European Court of Human Rights: Case of Manole a.o. v Moldova

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The European Court of Human Rights found that from February 2001 until September 2006 the Moldovan authorities violated freedom of expression by not sufficiently guaranteeing the independence of Teleradio-Moldova (TRM), the State-owned broadcasting company, which became a public broadcasting company in 2002. Nine journalists, editors and producers, who were all employed by TRM during that period, complained that the public broadcasting company was subjected to political control by the government and the ruling political party, with a lack of guarantees of pluralism in its editorial policy and news and information programmes. Relying on Article 10 of the European Convention, they complained that as journalists at TRM they were subjected to a censorship regime. They also claimed that the political control over news and political information worsened after February 2001, when the Communist Party won a large majority in Parliament: senior TRM management was replaced by those who were loyal to the Government, only a trusted group of journalists were used for reports of a political nature, which where then edited to present the ruling party in a favourable light, other journalists were reprimanded, interviews were cut and programmes were taken off the air, while opposition parties were allowed only very limited opportunities to express their views. After a strike by TRM journalists protesting against the government's media policy and control over TRM, a large number of journalists were not retained in their posts during a structural reorganisation of TRM. The journalists claimed that they were dismissed for political reasons and appealed the decision in court. They were unsuccessful, however. In the meantime, a number of reports by international organisations and non-governmental organisations, such as the Council of Europe, the OSCE and the Moldovan Centre for Independent Journalism (IJC), affirmed that domestic law in Moldova did not sufficiently guarantee the independence of editorial policy at TRM and that the political parties of the opposition were not adequately represented in TRM news and information programmes. The nine journalists lodged an application with the European Court in March 2002, arguing that their right to freedom of expression had been violated, due to the censorship regime imposed on them. They also claimed that the Moldovan State had not discharged its positive obligations under Article 10, because it had failed to enact legislation which would offer safeguards against abusive interferences by public authorities.

In its judgment, the European Court took as the starting point of its reasoning the fundamental truism that there can be no democracy without pluralism. A situation

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whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society, as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. The Court further observed that it is the State itself that must be the ultimate guarantor of pluralism and that the State has a duty to ensure that the public has access through television and radio to impartial and accurate information and a range of opinions and comments, reflecting the diversity of political outlook within the country. Journalists and other professionals working in the audiovisual media should not be prevented from imparting this information and commentary. Furthermore, it is indispensable for the proper functioning of democracy that a (dominant) public broadcaster transmits impartial, independent and balanced news, information and comment and, in addition, provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed. The Court concluded, on the basis of the evidence and reports by the Council of Europe, the OSCE and IJC, that there was a significant bias towards reporting on the activities of the President and the Government in TRM's television news and other programming and that this policy by TRM had indeed affected the applicants as journalists, editors and producers at TRM. The Court also found that domestic law from February 2001 onwards did not provide any guarantee of political balance in the composition of TRM's senior management and supervisory body nor any safeguard against interference from the ruling political party in the bodies' decision-making and functioning. Also, after 2002, there was no safeguard to prevent 14 of the 15 members of the Observers' Council being appointees loyal to the ruling party, despite the fact that this Council was precisely responsible for appointing TRM's senior management and monitoring its programmes for accuracy and objectivity. In the light, in particular, of the virtual monopoly enjoyed by TRM over audiovisual broadcasting in Moldova, the Court found that the Moldovan State authorities failed to comply with their positive obligation. The legislative framework throughout the period in question was flawed: it did not provide sufficient safeguards against the control of TRM's senior management, and thus its editorial policy, by the political organ of the Government. As Moldovan law did not provide any mechanism or effective domestic remedy to challenge at the national level the administrative practice of censorship and political control over TRM, the Court also rejected the Moldovan Government's objection that the applicants had not exhausted the remedies available to them under national law, as required by Article 35 para. 1 of the Convention. On that basis, the Court found a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of Manole a.o. v Moldova, Application no. 13936/02 of 17 September

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