European Court of Human Rights: Butkevich v. Russia

IRIS 2018-4:1/2

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In a case about a Ukrainian journalist being arrested during an anti-globalisation protest in Russia, the European Court of Human Rights (ECtHR) has clarified that the gathering of information is an essential preparatory step in journalism, solidly protected as a part of press freedom. The ECtHR recognises that the media fulfil an important task in a democratic society, when providing information on the authorities' handling of public demonstrations and the containment of disorder. Therefore, any attempt to remove journalists from the scene of demonstrations must be subject to "strict scrutiny". The ECtHR found that the arrest, prosecution and conviction of the journalist had violated his right to freedom of expression under Article 10 of the European Convention of Human Rights (ECHR). The ECtHR also stated that in cases relating to public events, there is a close link between the freedoms protected by Articles 10 (freedom of expression) and 11 (freedom of peaceful demonstration) of the ECHR.

The case concerns the arrest and conviction of Maksim Aleksandrovich Butkevich, who was covering as a journalist an anti-globalisation protest in July 2006 in St Petersburg, during a G8 Summit. While observing the demonstration and taking photographs - including when the police started to disperse the gathering and to arrest some of the participants - two police officers approached the journalist and ordered him to cease his "unlawful actions". As Butkevich continued taking pictures, he was ordered to come in the police vehicle and was taken to and detained in a police station. Administrative-offence proceedings were brought against him for disobeying a lawful order of the police. The case was examined in an expedited procedure, and on the same evening as that on which the events had occurred he was heard by a judge and convicted as charged. He was sentenced to three days' detention. Two days later the appeal court reduced this sentence to two days and ordered his release, with immediate effect.

Butkevich lodged a complaint with the ECtHR, alleging that his administrative arrest and delayed release from detention had been unlawful (breach of Article 5 § 1 of the ECHR), that he had not been given a fair trial by an impartial court (breach of Article 6 § 1 of the ECHR), and that his freedom of expression had been interfered with in an unlawful and disproportionate manner by the Russian authorities (Article 10 of the ECHR). Third-party submissions were made by the Ukraine Government and by three NGOs - the Media Legal Defence Initiative (MLDI), Article 19: Global Campaign for Free Expression, and the Mass Media

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Defence Centre. After finding breaches of Article 5 § 1 and Article 6 § 1 of the ECHR, the ECtHR also came to the conclusion that Butkevich's rights as a journalist under Article 10 of the ECHR were violated by the Russian police and judiciary.

As regards Butkevich's pre-trial deprivation of liberty at the police station, the ECtHR considered that the Russian authorities had not provided any justification for the administrative arrest. Thus, the ECtHR concluded that this aspect of interference with the journalist's right to freedom of expression had not been "prescribed by law" within the meaning of Article 10 of the ECHR.

With regard to Butkevich's prosecution and his being sentenced to administrative detention, the ECtHR accepted the legality of the interference, as it had been aimed at pursuing the legitimate aim of prevention of disorder, but it did not accept that it had been necessary in a democratic society, in accordance with Article 10 § 2 of the ECHR. The ECtHR considered as a pertinent issue the question of whether Butkevich had identified himself as a journalist in a timely and adequate manner during the demonstration and in the subsequent proceedings, but it left no doubt that Butkevich was to be considered as acting as a journalist during the event at issue. The fact that Butkevich on the day of the event had not been acting on a journalistic assignment from any media outlet did not influence the finding that he had been acting as a journalist, with the intention of collecting information and photographic material relating to a public event and to impart them to the public via means of mass communication. While the ECtHR noted that the legitimate aim of preventing disorder weighed heavily in Pentikäinen v. Finland (see IRIS 2016-1/2), it was of the opinion that the present case was different in this respect, as there was nothing in the case file confirming that the demonstration had not been peaceful or that it had turned violent. According to the ECtHR the domestic authorities should also have questioned and investigated whether Butkevich's alleged actions had been excusable or had otherwise been mitigated, given his argument that he had been acting as a journalist. As the ECtHR was of the opinion that the domestic decisions did not suggest that there had been any kind of adequate assessment of this aspect of the case, and as the Russian authorities have not produced any relevant and pertinent reasons in order to justify the prosecution and conviction of Butkevich, it came to the conclusion, unanimously, that the journalist's right to gather information had been violated. The ECtHR lastly considered that it was not necessary in the present case to make further findings concerning Butkevich's removal from the venue of the demonstration.

In application of Article 41 of the ECHR, the ECtHR awarded Butkevich EUR 7,000 in respect of non-pecuniary damage, and EUR 2,000 for costs and expenses related to the proceedings before the ECtHR.

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Judgment by the European Court of Human Rights, Third Section, case of Butkevich v. Russia, Application no. 5865/07, 13 February 2018

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