European Court of Human Rights: Four Recent Judgments on the Freedom of Expression and Information

1. Zana vs. Turkey, 25 November 1997 In this case the European Court of Human Rights comes to the conclusion that there was no breach of Article 10 of the European Convention for the protection of human rights and fundamental freedoms. Zana was convicted to several months of imprisonment in Turkey because of the publication of an interview in the newspaper Cumhuriyet, in which he said to support the PKK movement, although he disagreed with the massacres. And he added to this statement: “Anyone can make mistakes, and the PKK kill women and children by mistake...”.

According to the Court this statement is both contradictory and ambiguous, because it is difficult simultaneously to support the PKK, "a terrorist organisation which resorts to violence to achieve its ends", and to declare oneself opposed to massacres. The Court notes that the interview coincided with murderous attacks carried out by the PKK on civilians in south-east Turkey at the material time and that the publication of the interview had to be regarded as likely to exacerbate an already explosive situation in the region. The Court accordingly considers that the penalty imposed on Zana could reasonably be regarded as answering a “pressing social need” and hence as necessary in a democratic society. So there is no breach of Article 10 of the Convention.

2. Grigoriades vs. Greece, 25 November 1997 This case concerns the conviction of a lieutenant of the crime of insult to the army, insult which was contained in a letter the applicant sent to his unit’s commanding officer. A sentence of three months was imposed on Grigoriades. According to the Court, Article 10 of the Convention which guarantees the freedom of expression and information, applies to military personnel as to all other persons within the jurisdiction of a Contracting State. The Court notes that the contents of the letter indeed included certain strong and intemperate remarks concerning the armed forces in Greece, but those remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution. Nor did the letter contain any insults directed against the recipient of the letter or any other person. The Court decides that the letter had no objective impact on military discipline and that the prosecution and conviction of Grigoriades cannot be justified as necessary in a democratic society. The Court comes to the conclusion that in this case Article 10 is violated by the Greek authorities.

3. Guerra vs. Italy, 19 February 1998 In this case a group of inhabitants of Manfredonia complained of the fact that they had not received proper information from the authorities on the hazards of the industrial activity of a local chemical factory. Nor were they informed on the safety plans or emergency procedures in the event of an accident. The Court finds no infringement of Article 10 of the Convention. The Court argues that this article on the freedom of expression and information “basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him. That freedom cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion”. Hence, no violation of Article 10. However the Court is of the opinion that the Italian authorities, by not giving essential information to the population involved, did not take the necessary steps to ensure effective protection of the applicants’ right to respect for their private and family life and consequently violated Article 8 of the Convention.

4. Bowman vs. United Kingdom, 19 February 1998 (see IRIS 1998-3: 3) Mrs Bowman was prosecuted in the UK following the distribution of leaflets in election time. As the executive director of the Society for the Protection of the Unborn Child, Mrs Bowman campaigned against abortion. The leaflets contained information on the opinions of candidates standing for the general elections with regard to abortion. Mrs Bowman was charged with an offence under the Representation of the People Act 1983 which prohibits expenditure of more than five pounds sterling by an unauthorised person during the period before an election on conveying information to electors with a view to promoting or procuring the election of a candidate. Although Mrs Bowman at earlier occasions had been convicted for similar facts, this time she finally was acquitted by the Court. Nevertheless the European Court of Human Rights is of the opinion that the prosecution in itself can be regarded as an interference by the authorities in the applicants right of freedom of expression. The Court finds that the restrictive rule with regard to the distribution of leaflets in election time has the effect of a total barrier to Mrs Bowman’s publishing information with a view to influencing the voters in favour of an anti-abortion candidate. At the same time there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate. The Court concludes that the restriction in question is disproportionate to the aim pursued (“securing equality between candidates”) and hence violates Article 10 of the Convention.

• Judgment of the European Court of Human Rights, case Zana vs. Turkey, 25 November 1997
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