European Court of Human Rights: Case of Ernst and Others v. Belgium

IRIS 2003-9:1/4

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

Four Belgian journalists applied to the European Court of Human Rights, alleging (among other complaints) that searches and seizures by the judicial authorities at their newspaper's offices, their homes and the head office of the French speaking public broadcasting organisation *RTBF* constituted a breach of their freedom of expression under Article 10 and a violation of their right to privacy under Article 8 of the European Convention on Human Rights.

In 1995 searches were performed in connection with the prosecution of members of the police and the judiciary for breach of professional confidence following leaks in some highly sensitive criminal cases (the murder of the leader of the socialist party; investigations regarding industrial, financial and political corruption). The complaint lodged by the journalists against the searches and seizures at their places of work and homes was declared inadmissible by the Court of Cassation and the journalists were informed that no further action would be taken on their complaint.

The European Court, in its judgment of 15 July 2003, has come to the conclusion that the searches and seizures violated the protection of journalistic sources guaranteed by the right to freedom of expression and the right to privacy. The Court agreed that the interferences by the Belgian judicial authorities were prescribed by law and were intended to prevent the disclosure of information received in confidence and to maintain the authority and impartiality of the judiciary. The Court considered that the searches and seizures, which were intended to gather information that could lead to the identification of police officers or members of the judiciary who were leaking confidential information, came within the sphere of the protection of journalistic sources, an issue which called for the most careful scrutiny by the Court (see also ECourtHR 27 March 1996, Goodwin v. United Kingdom see IRIS 1996-4: 5 and ECourtHR 25 February 2003, Roemen and Schmit v. Luxembourg see IRIS 2003-5: 3). The Court emphasized the wide scale of the searches that had been performed, while at no stage had it been alleged that the applicants had written articles containing secret information about the cases. The Court also questioned whether other means could not have been employed to identify those responsible for the breaches of confidence, and in particular took into consideration the fact that the police officers involved in the operation of the searches had very wide investigative powers. The Court found that the Belgian authorities had not shown

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that searches and seizures on such a wide scale had been reasonably proportionate to the legitimate aims pursued and therefore came to the conclusion that there had been a violation of Article 10 of the Convention. The Court, for analogous reasons, also found a violation of the right to privacy protected by Article 8 of the Convention.

Arrêt de la Cour européenne des Droits de l'Homme (deuxième section), affaire Ernst et autres c. Belgique, requête n° 33400/96 du 15 juillet 2003

Judgment by the European Court of Human Rights (Second Section), case of Ernst and others v. Belgium, Application no. 33400/96 of 15 July 2003

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