European Court of Human Rights: Pentikäinen v. Finland

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On 20 October 2015 the Grand Chamber of the European Court of Human Rights (ECtHR) confirmed that the interference with a press photographer's right to freedom of expression and newsgathering as a result of disobeying a police order to leave the scene of a demonstration that had turned into a riot, can be said to have been "necessary in a democratic society" within the meaning of Article 10 of the European Convention on Human Rights (ECHR). The Grand Chamber comes to the same conclusion as the earlier judgment of the Fourth Section finding that the arrest, detention, prosecution and conviction of the journalist did not violate Article 10 ECHR (see IRIS 2014-4/2 and IRIS 2014-7/2).

The applicant, Markus 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 against the Asia-Europe meeting in Helsinki, and to conduct an extensive report on the demonstration for the paper version of the magazine and also to publish it online immediately, once the demonstration had ended. At a certain moment, the police decided to interrupt the demonstration, which had turned violent, and to seal off the demonstration area. It was announced over loudspeakers that the demonstration was stopped and that the crowd should leave the scene. The police continued to order the crowd to disperse, stating that any person who did not leave would be apprehended.

Hundreds of people then left voluntarily via several exit routes established by the police. When leaving, they were asked to show their identity cards and their belongings were checked. At one point, a police officer told Pentikäinen personally that he had one last chance to leave the scene. Pentikäinen told the police officer that he was reporting for Suomen Kuvalehti and that he was going to follow the event to its end. After the situation inside the cordon had already been peaceful for an hour with around only 20 demonstrators left, the police apprehended the protesters that had not left the scene yet, including Pentikäinen. He told the apprehending officer that he was a journalist and he presented his press card, which the police officer later confirmed. In addition, at the police station, the police were aware that Pentikäinen was a member of the press. He was detained for about 18 hours and 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. Apart from the acceptance that the impugned measures were prescribed by law, the

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Grand Chamber also considers them necessary in a democratic society, as pertinently and sufficiently motivated by the Finnish authorities. In general terms the Court is of the opinion that “a journalist cannot claim an exclusive immunity from criminal liability for the sole reason that, unlike other individuals exercising the right to freedom of expression, the offence in question was committed during the performance of his or her journalistic functions”. According to the Grand Chamber “the present case does not concern the prohibition of a publication (public disclosure of certain information) or any sanctions imposed in respect of a publication. What is at stake in the present case are measures taken against a journalist who failed to comply with police orders while taking photos in order to report on a demonstration that had turned violent” (§ 93). The Grand Chamber also endorses the argument of the Finnish Government, stating that “the fact that the applicant was a journalist did not entitle him to preferential or different treatment in comparison to the other people left at the scene”.

The judgment refers to the obligation of a journalist to behave in a “responsible” way, which includes obeying lawful orders by the police: “Against the background of this conflict of interests, it has to be emphasised that the concept of responsible journalism requires that whenever a journalist - as well as his or her employer - has to make a choice between the two duties and if he or she makes this choice to the detriment of the duty to abide by ordinary criminal law, such journalist has to be aware that he or she assumes the risk of being subject to legal sanctions, including those of a criminal character, by not obeying the lawful orders of, inter alia, the police”.The Grand Chamber agrees with the Finnish authorities that the impugned measures taken against Pentikäinen were necessary and proportionate for the protection of public safety and the prevention of disorder and crime. That includes not only his apprehension, but also the near 18-hour detention, the prosecution, and finally the criminal conviction for having disobeyed the police.

The majority of the Grand Chamber, by thirteen votes to four, comes to the conclusion that there has been no violation of Article 10 of the Convention. The Court recalls that it “clearly transpires from the case file that the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from the public gaze the actions of the police with respect to the demonstration in general or to individual protesters (..). Indeed, the applicant was not prevented from carrying out his work as a journalist either during or after the demonstration”. It also stresses that “this conclusion must be seen on the basis of the particular circumstances of the instant case, due regard being had to the need to avoid any impairment of the media’s “watch-dog” role”. The dissenting judges consider the reasoning and finding by the majority of the Grand Chamber “a missed opportunity”, neglecting the rights of journalists to observe public demonstrations effectively and unimpeded, so long as they do not take a direct and active part in hostilities. The four dissenters emphasise “the fundamental role of the press in obtaining and disseminating to the public

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information on all aspects of governmental activity". In a statement of 12 November 2015 published on the Council of Europe's Platform to promote the protection of journalism and the safety of journalists, the EFJ, the IFJ, Index on Censorship and Article 19 call on Finland and other Council of Europe member states to adopt a clear legal framework for the treatment of journalists during protests, in order to ensure the right balance between press freedom and public order during protests and demonstrations.

Judgment by the European Court of Human Rights (Grand Chamber), Pentikäinen v. Finland, Application no. 11882/10 of 20 October 2015

https://hudoc.echr.coe.int/eng?i=001-158279

EFJ, IFJ, Article 19, Index, "Finland: Unclear Legal Framework for Guaranteeing Journalists' Rights Covering Protests" 12 November 2015

http://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&_sojdashboard_WAR_coesojportlet_alertPK=13001969&_sojda

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