

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

Bulletin XIX: ROUND-UP OF JUDGEMENTS FROM MAY AND JUNE 2013

26 July 2013

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

- **LLC 'Vesti' and Ukhov v. Russia** (Application no. 21724/03), 30 May 2013 (defamation conviction for allegations of misuse of public funds did not violate the right to freedom of expression);
- **Uldis Dreiblats v. Latvia** (Application no. 8283/07), 4 June 2013 (complaint regarding disclosure of sources inadmissible for failure to exhaust domestic remedies); and
- Youth Initiative for Human Rights v. Serbia (Application no. 48135/06/07), 25 June 2013 (access to information regarding surveillance conducted by security services)

These judgments concerned the following issues:

- **OOO 'Vesti' and Ukhov v. Russia** (Application no. 21724/03), 30 May 2013 **defamation conviction for allegations of misuse of public funds did not violate the right to freedom of expression**

This concerned a newspaper which had published an article reporting a news conference that had been held by a regional Federal Inspector and the Mayor of a city. The article was critical of some of the activities of the two and stated that investor had shied away from certain cultural projects because of concerns the funds would go into the pockets of the Federal Inspector, and he would spend the funds on 'lovers'. The Inspector brought defamation proceedings and was awarded damages of around €650. The domestic court found that no evidence had been produced the concerning the truth of the allegations.

The European Court held that the defamation conviction did not violate the right to freedom of expression. It considered that while it was regrettable that the domestic court had not clarified whether the statement was an allegation of fact or a statement of opinion, even a statement of opinion needed some basis in fact. It noted that the applicants had not tried to establish a

sufficiently accurate and reliable factual basis for the allegation that the Federal Inspector had lovers and might spend public funds on them. It noted that, “even public figures may legitimately expect to be protected against the propagation of unfounded rumours relating to their private life...” Considering furthermore that the amount of damages was not excessive, the Court concluded that the conviction did not violate the right to freedom of expression.

- **Uldis Dreiblats v. Latvia** (Application no. 8283/07), 4 June 2013 **complaint regarding disclosure of journalist’s sources inadmissible for failure to exhaust domestic remedies**

This concerned a journalist who had been ordered to disclose how he had obtained the transcript of a telephone conversation involving a candidate in the elections, which had been recorded by the Security Police in the context of a criminal investigation for tax evasion. A court had ordered that the journalist’s source should be disclosed, and this order was upheld on appeal. The Court of Appeal referred to an upcoming NATO summit in the country which justified heightened security. When the journalist refused to comply with the court order, criminal proceedings were started for non-compliance and he was fined the equivalent of €1,712. The conviction was upheld on appeal; but on further appeal, to the Supreme Court, the conviction was quashed. The journalist then wrote to the Prosecutor General asking for an apology, which was denied. He was however informed of the possibility to institute civil proceedings for damages. He did not do this but instead lodged a complaint with the European Court of Human Rights arguing that he had not had adequate redress for a violation of his rights. He also complained that the first request for disclosure of sources had been heard by a court in his absence.

The European Court declared the complaint inadmissible, stating that the applicant had failed to follow the domestic law procedure to obtain damages caused by unlawful activities of investigators, prosecutors or courts. As regards the complaint that the journalist had not been heard when a request for the disclosure of sources was first made, the European Court of Human Rights held that because this hearing did not involve the determination of his civil rights or of a criminal charge, Article 6 of the Convention (which protects the right to a fair trial) did not apply.

- **Youth Initiative for Human Rights v. Serbia** (Application no. 48135/06/07), 25 June 2013 **access to information regarding surveillance conducted by security services**

This concerned an application by an NGO which had requested the Serbian intelligence agency (Bezbednosno-informativna agencija) to inform it how many people had been subjected to electronic surveillance in 2005. The agency refused, but the country’s Information Commissioner (Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti), ordered it to release the information. The agency appealed, but the Supreme Court of Serbia dismissed its appeal. Then, the intelligence agency notified the applicant that it did not hold the information requested.

The European Court of Human Rights held that the agency’s actions violated the applicant’s right to freedom of expression. It stated that the notion of “freedom to receive information” includes

a right of access to information; and that the activities of the NGO concerned a matter of public interest. It noted that the applicant requested the intelligence agency to provide it with factual information concerning the use of electronic surveillance measures which the agency had first refused to disclose and then claimed it did not have. The Court held that the agency's statement that it did not have the information was "unpersuasive" and concluded that the intelligence agency's refusal was in defiance of domestic law and tantamount to arbitrariness.

The Court ordered Serbia to ensure that the intelligence agency of Serbia provide the applicant with the information requested within three months.

In a joint concurring opinion, Judges Sajó and Vučinić emphasised the need to interpret Article 10 in conformity with developments in international law regarding freedom of information, which entails a right of access to information held by public bodies. They referred to the Court's recent case law on access to information (*Gillberg v. Sweden* no. 41723/06, § 74, 3 April 2012), to other legal developments including the adoption of the Council of Europe Convention on Access to Official Documents (2009, not yet in force), and highlighted three implications of this judgment that the Court should address. First, they stated that the distinction between 'journalism' and other members of society was fast disappearing, particularly in view of the development of the internet. Government should be open and transparent with respect to all citizens. Second, they stated that Governments should take active steps to ensure the provision of information to citizens. Third, they stated that there should not be a more restrictive regime for access to personal data than existed for access to information for the general public.

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