European Court of Human Rights: Görmüş a.o. v. Turkey

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights (ECtHR) has once more confirmed the strong protection that is to be given to journalists' sources, in a case also related to the disclosure of confidential information and the protection of whistle-blowers. The Court is of the opinion that the Turkish authorities have violated the right to freedom of expression of journalists, reporting on important matters related to the armed forces.

The magazine Nokta published an article based on documents classified "confidential" by the Chief of Staff of the armed forces in Turkey. It revealed a system for classifying publishing companies and journalists according to whether they were "favourable" or "hostile" to the armed forces, so that specific journalists could be excluded from covering activities organised by the army. Following a complaint by the Chief of Staff of the armed forces, the Military Court ordered a search of all the magazine's premises, demanding electronic and paper copies of the files stored on all private and professional computers. The Military Court considered the search and seizure lawful, as these measures had only been intended to elucidate the circumstances surrounding the disclosure of a document classified as "secret", and not to identify those responsible for the leak of the confidential information. The Military Court also pointed out that the Criminal Code made it an offence to procure, use, possess or publish information whose disclosure was prohibited for the purposes of protecting State security, and that journalists were not exempted from criminal liability in that connection. The director of the magazine, the editors and some journalists lodged an application with the Strasbourg Court complaining of a violation of their right to freedom of expression and information (Article 10 ECHR).

The European Court held that the article published by Nokta, on the basis of "confidential" military documents, was capable of contributing to public debate. It emphasised the need to protect journalistic sources, including when those sources are State officials highlighting unsatisfactory practices in their workplace. It considered the seizure, retrieval and storage by the authorities of all of the magazine's computer data, with a view to identifying the public-sector whistle-blowers, as a disproportionate interference with the right to freedom of expression and information. The action taken by the authorities had undermined the protection of sources to a greater extent than an order requiring them to reveal the identity of the sources, since the indiscriminate retrieval of all the data

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had revealed information that was unconnected to the acts in issue. The Court also held that the impugned interference by the Turkish authorities could risk deterring potential sources from assisting the press in informing the public of matters involving the armed forces, including when they concerned a public interest. In the Court's view, this intervention was likely not only to have very negative repercussions on the relationships of the journalists in question with their sources, but could also have a serious and chilling effect on other journalists or other whistle-blowers who were State officials, and could discourage them from reporting any misconduct or controversial acts by public authorities.

Furthermore, the Court noted that the reasons for which the contested documents had been classified as confidential were not justified, as the government had not shown that there had been a detrimental impact as a result of their disclosure. Thus, the Court considered that the contested article had been highly pertinent in the debate on discrimination against the media by State bodies, especially as the style used in the article and the time of its publication had not raised any difficulty that was such as to damage the interests of the State. The Court is also of the opinion that the journalists of Nokta had acted in accordance with professional ethics, and that they had had no intention other than to inform the public of a topic of general interest. The Court unanimously concluded that the Turkish authorities have violated Article 10 of the ECHR, holding that the interference with the journalists' right to freedom of expression, did not meet a pressing social need, had not been proportionate to the legitimate aim pursued and that, in consequence, it had not been necessary in a democratic society.

Arrêt de la Cour européenne des droits de l'homme, Deuxième section, affaire Görmüş et a. c. Turquie, requête n° 49085/07 du 19 janvier 2016

Judgment of the European Court of Human Rights, Second Section, case Görmüş a.o. v. Turkey, Application no. 49085/07 of 19 January 2016

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