

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

Bulletin XXXVI: EDITORIAL INDEPENDENCE OF JOURNALISTS

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Focus on editorial independence of journalists

The right to editorial independence implies that journalists should have the right to exercise their own right to freedom of expression. In the context of the professional work environment of a journalist, this is complicated by the fact that a journalist typically works within a structure whereby one or more editors have editorial responsibility over a media outlet, and owners often try to have a say in content as well. Whilst journalists and editors often work together fairly harmoniously, there can be significant tension between the owner of a media outlet and the editorial team.

The Council of Europe has adopted a number of declarations and recommendations emphasising the importance of editorial freedom, and the need for protection against undue political and commercial interference. The European Court of Human Rights has confronted the issue of editorial independence in the context of a case concerning attempted state control over the national broadcaster, a case concerning a journalist who was sacked by his employer, as well as in a case that dealt with broadcast licensing. The following paragraphs summarise these judgments and recommendations.

European Court of Human Rights

- **Manole v. Moldova** (no. 13936/02), 17 September 2009 (sanctioning journalists for asserting editorial independence and failure to guarantee editorial independence of public broadcaster violates right to freedom of expression)

This concerned a group of journalists employed by Teleradio-Moldova (TRM), a State-owned broadcasting company which at the time the application was made was the only national television and radio station in the country. There was a long history of political control at TRM, which had got worse after the election victory of the Communist Party, in 2001. Senior managers were replaced by persons loyal to the Government and only a small group of journalists was used for reports of a political nature, which were edited to present the ruling party in a favourable light. Journalists were reprimanded for using expressions which reflected negatively on the Soviet period or reports that suggested cultural and linguistic links with Romania. Journalists who did not follow these policies were subjected to disciplinary measures. The applicants were dismissed from their posts as journalists and appealed to the European Court of Human Rights arguing that their editorial

independence had been violated and that they had been subjected to a regime of censorship by the State.

The European Court held that the journalists' right to freedom of expression had been violated. The Court emphasised that States must ensure that a pluralistic media sphere exists in which the public can receive ideas and opinions from a range of viewpoints. States must implement a regulatory framework to promote this, and also ensure that within this framework, individual journalists can work independently and free from political or other undue interference.

The Court emphasised that,

“A situation whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society...”

It emphasised that when a State decides to create a public broadcasting system, it was vital that it provides an independent and pluralistic service. This is particularly important when the public broadcaster is the dominant broadcaster within a country or region. The independence of public service broadcasters should be assured by, among other things, a clear statement of editorial independence and institutional autonomy in the broadcaster's legal framework, in particular as regards the editing and presentation of news and current affairs programmes and the recruitment, employment and management of staff.

With regard to the situation of the applicants, the Court noted that there had been a significant bias by TRM towards reporting on the activities of the President and Government, and that there was evidence of a policy of restricting on topics that reflected badly on the Government, including human rights violations committed during the Soviet period. The Court also considered that TRM had enjoyed a virtual monopoly over broadcasting in Moldova, and that this put the State under an obligation to transmit accurate and balanced news and information reflecting the full range of political opinion and debate. The State had clearly failed in this duty and TRM's independence from political interference and control had been insufficiently guaranteed.

- **Fuentes Bobo v. Spain**, Application No. 39293/98, 29 February 2000 (dismissal of journalist violated right to freedom of expression)

This concerned a producer and presenter at TVE, the Spanish State television station, whose programme was dropped from the schedule. He was offered no replacement work but was still required to complete his working hours. Following a demonstration by staff about mismanagement at the station, he then co-authored an article in a daily newspaper criticising TVE management. He was then suspended without pay. He appealed, and during his appeal he appeared in two radio programmes in which he criticised TVE's actions in words that TVE's managers regarded as offensive. He was dismissed.

The Court held that the dismissal violated the presenter's right to freedom of expression. Although the disciplinary action concerned a private law employment relationship, this did not mean that the right to freedom of expression could be disregarded. The Court found that it was clear that the presenter had been dismissed because of his criticism of the management of the broadcaster. These

contributed to a wider, on-going public debate about TVE, and were clearly in the public interest. While the language he used had been offensive, it appeared to have been provoked by the radio-show hosts in lively and spontaneous exchanges. In addition, neither TVE nor its managers had instituted defamation proceedings or taken any other legal action against the applicant; TVE had immediately imposed the severe penalty of dismissal.

- **Centro Europa 7 S.r.l. and Di Stefano v. Italy**, application no. 38433/09, 7 June 2012
(importance of editorial freedom and pluralism of the media)

The case concerned an Italian TV company's inability to broadcast, despite having a broadcasting licence, because no television frequencies were allocated to it. The Court found in particular that the laws in force at the time had lacked clarity and precision and that the TV had no way of knowing when it might at last be given a frequency so that it could broadcast. This had the effect of strengthening the existing broadcasting monopoly, and the Court therefore found that the Italian authorities had failed to guarantee effective pluralism in the media.

In the context of reaching this decision, the Court made some important remarks about the need for editorial freedom.

In paragraph 133 of the judgment, the Court emphasises that,

"A situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audio-visual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society..."

In paragraph 134, the Court holds that every state has a duty to adopt laws and regulations to ensure editorial freedom and media pluralism:

"in such a sensitive sector as the audio-visual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism".

Council of Europe Recommendations

The Committee of Ministers and Parliamentary Assembly of the Council of Europe have adopted several declarations and recommendations emphasising the importance of editorial freedom.

- Parliamentary Assembly Resolution 428 (1970), on mass communication media and human rights:

"The internal organisation of mass media should guarantee the freedom of expression of the responsible editors. Their editorial independence should be preserved."

- Committee of Ministers Recommendation Rec (99) 1 on Measures to Promote Media Pluralism:

"Member states should consider possible measures to ensure that a variety of media content reflecting different political and cultural views is made available to the public, bearing in mind the importance of guaranteeing the editorial independence of the media..."

Member states should encourage media organisations to strengthen editorial and journalistic independence voluntarily through editorial statutes or other self-regulatory means.”

- Committee of Ministers Recommendation Rec(2011)7 on a new notion of media:

“Editorial freedom or independence is an essential requirement for media and a direct corollary of freedom of expression and the right to hold opinions and to receive and impart information, guaranteed under Article 10 of the European Convention on Human Rights.

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