

European Court of Human Rights: Case of Leempoel & S.A. Ed. Ciné Revue v. Belgium

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In a judgment of 9 November 2006, the European Court of Human Rights found no violation of freedom of expression in a case concerning the withdrawal from sale and ban on distribution of an issue of the Belgian weekly magazine Ciné Télé Revue. On 30 January 1997, the magazine published an article containing extracts from the preparatory file and personal notes that an investigating judge, D., had handed to a parliamentary commission of inquiry. The article was advertised on the front cover of the magazine via the headline, which was superimposed on a photograph of the judge. The disclosures received substantial press coverage, as the issue was related to the “Dutroux case” and the manner in which the police and the judiciary had handled the investigations into the disappearance, kidnapping, sexual abuse and murder of several children.

Following a special judicial procedure for urgent applications before a judge in Brussels, investigating judge D. obtained an injunction for the magazine editor and its publisher to take all necessary steps to remove every copy of the magazine from sales outlets and the prohibition of the subsequent distribution of any copy featuring the same cover and the same article. The court order was based on the grounds that the published documents were subject to the rules on confidentiality of parliamentary inquiries and that their publication appeared to have breached the right to due process and also the judge’s right to respect for her private life.

In an application before the European Court of Human Rights, the applicants complained that the ruling against them infringed Article 10 of the Convention and they maintained that Article 25 of the Belgian Constitution, which forbids censorship of the press, afforded a greater degree of protection than Article 10 of the Convention and that its application should accordingly have been safeguarded by Article 53 of the Convention (the Convention’s rights and freedoms being “minimum rules”).

The Court noted that although the offending article was related to a subject of public interest, its content could not be considered as serving the public interest. Moreover, the parliamentary commission’s hearings had already received significant media exposure, including via live broadcasts on television. The Court found that the article in question contained criticism that was especially directed

against the judge's character and that it contained in particular a copy of strictly confidential correspondence which could not be regarded as contributing in any way to a debate of general interest to society. The use of the file handed over to the commission of inquiry and the comments made in the article had revealed the very essence of the "system of defence" that the judge had allegedly adopted or could have adopted before the commission. The Court is of the opinion that the adoption of such a "system of defence" belonged to the "inner circle" of a person's private life and that the confidentiality of such personal information had to be guaranteed and protected against any intrusion. As the Court found that the article in question and its distribution could not be regarded as having contributed to any debate of general interest to society it considered that the grounds given by the Belgian courts to justify the ban on the distribution of the litigious issue of the magazine were relevant and sufficient and that the interference with the applicants' right to freedom of expression was proportionate to the aim pursued. The Court considered that such interference could be seen as "necessary in a democratic society" and did not amount to a violation of Article 10.

With regard to the alleged negligence to apply Article 53, the Court referred back to its finding that the interference in question had been "prescribed by law" and further observed that the decision to withdraw the magazine from circulation did not constitute a pre-publication measure but, having been taken under the special procedure for urgent applications, sought to limit the extent of damage already caused. As such interference was not considered by the Belgian Court of Cassation as a form of censorship, the European Court did not consider it necessary to examine separately the complaint under Article 53 based on an alleged breach of Article 25 of the Belgian Constitution.

Arrêt de la Cour européenne des Droits de l'Homme (première section), affaire Leempoel & S.A. Ed. Ciné Revue c. Belgique, requête n° 64772/01, 9 novembre 2006

Judgment by the European Court of Human Rights (First Section), case of Leempoel & S.A. Ed. Ciné Revue v. Belgium, Application no. 64772/01 of 9 November 2006

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