European Court of Human Rights: Case of Monnat v. Switzerland

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In a judgment of 21 September 2006, the European Court of Human Rights has come to the conclusion that the Swiss authorities have violated the freedom of expression of a journalist by placing a programme broadcast by the Swiss Public Broadcasting Corporation SSR under a legal embargo. In 1997, the SSR broadcast a critical documentary on the position of Switzerland during the Second World War. The documentary was part of a news programme, entitled " *Temps présent* " ("Present time"), for which the applicant, Daniel Monnat, was then responsible. The programme described the attitude of Switzerland and of its leaders, emphasising their alleged affinity with the far right and their penchant for a rapprochement with Germany. It also contained an analysis of the question of anti-Semitism in Switzerland and of its economic relations with Germany, focusing on the laundering of Nazi money by Switzerland and on the role of Swiss banks and insurance companies in the matter of unclaimed Jewish assets. The programme elicited reactions from members of the public. Viewers' complaints, within the meaning of section 4 of the Federal Broadcasting Act, were filed with the *Autorité indépendante d'examen des plaintes en matière de radio-télévision* (Independent Broadcasting Complaints Commission). The Complaints Commission was of the opinion that the programme had breached the duty to report objectively in such a way as to reflect the plurality and diversity of opinion. The Complaints Commission found against the SSR and requested the broadcasting company to take appropriate measures. The Commission particularly found that the method used, namely politically engaged journalism, had not been identified as such. The News Editors' Conference of SSR informed the Complaints Commission that it had taken note of its decisions and would take them into account when dealing with sensitive issues. Being satisfied with the measures, the Commission declared the proceedings closed. In the meantime, the registry of the court of Geneva decided to place the programme under a legal embargo, which led to the suspension of the sale of videotapes of the programme.

Mr. Monnat alleged before the European Court of Human Rights that the programme scrutiny introduced by Swiss law and the decision of the Complaints Commission, upheld by the Federal Court, had hampered him in the exercise of his freedom of expression, as provided for by Article 10 of the European Convention on Human Rights. The Court dismissed the applicant's complaint as to the inappropriateness of the programme scrutiny introduced by the Federal

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Broadcasting Act, because he was challenging general legal arrangements in abstract terms. However, in his capacity as a programme-maker he could claim to be the victim of a violation of the Convention because of the legal embargo.

The Strasbourg Court noted that the impugned programme had undoubtedly raised a question of major public interest, at a time when Switzerland's role in the Second World War was a popular subject in the Swiss media and divided public opinion in that country. As regards the journalist's duties and responsibilities, the Court was not convinced that the grounds given by the Federal Court had been "relevant and sufficient" to justify the admission of the complaints, even in the case of information imparted in a televised documentary on a state-owned television channel. As to the sanctions imposed in this case, the Court noted that whilst they had not prevented the applicant from expressing himself, the admission of the complaints had nonetheless amounted to a kind of censorship, which would be likely to discourage him from making criticisms of that kind again in future. In the context of debate on a subject of major public interest, such a sanction would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, it was liable to hamper the media in performing their task as purveyor of information and public watchdog. Moreover, the censorship had subsequently taken on the form of a legal embargo on the documentary, formally prohibiting the sale of the product in question. For these reasons, the Court considered that there had been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des Droits de l'Homme (troisième section), affaire Monnat c. Switzerland , requête n°73604/01 du 21 septembre 2006

Judgment by the European Court of Human Rights (Third Section), case of Monnat v. Switzerland, Application no. 73604/01 of 21 September 2006

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