someone considered to be a member of a terrorist organisation or reporting on a clash involving such an organisation therefore violated the right to freedom of expression.

- ***Belek and Özturk v. Turkey***, application nos. 10752/09, 4375/09, 4327/09, 4323/09, 28616/08, 28470/08, 17 June 2014 (conviction of journalists for reporting statement by member of a terrorist organisation violated the right to freedom of expression)

This concerned the owner and editor-in-chief of a daily newspaper, which had published various articles that contained statements by the Workers' Party of Kurdistan (PKK), an illegal armed organisation in Turkey. They were convicted for publishing statements by an illegal armed organisation, an offence punishable under the Turkish Prevention of Terrorism Act, and

ordered to pay a small fine. They appealed to the European Court of Human Rights arguing that their right to freedom of expression had been violated. They also complained that because of the small size of the fine they had not been able to appeal their case to the Turkish Court of Cassation.

The European Court of Human Rights held that the articles did not incite hatred or constituted a call to arms, and that they did not endorse any terrorist policies. The conviction for merely reproducing the statements of someone considered to be a member of a terrorist organisation therefore violated the right to freedom of expression. With regard to the inability to appeal to the Court of Cassation, the Court found that this constituted a denial of the right of access to justice.

- ***Roşianu v. Romania***, application no. 27329/06, 24 June 2014 (refusal by a mayor to provide information to journalist violated right to freedom of expression)

This concerned the refusal by a mayor to disclose information about the use of public money to a journalist. The mayor had also refused to comply with court decisions ordering him to hand over the information requested, and had instead invited the journalist to come to the town hall to make photocopies of thousands of pages of documents himself.

The Court held that by refusing to comply with a court order, the mayor had deprived the applicant of effective access to a court. The Court considered that there had not been any suggestion by the Romanian government that the interference in the journalist's right had been prescribed by law or that it pursued a legitimate aim. The Court emphasised that the journalist had made the request as part of his investigations on a matter of public importance. Given that the journalist's intention had been to communicate the information to the public and thereby to contribute to the public debate on good public governance, his right to impart information had clearly been impaired. The Court held that the invitation by the mayor to come and photocopy the documents could not possibly amount to execution of a judicial decision ordering disclosure of information of a public nature.

- ***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 €2667.¹ He appealed to the European Court of Human Rights.

¹ Under Swiss law, any documents related to police or judicial investigations are secret until a case has been closed. Only a senior police officer or a judge may give permission for documents or parts of a file to be made public, for example when this is necessary as part of a public appeal for information related to a crime.

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.

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