European Court of Human Rights: Brambilla and others v. Italy

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The legality and acceptability of some controversial practices by journalists was at the heart of a recent case before the European Court of Human Rights (ECtHR). The case concerns the conviction of three journalists in Italy who intercepted radio communications between police officers (carabinieri) in order to arrive quickly at crime scenes and report on them for their local online newspaper. Stressing the notion of responsible journalism and noting that the decisions of the domestic courts had been duly reasoned and had focused primarily on the need to protect national security and prevent crime and disorder, the Court confirms the duty of journalists to comply with domestic law, which prohibits the interception by any persons of communications not addressed to them, including those of law-enforcement agencies. The Court also notes that the penalties ordered by the domestic courts, consisting of the seizure of the radio equipment and the imposition of suspended custodial sentences, were not disproportionate. It emphasises that the newspaper and the journalists have not been prevented or prohibited from bringing news items to the attention of the public.

The applicants in this case were Mr Brambilla, the director of a local online newspaper, and Mr De Salvo and Mr Alfano, both journalists working for that newspaper. While using radio equipment to intercept the frequencies used by the police, they gained access to communications about a police patrol on its way to a location where weapons were being stored illegally. Mr De Salvo and Mr Alfano went to the scene immediately, but they were stopped and searched by the police on their arrival. The police found equipment in their car capable of intercepting radio communications between law-enforcement officers. A short time later, in the offices of Mr De Salvo and Mr Alfano, more items capable of intercepting police communications were seized. Subsequent criminal proceedings were instituted against the director of the newspaper and the two journalists, and all three were convicted, with suspended custodial sentences imposed. The Milan Court of Appeal, and finally the Court of Cassation, found that the communications had been confidential and that their interception was punishable under the Criminal Code, taking the view that the right to press freedom could not take precedence in a case concerning the illegal interception of communications between law-enforcement officers.

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Relying on Article 10 of the European Convention on Human Rights (ECHR), the director of the newspaper and the two journalists complained about the search of their vehicle and their offices, the seizure of their radio equipment and their conviction. They argued that these actions and convictions amounted to a violation of their right to freedom of expression and information.

The European Court agrees with the domestic courts that the newspaper and the journalists have not been prohibited from bringing the news items to the public's attention, as their convictions were based solely on the possession and use of radio equipment to intercept communications between law-enforcement officers. The ECtHR reiterated that the notion of responsible journalism required that, where journalists acted to the detriment of the duty to abide by ordinary criminal law, they had to be aware that they risked being subjected to legal sanctions, including those of a criminal character. It noted that in seeking to obtain information for publication in a local newspaper, the journalists and the director of the newspaper had routinely intercepted police communications. This contravened the domestic criminal law, which in general terms prohibited the interception by any persons of conversations not addressed to them, including conversations between law-enforcement officers. The Court observed that the penalties imposed on the applicants consisted of the seizure of their radio equipment and the imposition of custodial sentences of one year and three months in the case of the two journalists and six months in the case of the director of the newspaper. However, as these sentences had been suspended, the penalties the ECtHR found that it were not disproportionate and that the Italian courts had made an appropriate distinction between the journalists' duty to comply with domestic law and the pursuit of their journalistic activity, which had not been otherwise restricted. Accordingly, the ECtHR held that there had been no violation of Article 10 of the Convention.

This is the third time in 2016 that the ECtHR has found no infringement of journalists' rights in cases related to illegal preparatory acts of newsgathering. The case of Boris Erdtmann v. Germany (Application no. 56328/10, 5 January 2016) concerned the conviction of a journalist for carrying a weapon on board an aeroplane. After the terrorist attacks of 11 September 2001 in New York, Mr Erdtmann researched the effectiveness of security checks at German airports and made a short television documentary about his investigation and findings, filmed with a hidden camera. The ECtHR found that the criminal conviction of the journalist was pertinent and necessary in a democratic society and that there was no appearance of a violation of the journalist's rights under Article 10 ECHR. Also in the case of Salihu and others v. Sweden (see IRIS 2016-8/1) the ECtHR held that the journalists' convictions for illegally purchasing a firearm were lawful and necessary, while they pursued the legitimate aims of the protection of public safety and prevention of disorder and crime. In each of these cases however, the domestic courts, by deciding on the nature and severity of the criminal sanction, took into consideration the pursuit of journalistic activity, which had not been

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otherwise restricted. The interferences with the journalists' right to freedom of expression and information in each of these cases finally resulted in only lenient sentences or convictions for the journalists, while without the journalistic context more severe sanctions could have been imposed. In such circumstances, the ECtHR was satisfied that the interferences with the journalists' right to freedom of expression and information at issue do not discourage the press from investigating a certain topic or expressing an opinion on topics of public debate.

Arrêt de la Cour européenne des droits de l'homme, cinquième section, affaire Brambilla et autres c. Italie, requête n° 22567/09 du 23 juin 2016

https://hudoc.echr.coe.int/eng?i=001-163915

Judgment by the European Court of Human Rights, First section, case of Brambilla and others v. Italy, Application no. 22567/09 of 23 June 2016

Decision by the European Court of Human Rights, Fifth section, case of Boris Erdtmann v. Germany, Application no. 56328/10 of 5 January 2016

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