European Court of Human Rights: RTBF v Belgium

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In a judgment of 29 March 2011 the European Court found a violation of Article 10 of the European Convention on Human Rights in the case Radio-télévision belge de la communauté française (RTBF) v Belgium. The case concerned an interim injunction ordered by an urgent-applications judge against the RTBF, preventing the broadcasting of a programme on medical errors and patients' rights. The injunction prohibited the broadcasting of the programme until a final court decision in a dispute between a doctor named in the programme and the RTBF. As the injunction constituted an interference by the Belgian judicial authorities with the RTBF's freedom of expression, the European Court in the first place had to ascertain whether that interference had a legal basis. Whilst Article 10 does not prohibit prior restraints on broadcasting, such restraints require a particularly strict legal framework, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse. As news is a perishable commodity, delaying its publication, even for a short period, might deprive it of all its interest. In ascertaining whether the interference at issue had a legal basis, the Court observed that the Belgian Constitution authorised the punishment of offences committed in the exercise of freedom of expression only once they had been committed and not before. Although some provisions of the Belgian Judicial Code permitted in general terms the intervention of the urgent-applications judge, there was a discrepancy in the case law as to the possibility of preventive intervention in freedom of expression cases by that judge. The Belgian law was thus not clear and there was no constant jurisprudence that could have enabled the RTBF to foresee, to a reasonable degree, the possible consequences of the broadcasting of the programme in question. The European Court observed that, without precise and specific regulation of preventive restrictions on freedom of expression, many individuals fearing attacks on them in television programmes - announced in advance - might apply to the urgent-applications judge, who would choose different solutions to their cases and that this would not be conducive to preserving the essence of the freedom of imparting information. Although the European Court considers a different treatment between audiovisual and print media not unacceptable as such, e.g., regarding the licensing of radio and television, it did not agree with the Belgian Court of Cassation decision to refuse to apply the essential constitutional safeguard against censorship of broadcasting. According to the European Court, this differentiation appeared artificial, while there was no clear legal framework to allow prior restraint as a form of censorship on broadcasting. The Court was of the opinion that the legislative framework,

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together with the case-law of the Belgian courts, did not fulfil the condition of forseeability required by the Convention. As the interference complained of could not be considered to be prescribed by law, there had thus been a violation of Article 10 of the Convention. The judgment contains an important message to all member states of the European Convention on Human Rights: prior restraints require a particularly strict, precise and specific legal framework, ensuring both tight control over the scope of bans both in print media and in audiovisual media services, combined with an effective judicial review to prevent any abuse by the domestic authorities.

Arrêt de la Cour européenne des droits de l'homme (deuxième section), affaire RTBF c. Belgique (n°50084/06) du 29 mars 2011

Judgment by the European Court of Human Rights (Second Section), case of RTBF v Belgium (no. 50084/06) of 29 March 2011

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