European Court of Human Rights: Pavel Zarubin a.o. v. Lithuania

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

A recent decision of the European Court of Human Rights (ECtHR) deals with the complaint of a team of four Russian TV journalists who were expelled from Lithuania and banned from re-entering it because they posed a danger to national security. The ECtHR came to the conclusion that the Lithuanian authorities credibly demonstrated that the expulsion and re-entry ban imposed on the Russian journalists were proportionate and necessary in the interests of Lithuania's national security. Both measures were held not to be in breach of the journalists' right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights (ECHR).

The case goes back to March 2016, when a reporter, a sound operator, a cameraman and a chief editor working for the Russian State Television 'All-Russia State Television and Radio Broadcasting Company' came to Lithuania on the occasion of the Vilnius Russia Forum. At the Forum, topical issues relating to Russia were discussed: its internal and external affairs, economic and political developments, the human rights situation in the country, and future perspectives for its relations with the West. The team of Russian TV journalists arrived in Lithuania with an assignment to cover the events of the Forum and to interview its participants. They were not, however, authorised to attend the Forum. When they appeared at the Forum venues, the four Russian journalists, according to media and police reports, were engaged in 'provocations' and 'hooliganism' and had sought to 'psychologically terrorise' members of the Russian political opposition participating in the event. On the same day, the Migration Department of the Ministry of the Interior issued decisions to expel the four journalists from Lithuania and to ban them from re-entering Lithuania for one year. The journalists appealed against these decisions to the Vilnius Regional Administrative Court. They submitted that they had arrived at the Forum as journalists and had approached its participants in a polite and peaceful manner, seeking to interview and film them, but that some of the organisers and participants had attacked them and their equipment. The administrative court dismissed the appeals, considering that the Russian journalists had not been authorised to attend the Forum and that there was reliable evidence that they had behaved violently at the Forum venues. Based on partly classified and partly declassified information from the State Security Department (SSD), the administrative court found that the journalists' presence in Lithuania had constituted a real and evident threat to

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national security. This decision was later confirmed by the Supreme Administrative Court, which found that the real purpose had not been to obtain information and prepare a video report about the Vilnius Russia Forum, but to carry out provocative actions. It also referred to the strong link between the Russian Government and the Russian State media. Moreover, the television network for which the four Russian journalists worked was owned by the same company as another Russian television network that had been previously suspended in Lithuania on the grounds of incitement to war, discord and national hatred. The Supreme Administrative Court found that there were sufficient grounds for the Lithuanian authorities to consider that the Russian team of journalists had posed a threat to national security.

The four journalists lodged applications before the ECtHR arguing that they had been expelled from Lithuania and banned from re-entering it because of their activities as journalists. They submitted that their actions during the Forum had been respectful and had not overstepped the acceptable limits of journalistic activity, and that they thus could not have posed a threat to the national security of Lithuania. They also complained about other violations of the ECHR, but these complaints were all dismissed for obvious reasons. With regard to the complaint of a violation of their rights under Article 10 ECHR (freedom of expression and information), the ECtHR accepted that there could be some doubt as to whether Article 10 ECHR was applicable, as the expulsion order was based on the team's aggressive and provocative actions during a high-level political event rather than any opinions, statements or publications. The ECtHR however was prepared to proceed on the assumption that the expulsion of the four journalists from Lithuania and the ban on their re-entering for one year constituted an interference with their right to freedom of expression. As the ECtHR was satisfied that those measures were prescribed by law, and that they were carried out in the interests of national security, it remained to be assessed whether the interference was necessary in a democratic society.

As it is not for the ECtHR to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of state sovereignty, the ECtHR was satisfied with the way the domestic authorities had produced evidence that the four Russian journalists posed a threat to national security. The ECtHR accepted that some of the evidence included classified information provided by the SSD. It observed that, in accordance with the domestic law, the courts had full access to the classified information and were therefore able to exercise their power of scrutiny, while the classified information had not been of decisive value in the proceedings and had been corroborated by publicly available data. In such circumstances, the ECtHR is satisfied that the domestic courts did not rely to a decisive extent on classified information and that the applicants had adequate opportunity to challenge the factual grounds for the decisions against them. The ECtHR furthermore noted that

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there was nothing in the case file to suggest that the domestic courts erred in their assessment of the relevant facts or applied domestic law in an arbitrary or manifestly unreasonable manner. It therefore sees no grounds to disagree with the conclusion that the expulsion and entry ban were necessary in the interests of national security.

The ECtHR saw no reason to depart from the conclusion reached by the domestic courts that the measures imposed on the four Russian journalists had been proportionate, as the expulsion and entry ban had been ordered not because of the dissemination of any ideas or their journalistic activities, but because of their aggressive and provocative actions. The ECtHR also found that their conduct was not compatible with the concept of responsible journalism, albeit reiterated, that 'the fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly.' Finally, the ECtHR took into account that the Russian journalists did not have any family, social or economic ties in Lithuania, as an additional justification of the length of the entry ban for a period of one year. As the interference with the four Russian journalists' right to freedom of expression was necessary and proportionate, the ECtHR found the complaint under Article 10 ECHR manifestly ill-founded and declared it therefore inadmissible.

ECtHR Second Section (Decision), Pavel Zarubin v. Lithuania, Application no. 69111/17 and three other applications, Decision of 26 November 2019, notified in writing on 19 December 2019.

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