[BG] Constitutional Court interprets freedom of communication

IRIS 1996-8:1/12

Radomir Tscholakov
Bulgarian National Television

In its fullest ruling so far (Decision No. 7 of 4 June 1996), the Bulgarian Constitutional Court has indicated how freedom of opinion, the media and information, which is guaranteed by the Constitution, is to be interpreted. In so doing, it has laid down guidelines for future legislation on the subject. The case, No. 1/1996, was brought by the President of the country. It concerned the dismissal of seven staff of the national radio service. Under Article 149, para. 1 (2) of the Bulgarian Constitution, the Constitutional Court must interpret the standards laid down in Articles 39, 40 and 41 of the Constitution (protection of, and restrictions on, freedom of opinion, the media and information) in terms which are legally binding.

In its decision, which is largely inspired by relevant West European judicial and legislative principles, the Constitutional Court bases itself both on Bulgarian legal theory and on the interpretations given of Article 10 of the European Convention on Human Rights. It particularly emphasises that, under the Bulgarian Constitution, Article 10 of the Convention is binding on the country's courts. Its reflections on the nature and content of freedom of communication (its own term) are based on exploration of its functional premises. Although the Court has no wish to establish a "hierarchy of basic rights", it emphasises that freedom of communication is particularly important among those rights.

It makes the point that the right to freedom of opinion, which it describes as a "personal right", is closely linked with human dignity, and is a basic condition for political pluralism. It goes so far as to term it the "mother-right, from which all freedom of communication derives", and adds: "Freedom of opinion is one of the fundamental principles on which every democratic society is based, and is one of the conditions of its progress and of the development of every individual". According to the Court, freedom of expression is not simply a personal right, protecting the individual against interference by the state, but implies an "institutional guarantee". In other words, the state must not only protect the individual's right, but take steps to ensure the free establishment of a "common public area, in which individual opinions can be exchanged and public opinion formed in the process". Protecting freedom of opinion is in the state's own vital interest, since it secures or establishes the democratic decision-making process and the exercise of democratic control of government. Article 39 protects not only

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the opinions of individuals, but also those of groups and communities. Basic rights belong not simply to individuals; but to society as a whole. Because the Constitution protects other rights, which sometimes conflict with the right to freedom of opinion, the latter may also be curtailed. But any curtailment of that right must be preceded by a "weighing up of the interests or legally protected rights" involved. In cases where freedom of opinion must be restricted to protect the personal rights of others, the Court makes a distinction between freedom to express an opinion on the private life of ordinary people and freedom to express an opinion on people in the public eye. The latter freedom should receive more protection.

Concerning freedom of the media (Article 40 of the Constitution), the Court ruled that the media fulfil a "public function". They play a major part in forming and influencing public opinion. Freedom of the media is a right which protects them against state interference, and it affects the press more than broadcasting. Article 40 protects the "institution of the free press". The "special situation" in which shortage of frequencies puts broadcasting argues in favour of a limited state role in the granting of licences. It is none the less essential that the superordinate right to freedom of opinion be respected. Because freedom of the media under Article 40 is functionally connected with freedom of opinion under Article 39, the former can be said to "serve" the latter. The Court sees Article 40 as making it constitutionally necessary to turn the state electronic media (Bulgarian Radio and Television) into a "public service", and states that removing any possibility of the state's interfering with it - even through the way in which it is funded - is the "first precondition of its independence". The right enshrined in Article 40 imposes on the state a positive obligation to bring the broadcasting regulations into line with Article 39 (freedom of opinion). As part of this, the state also has a duty to take "measures to prevent excessive media concentration", as soon as it threatens "communication freedoms and rights", interpreted both as end and means. The Constitutional Court advises future legislators to introduce regulations on the "right of reply" in the media.

Concerning freedom of information (Article 41), the Court takes information to be nothing more than the facts, opinions and ideas which are sufficiently protected by Articles 39 and 40. (It has expressly refused to interpret the concept with reference to the new information and communication technologies). The personal right to "seek and disseminate information" also requires the state to make information available. The Court finds, in other words, that this constitutional provision obliges the state to regulate access to information: on the one hand, it must publish information which is of public interest; on the other, it must guarantee access to information sources. This must be regulated by law.

In decision No. 7/1996, the Constitutional Court has decided the fate of the future Broadcasting Act in advance. This controversial text, which regulates (state) supervision and the activity of the electronic media in Bulgaria has since been

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adopted by Parliament on a second reading. The President, who publishes laws by decree, has refused to ratify the act and has sent it back to Parliament (see elsewhere in this issue). If the governing majority passes it again on conclusion of the parliamentary procedure, it risks being sent to the Constitutional Court for a ruling on its constitutional validity. Following the Court's interpretative decision it is likely to be declared unconstitutional.

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Decision of the Bulgarian Constitutional Court, No.7 of 4 June 1996, published in Darzaven vestnik No. 55/28 June 1996 (60 p.)

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