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

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In the case Fuentes Bobo v. Spain the Court reached the conclusion that the dismissal of an employee of the public broadcasting organisation TVE was to be considered a violation of the right to freedom of expression. In 1993 Fuentes Bobo co-authored an article in the newspaper Diario 16 criticising certain management actions within the Spanish public broadcasting organisation. Later in two radio programmes Fuentes Bobo made critical remarks about some TVE-managers. These remarks led to disciplinary proceedings that resulted in the applicant's dismissal in 1994. In its judgment of 29 February 2000 the Court (Fourth Section) was of the opinion that the dismissal of the applicant due to certain offensive statements was to be considered an interference by the Spanish authorities with the applicant's freedom of expression. The Court pointed out that Article 10 of the Convention is also applicable to relations between employer and employee and that the State has positive obligations in certain cases to protect the right of freedom of expression against interference by private persons. Although the interference was prescribed by law and was legitimate in order to protect the reputation or rights of others, the Court could not agree that the severe penalty imposed on the applicant met a "pressing social need". The Court underlined that the criticism by the applicant had been formulated in the context of a labour dispute within TVE and was to be included in a public discussion on the failings of public broadcasting in Spain at the material time. The Court also took into consideration that the offensive remarks attributed to the applicant appeared more or less to have been provoked during lively and spontaneous radio shows in which he participated. Because no other legal action had been taken against the applicant with regard to the "offensive" statements and because of the very severe character of the disciplinary sanction the Court finally came to the conclusion that the dismissal of Fuentes Bobo was a violation of Article 10 of the Convention.

In a judgment delivered on 16 March 2000 in the case of Özgür Gündem v. Turkey the European Court (Fourth Section) once more held that there has been a violation of Article 10 of the Convention by the Turkish authorities. Özgür Gündem was a daily newspaper published in Istanbul during the period from 1992 to 1994, reflecting Turkish Kurdish opinions. After a campaign that involved killings, disappearances, injuries, prosecutions, seizures and confiscation, the newspaper ceased publication. The applicants submitted that the State authorities had failed

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to provide protection for the newspaper and complained of the convictions arising from its reporting on the Kurdish issue that was estimated as constituting separatist propaganda and provoking racial and regional 5 5 5 hatred. In respect of the allegations of attacks on the newspaper and its journalists, the Court was of the opinion that the Turkish authorities should have better protected Özgür Gündem. The Court considered that although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may be positive obligations inherent in an effective respect for the rights concerned. The Court stated that genuine, effective exercise of freedom of expression "does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals". In the case of Özgür Gündem the Turkish authorities have not only failed in their positive obligation to protect the freedom of expression of the applicants. According to the Court the search operations, prosecutions and convictions for the reporting on the Kurdish problem and for criticising government policy violated Article 10 as well. The Court underlined that the authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting. The judgment also emphasised that the public enjoys the right to be informed of different perspectives on the situation in south-east Turkey, irrespective of how unpalatable those perspectives appear to the authorities. An important element was also that the reporting by Özgür Gündem was not to be considered as advocating or inciting the use of violence. The Court held unanimously that there was a breach of Article 10 of the Convention.

In a judgment of 21 March 2000 the European Court of Human Rights (Third Section) found no violation of the right to freedom of expression in the case of Andreas Wabl v. Austria. Wabl, a member of Parliament, has accused the newspaper Kronen-Zeitung of "Nazi journalism" after the newspaper had quoted a police officer calling for Wabl to have an AIDS-test. The police officer's arm had been scratched by Wabl in the course of a protest campaign. Proceedings against Wabl led to an injunction to prevent him repeating the impugned statement of "Nazi journalism". Although the article published in the Kronen-Zeitung was to be considered as defamatory, the Court had particular regard to the special stigma that attaches to activities inspired by National Socialist ideas and to the fact that according to Austrian legislation it is a criminal offence to perform such activities. The Court also took into account that the applicant was only prohibited from repeating the statement that the reporting in the Kronen-Zeitung amounted to "Nazi journalism" or the making of similar statements. Hence the applicant retained the right to voice his opinion regarding this reporting in other terms. The Court reached the conclusion that the Austrian judicial authorities were entitled to consider that the injunction was necessary in a democratic society and that accordingly there was no violation of Article 10 of the Convention.

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Fuentes Bobo v. Spain, application no. 00039293/98, of 29 February 2000

https://hudoc.echr.coe.int/eng?i=002-6095

Özgür Gündem v. Turkey, application no 23144/93 of 16 March 2000

https://hudoc.echr.coe.int/eng?i=001-58508

Andreas Wabl c. Autriche, recours n° 24773/94, du 21 mars 2000

Andras Wabl v. Austria, application no. 24773/94 of 21 March 2000

https://hudoc.echr.coe.int/eng?i=001-46005

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