European Court of Human Rights: Becker v. Norway

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A recent judgment of the European Court of Human Rights (ECtHR) emphasises once more the importance of the protection of journalistic sources for press freedom. The ECtHR emphasises that a journalist's protection under Article 10 of the European Convention on Human Rights (ECHR) cannot automatically be removed by virtue of a source's own conduct, and that the principle of protecting a source applies even when that source's identity is known.

The case concerns a journalist, Cecilie Langum Becker, working for DN.no, a Norwegian Internet-based newspaper. Ms Becker was ordered to give evidence in a criminal case brought against one of her sources, Mr X, who was accused of market manipulation. Mr X had confirmed to the police that he had been Ms Becker's source for an article she had written about the allegedly difficult situation being faced by the Norwegian Oil Company (DNO). The price of DNO stock decreased by 4.1% on the first trading day after the publication of Ms Becker's article. Mr X was subsequently charged with using Ms Becker to manipulate the financial market. Ms Becker refused to testify against Mr X, and the courts therefore ordered her to testify about her contacts with him, finding that there was no source to protect as he had already come forward. They also considered that her evidence might significantly assist the courts in elucidating the case. Mr X was, however, convicted as charged before the final decision on Ms Becker's duty to give evidence had been made. Relying on Article 125 of the Norwegian Code of Criminal Procedure and Article 10 of the ECHR, Ms Becker argued that she was under no obligation to give evidence and she refused at any stage of the proceedings to answer questions about possible contact between her and Mr X and other sources. On account of her refusal to comply, the High Court ordered Ms Becker to pay a fine of approximately EUR 3,700 for the offence of impeding the good order of court proceedings, failing which she would be liable to ten days' imprisonment. A short time later Ms Becker lodged an application with the ECtHR, alleging that she had been compelled to give evidence that would have enabled one or more journalistic sources to be identified, in violation of her right under Article 10 of the ECHR to receive and impart information. It took the ECtHR more than five years to decide on the case, but finally, with a unanimous vote, the Fifth Section of the ECtHR on 5 October 2017 found that Norway violated Ms Becker's right to protect her sources.

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The ECtHR builds on its earlier case law in which it has developed the principles governing the protection of journalistic sources, such as in Goodwin v. the United Kingdom (see IRIS 1996-4/4) and in Sanoma Uitgevers B.V. v. the Netherlands (see IRIS 2010-10/2), reiterating that "the Court has always subjected the safeguards for respect of freedom of expression in cases under Article 10 of the Convention to special scrutiny. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest." The Court reiterated that in Nagla v. Latvia (see IRIS 2013-8/2) it found that the fact that a source's identity had been known to the investigating authorities prior to a search at the premises of a journalist did not remove the journalist's protection under Article 10 of the ECHR and it emphasises that a journalist's protection under Article 10 cannot automatically be removed by virtue of a source's own conduct. The ECtHR furthermore holds that protection afforded to journalists when it comes to their right to keep their sources confidential is "two-fold, relating not only to the journalist, but also and in particular to the source who volunteers to assist the press in informing the public about matters of public interest", while in Voskuil v. the Netherlands (see IRIS 2008-4/2) the ECtHR found that the potential significance in criminal proceedings of the information sought from a journalist was insufficient under Article 10 of the ECHR as a reason to justify compelling him to disclose his source or sources. It also emphasised that a "chilling effect" will arise wherever journalists are seen to assist in the identification of anonymous sources.

The ECtHR went on to rule that the possible effects of the order were of such a nature that the general principles developed with respect to orders to disclose a source were applicable to the case, and that Ms Becker's refusal to disclose her source or sources did not at any point in time hinder the investigation of the case or the proceedings against Mr X. On the contrary, there was no indication that Ms Becker's refusal to give evidence attracted any concerns on the part of the Norwegian courts as regards the case or the evidence against Mr X. It also bore in mind that Ms Becker's journalistic methods had never been called into question and that she had not been accused of any illegal activity. Having regard to the importance of the protection of journalistic sources for press freedom, the ECtHR finds that the reasons adduced in favour of compelling Ms Becker to testify on her contact with Mr X, though relevant, were insufficient. Accordingly, the ECtHR is not convinced that the impugned order was justified by an "overriding requirement in the public interest" and, hence, necessary in a democratic society. The ECtHR accordingly concludes that there has been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fifth Section, case of Becker v. Norway, Application no. 21272/12 of 5 October 2017

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