

European Court of Human Rights: Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland

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The applicant company, the Swiss Radio and Television Company (SSR) is a radio and television broadcaster based in Zurich. In 2004 it requested permission to have access to the Hindelbank Prison in order to prepare a television interview with A., a prisoner serving a sentence for murder. SSR wished to integrate this interview in the programme “Rundschau”, a weekly programme covering political and economic questions, in a feature concerning the trial of another person who had been accused of murder in the same case. SSR’s request was refused by the prison authorities who referred to the need to maintain peace, order and safety and to ensure equal treatment among prisoners. SSR complained about this refusal, on account of which it was unable to broadcast the planned interview in its “Rundschau” programme. SSR submitted that an interview with A., who had given her consent, was a matter of public interest given that even after her conviction, the case had continued to attract a great deal of media interest. But all appeals before the Swiss courts failed, as it was argued that the entitlement to film in prisons could endanger prisoner rehabilitation and violate the personality rights of prisoners. It was also argued that the organisation and supervision measures required for television filming exceeded what could reasonably be expected of the prison authorities. It was suggested that instead of filming in the prison, an audio recording or a simple interview could suffice, as images of the prisoner were not necessary for the purposes of a thematic report. Relying on Article 10, SSR complained in Strasbourg that it had not been granted permission to film an interview with a prisoner inside a prison. It argued that this refusal amounted to a violation of its right to freedom of expression and information.

The European Court observed that in determining an issue of freedom of expression in the context of a very serious television broadcast devoted to a subject of particular public interest, the Swiss authorities had limited discretion to judge whether or not the ban on filming had met a “pressing social need”. While acknowledging that there had, at the outset, been grounds to justify the ban on filming - in particular with regard to the presumption of innocence of the person who was the subject of the programme and whose trial was imminent and the interests of the proper administration of justice - the Court observed that the grounds for the courts’ refusal had not been relevant or sufficient, either from the point of view of the other prisoners’ rights (privacy and rehabilitation) or from the point of view of maintaining order or security reasons. Furthermore, the Swiss courts had not examined the technical aspects submitted by SSR regarding the

limited impact of the filming. As regards the duty of the authorities to protect A., the European Court noted that she had given her full and informed consent to the filming. The Court reiterated lastly, with regard to the alternatives to filming proposed by the Swiss authorities, that since Article 10 also protected the form by which ideas and information were conveyed, it was not for this Court, or for the national courts, to substitute their own views for those of the media as to what technique of reporting should be adopted by journalists. The telephone interview with A. broadcast by SSR in another programme had not in any way remedied the interference caused by the refusal to grant permission to film in prison. While reiterating that the national authorities in principle were better placed than the Court to make decisions concerning access by third parties to a prison, the Court emphasized that in matters of media reporting on issues of public interest, the margin of appreciation of the domestic authorities is reduced and any interference in this context must be convincingly justified on pertinent and sufficient grounds. The Court concluded that the absolute ban imposed on SSR's filming in the prison did not respond to this condition and had not met a "pressing social need". For that reason, the majority of the Court, with a 5/2 decision (the German and the Swiss judge dissented), came to the conclusion that there has been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Schweizerische Radio- und Fernseh gesellschaft SRG c. Suisse, requête n° 34124/06 du 21 juin 2012

Judgment by the European Court of Human Rights (5th section), case of Schweizerische Radio- und Fernseh gesellschaft SRG v. Switzerland, nr. 34124/06 of 21 June 2012

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