European Court of Human Rights: Pentikäinen v. Finland

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In a judgment of 4 February 2014, the European Court found that a Finnish press photographer's conviction for disobeying the police while covering a demonstration did not breach his freedom of expression. The applicant, Mr Pentikäinen, is a photographer and journalist for the weekly magazine Suomen Kuvalehti. He was sent by his employer to take photographs of a large demonstration in Helsinki. At a certain point, the police decided to interrupt the demonstration which had turned violent. It was announced over loudspeakers that the demonstration was over and that the crowd should leave the scene. After further escalation of violence, the police considered that the event had turned into a riot and decided to seal off the demonstration area. When leaving, the demonstrators were asked to show ID and their belongings were checked. However, a core group of around 20 people remained in the demonstration area, including Mr Pentikäinen, who assumed the order to leave the area only applied to the demonstrators and not to him, doing his work as a journalist. He also tried to make clear to the police that he was a representative of the media, referring to his press badge. A short time later the police arrested the demonstrators, including Mr Pentikäinen. He was detained for more than 17 hours and short time later the public prosecutor brought charges against him. The Finnish courts found the journalist guilty of disobeying the police, but they did not impose any penalty on him, holding that his offence was excusable.

In Strasbourg Mr Pentikäinen complained that his rights under Article 10 (freedom of expression) had been violated by his arrest and conviction, as he had been prevented from doing his job as a journalist. The European Court recognised that Mr Pentikäinen, as a newspaper photographer and journalist, had been confronted with an interference in his right to freedom of expression. However, as the interference was prescribed by law, pursued several legitimate aims (the protection of public safety and the prevention of disorder and crime) and was to be considered necessary in a democratic society, there was no violation of his right under Article 10 of the Convention. The European Court especially referred to the fact that Mr Pentikäinen had not been prevented from taking photos of the demonstration and that no equipment or photos had been confiscated. There was no doubt that the demonstration had been a matter of legitimate public interest, justifying media reporting on it, and Mr Pentikäinen was not prevented from doing so. His arrest was a consequence of his decision to ignore the police orders to leave the area, while there was also a separate secure area which had been

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reserved for the press. It was also doubtful whether Mr Pentikäinen had made it sufficiently clear to the police when being arrested that he was a journalist. Furthermore, although Mr Pentikäinen was found guilty of disobeying the police, no penalty had been imposed on him and no entry of his conviction had been made on his criminal record. The Court also considered that the fact that the applicant was a journalist did not give him a greater right to stay at the scene than the other people and that the conduct sanctioned by the criminal conviction was not his journalistic activity as such, but his refusal to comply with a police order at the very end of the demonstration, when the latter was judged by the police to have become a riot. The European Court concluded therefore, by five votes to two, that the Finnish courts had struck a fair balance between the competing interests at stake and accordingly came to the conclusion that there had been no violation of Article 10.

According to the separate dissenting opinion of two judges it has not been substantiated why it was necessary in a democratic society to equate a professional journalist, operating within recognised professional limits in covering the demonstration, with any of the people taking part in the demonstration and to impose drastic criminal restraints on him. The dissenting judges criticised sharply the imposition of restrictions on a journalist's freedom of expression through his arrest, detention, prosecution and conviction for a criminal offence simply because he had the courage to do his duty in furtherance of the public interest. According to the dissenting judges, the case reveals a one-sided attitude on the part of the Finnish authorities, one likely to create a "chilling effect" on press freedom.

Judgment by the European Court of Human Rights (Fourth Section), case of Pentikäinen v. Finland, Appl. no. 11882/10 of 4 February 2014

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