

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

Bulletin XXXVIII: FOCUS ON MEDIA PLURALISM

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Article 10 of the European Convention on Human Rights requires States to ensure that the public has access to impartial and accurate information and a range of opinion and comment, reflecting the diversity of political outlook within the country. The European Court of Human Rights has handed down a small number of judgments explaining what this principle means in practice, while the Council's Committee of Ministers has issued a recommendation on the issue. The European Union has enshrined the principle of media pluralism in its Charter of Fundamental Rights.

The following paragraphs elaborate on this.

European Court of Human Rights Judgments

- ***Informationsverein Lentia and Others v. Austria***, (App. no. 13914/88), 24 November 1993: denial of broadcasting licence violated right to freedom of expression, breached principle of media pluralism

This concerned a housing association which wanted to establish an internal cable television network for its members but was unable to do so because Austrian law provided that only the Austrian Broadcasting Corporation had a right to broadcast. The association appealed to the European Court of Human Rights arguing that this violated its right to freedom of expression.

The European Court upheld the complaint and held that the association's right to freedom of expression had been breached. In its judgment, the Court emphasises the need for pluralism and diversity in the media, stating that it "has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audiovisual media, whose programmes are often broadcast very widely."

- ***Manole & Others v Moldova***, (App. no. 13936/02), 17 September 2009: dismissal of journalists violated right to freedom of expression and threatened diversity of media content

This concerned a group of employees at the country's national broadcaster who had been dismissed from their posts. They argued that they had been dismissed as part of a political 'purge' of the

broadcaster and complained to the European Court of Human Rights that their right to freedom of expression had been violated.

The Court found that the applicants' right to freedom of expression had indeed been violated and made a number of important statements regarding media pluralism. The Court took as its starting point the "fundamental truism" that "there can be no democracy without pluralism" and emphasised that the State "must be the ultimate guarantor of pluralism". Furthermore, it stated that:

Freedom of the press and other news media afford the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them ... The audiovisual media, such as radio and television, have a particularly important role in this respect. Because of their power to convey messages through sound and images, such media have a more immediate and powerful effect than print. The function of television and radio as familiar sources of entertainment in the intimacy of the listener or viewer's home further reinforces their impact ... Moreover, particularly in remote regions, television and radio may be more easily accessible than other media.

It went on to state that there is "...a duty on the State to ensure, first, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment".

- ***Centro Europa 7 S.r.l. and Di Stefano v. Italy***, (App. no. 38433/09), 7 June 2012: **denial of frequency to broadcaster violated right to freedom of expression and threatened media pluralism**

This concerned a complaint by a company which, despite having been awarded a broadcasting licence, had not been allocated a frequency on which to broadcast. Following lengthy proceedings in the Italian courts it appealed to the European Court of Human Rights. Its complaints included that the country's broadcast media was dominated by just a few large companies, and that this in itself constituted a violation of the right of the Italian people to a more diverse and pluralistic media sector.

The Court held that the company's right to freedom of expression had been violated, as well as its right to a fair trial and its right to property. In holding so, the Court made several important statements regarding the need for States to guarantee pluralism in the media.

First, the Court emphasised that "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". The Court went on to explain that, "to ensure true pluralism in the audio-visual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audio-visual market. It is necessary in addition to allow effective

access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed.”

The Court went on to warn of the dangers of undue economic and business influence over editorial policy, stating that this danger is particularly acute when the media are concentrated in the hands of only a few owners: “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 particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive”.

European Union

Article 11 of the Charter of Fundamental Rights of the *European Union*, based on the constitutional traditions of the EU’s Member States, guarantees that:

The freedom and pluralism of the media shall be respected.

Council of Europe declarations and recommendations

The Committee of Ministers of the *Council of Europe* has adopted a Recommendation on media pluralism and diversity of media content (Recommendation no. 2007-2). This Recommendation emphasises that “media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information”, and that “the demands which result from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms will be fully satisfied only if each person is given the possibility to form his or her own opinion from diverse sources of information.”

The Recommendation provides for a number of measures which States should implement, including the following:

- ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public;
- consider the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets;
- act against concentration operations of all forms, notably to divest existing media properties where unacceptable levels of concentration are reached and/or where media pluralism is threatened;
- guarantee the independence of public service media organisations vital for the safeguard of their editorial independence and for their protection from control by one or more political or social groups. These mechanisms should be established in co-operation with civil society;
- adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed”.

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