European Court of Human Rights: First Judgments on Freedom of Expression and Information after Reorganisation of the Court

IRIS 1999-2:1/4

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1. Fressoz and Roire v. France: the right of journalists to receive and publish confidential documents under the protection of Article 10 of the European Convention on Human Rights.

In its first judgment after the reorganisation of the European Court of Human Rights in Strasbourg (1 November 1998, Protocol No. 11), the Court decided in favour of the protection of journalists and emphasised the importance of the freedom of the press and its vital role in a democratic society. The case concerns important aspects regarding the limits of journalistic freedom in reporting on matters of general interest. The applicants were both convicted in France for the publication of an article in the satirical newspaper Le Canard enchaîné. The article and the documents it contained showed that the managing director of Peugeot had received large pay increases while at the same time the management refused the demands of the workers at Peugeot for a pay rise. Mr. Fressoz, the publication director of the magazine at that time, and Mr. Roire, the journalist who wrote the article, were convicted for receiving and publishing photocopies that had been obtained through a breach of professional confidence by an unidentified tax official. They both claimed that these convictions violate their freedom of expression as protected by Article 10 of the European Convention. The Court emphasised that in principle journalists cannot be released from their duty to obey ordinary criminal law on the grounds that Article 10 affords them protection of freedom of expression. However, in particular circumstances the interest of the public to be informed and the vital role of the press may justify the publication of documents that fall under an obligation of professional secrecy.

Taking into consideration the fact that the article contributed to a public debate on a matter of general interest, that the information on the salary of Mr. Calvet as head of a major industrial company did not concern his private life, and that the information was already known to a large number of people, the Court was of the opinion that there was no overriding requirement for the information to be protected as confidential. It was true that the conviction was based on the publication of documents of which the divulgation was prohibited, but the information they contained was not confidential. The Court emphasised that in essence Article 10 of the Convention "leaves it for journalists to decide whether or

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not it is necessary to reproduce such documents to ensure credibility. It protects journalists' rights to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide 'reliable and precise' information in accordance with the ethics of journalism" (par. 54). In the Court's view the publication of the tax assessments was relevant not only to the subject matter but also to the credibility of the information supplied, while at the same time the journalist had acted in accordance with the standards governing his profession as a journalist.

The final and unanimous conclusion of the Court, sitting in Grand Chamber, as that there was no reasonable relationship of proportionality between the legitimate aim pursued by the journalist's conviction and the means deployed to achieve that aim, given the interest a democratic society had in ensuring and preserving freedom of the press. The Court decided that there had been violated Article 10 of the Convention and awarded the applicants FRF 60.000 for costs and expenses. 2. Janowski vs. Poland: insulting civil servants acting in their official capacity is not allowed. Mr. Janowski, a journalist, was convicted because he insulted two municipal guards. He offended the guards by calling them "oafs" and "dumb" during an incident which took place in a square, witnessed by several bystanders. Mr. Janowksi argued before the European Court that his conviction violated his right of freedom of expression as protected by Article 10 of the Convention. In evaluating whether the interference in the applicant's right was necessary in a democratic society, the Court emphasised that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks, and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty. According to the Court the applicant's remarks did not form part of an open discussion of matters of public concern and neither did they involve the issue of freedom of the press since the applicant, although a journalist by profession, was clearly acting as a private individual on this occasion. Not being persuaded that the applicant's conviction was to be considered as an attempt by the authorities to restore censorship and discouragement of the expression of criticism in the future, the Court decided by twelve votes to five that there had been no breach of Article 10 of the Convention.

Fressoz und Roire g. Frankreich

Fressoz and Roire vs. France

https://hudoc.echr.coe.int/eng?i=001-58906

Janowski g. Polen

Janowski vs. Poland

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