

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

Bulletin XX: ROUND-UP OF JUDGEMENTS FROM JULY 2013

1 August 2013

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

- **di Giovanni v. Italie** (Application no. 51160/06), 9 July 2013 (formal warning for a judge who had made unfounded allegations of corruption in judicial appointments did not violate right to freedom of expression);
- **Morice v. France** (Application no. 29369/10), 11 July 2013 (defamation conviction for lawyer who had made sharply critical comments of investigating judges did not violate the right to freedom of expression);
- **Remuszko v. Poland** (Application no. 1562/10), 16 July 2013 (refusal by private newspapers to publish an advertisement by a third party did not violate third party's right to freedom of expression);
- **Węgrzynowski and Smolczewski v. Poland** (Application no. 33846/07), 16 July 2013 (continuing publication of defamatory article on internet archives did not violate the right to respect for private life);
- **Nagla v. Latvia** (Application no. 73469/10), 11 July 2013 (search of journalist's home and seizure of laptop and other materials violated right to freedom of expression);
- **Belek and Özkurt v. Turkey** (Application no. 1544/07), 16 July 2013; (conviction for publishing a statement of alleged terrorist group representative violated the right to freedom of expression);
- **Sampaio e Paiva de Melo v. Portugal** (Application no. 33287/10), 23 July 2013 (criminal defamation penalty for statement of opinion on a matter of public interest violated the right to freedom of expression)

The judgments concerned the following issues.

- *di Giovanni v. Italie* (no. 51160/06) 9 July 2013: formal warning for a judge who had made unfounded allegations of corruption in judicial appointments did not violate right to freedom of expression

This concerned a judge who had stated, in a newspaper interview, that one of the members of the board of examiners for new judges had used his influence to help a relative. She was found guilty of having failed in her duty of respect and discretion with regard to members of the board of examiners, and was given a formal warning.

The European Court of Human Rights held that the warning did not violate the right to freedom of expression. It stated that the allegation she had made had been very serious and had not had any basis in fact. It noted that members of the judiciary should exercise discretion and not use the media to respond to provocations. It further noted the very light nature of the sanction imposed on the judge.

- *Morice v. France* (no. 29369/10) 11 July 2013: defamation conviction for lawyer who had made sharply critical comments of investigating judges did not violate the right to freedom of expression

This concerned a lawyer who had been convicted of defamation for having criticised judges who had investigated the death of a French judge in Djibouti. The lawyer had disputed the official finding that the judge had committed suicide, and filed a complaint for murder. With a colleague, he had sent letters to the Minister of Justice complaining that there had been shortcomings in the investigation, and he reiterated those complaints in a newspaper interview. Two of the investigating judges filed complaints against the lawyer for defamation and were awarded damages. The lawyer was also ordered to pay a fine.

The European Court of Human Rights held that the conviction did not violate the lawyer's right to freedom of expression. The Court noted that the lawyer had not just made statements on the facts of the case; he had also made statements casting doubt on the impartiality and loyalty of the investigating judges. He had done so in a letter to the minister of justice as well as in a subsequent newspaper interview, without having awaited a response from the minister. The Court considered that even had the aim been to alert the public with regard to possible problems in the functioning of the justice system, the lawyer had done so in particularly virulent terms. It concluded that he had behaved in a manner which had exceeded the limits that lawyers had to respect in publicly criticising the justice system.

- *Remuszko v. Poland* (no. 1562/10) 16 July 2013: refusal by private newspapers to publish an advertisement by a third party did not violate third party's right to freedom of expression

This concerned an application by a journalist who had written a critical history of one of Poland's main newspapers. No reviews of his book had been published and so he attempted to buy advertising space in various national newspapers. All newspapers refused to publish the advertisement drafted by the journalist. Following domestic court proceedings which were partly successful, the journalist appealed to the European Court of Human Rights arguing that the refusal by the newspapers to publish his advertisement violated his right to freedom of expression.

The European Court of Human Rights noted that States have a wide margin of appreciation in the regulation of commercial speech, which the advertisement was. It also noted that there is no general right of access to the media, even for book that discussed an issue of politics, and it considered that

the applicant had been able to publicise his book through various other means, including the internet. It therefore held that the journalist's right to freedom of expression had not been violated.

- *Węgrzynowski and Smolczewski v. Poland* (no. 33846/07) 16 July 2013: continuing publication of defamatory article on internet archives did not violate the right to respect for private life

This concerned an application by two lawyers whom journalists had alleged to have been involved in questionable business practices. They successfully sued the journalists for defamation in the domestic courts but a copy of the article in question remained on the website of the newspaper. The lawyers therefore appealed to the European Court of Human Rights, claiming that the continuing publication of the article on the newspaper's website violated their right to private life.

The European Court held that the continuing publication did not violate the lawyers' right to respect for private life. It noted that while the right to respect for private life needs to be balanced against the right to freedom of expression, and that democratic society requires vigorous debate on matters of public interest, journalists must not overstep the bounds. However, with regard to internet archives, it held that it is not the role of the courts to 'rewrite history' and order the complete removal of all traces of an article from the internet, even if the print version of that article has been found to violate the right to freedom of expression. It stated that the right to freedom of expression protected the "legitimate interest of the public in access to the public Internet archives of the press". The Court also referred to earlier caselaw in which it had indicated that a requirement to add a note to the archived article stating that it had been subject to defamation proceedings would have been possible – but that the applicants in this case had instead requested the complete removal of the article in question.

- *Nagla v. Latvia* (Application no. 73469/10) 11 July 2013: search of journalist's home and seizure of laptop and other materials violated right to freedom of expression

This concerned an application by a TV journalist who had reported on vulnerabilities in the security of one of the databases maintained by the national revenue service. She had obtained the information through an anonymous source and had immediately reported her concerns to the revenue service. Several months later, the police searched her house and seized a number of materials, including computer hard drives. The search was retrospectively approved by a judge.

The European Court of Human Rights held that the search of her house and seizure of equipment had violated the right to freedom of expression, which protected the confidentiality of sources. It noted that although the search took place three months after she had first reported the flaw, the police had utilised an 'urgent' procedure under which no prior judicial approval needed to be sought. The search had encompassed a wide range of items, and the national courts had provided no justification for either the breadth of the search or the use of the 'urgent' procedure.

- *Belek and Özkurt v. Turkey* (no. 1544/07) 16 July 2013: conviction for publishing a statement of alleged terrorist group representative violated the right to freedom of expression

This concerned the owner and editor-in-chief of a Turkish newspaper who had been fined for publishing statements made by the chairman of a branch of the PKK, a group regarded as terrorists

by the Turkish government, and subsequent statements by prisoners explaining why they had embarked on a hunger strike.

The European Court of Human Rights held that the conviction violated the right to freedom of expression. The Court noted that the statements did not call for the use of violence, armed resistance or an uprising, and that they did not constitute hate speech. It held that there was no reason why the publication of these statements should be a criminal offence.

- *Sampaio e Paiva de Melo v. Portugal* (no. 33287/10) 23 July 2013: criminal defamation penalty for statement of opinion on a matter of public interest violated the right to freedom of expression

This concerns a journalist who had published a book in which he criticised the chairman of a well-known football club, describing him as “the sworn enemy” of the national team and, referring to criminal proceedings in which the chairman had been involved, as the “national champion of prosecutions in Portuguese football”. The journalist was found guilty of defamation and ordered to pay a fine as well as damages to the chairman. The sentence was upheld on appeal.

The European Court of Human Rights held that the conviction violated the journalist’s right to freedom of expression. The Court noted that the events described in the book related to the World Cup of 2006 and the wider world of Portuguese football, which were issues of public interest, and in the context of an ongoing public debate. The Court noted also that the statements concerned amounted to statements of opinion, which had been based on facts that were common knowledge at the time. Finally, the Court held that in any case, the imposition of a criminal penalty in a matter like this is likely to cause a chilling effect on the contribution of the press to public debate on matters of general interest and should not be resorted to without particularly strong reasons.

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