ECtHR: *Basok v. Russia*

IRIS 2020-5:1/26

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Once again, the European Court of Human Rights (ECtHR) has found that Russia violated a journalist's right to gather news (see also *Butkevich v. Russia*, IRIS 2018-4/2). The ECtHR found that the aggressive behaviour of a senior policeman trying to stop a journalist from taking pictures documenting a news story amounted to a breach of the journalist's right to freedom of expression and information under Article 10 of the European Convention on Human Rights (ECHR).

The applicant, Yuriy Borisovich Basok, was acting as a freelance journalist for an Internet news portal when he was present in Yekaterinburg at the venue of a public protest against an increase in the tax on foreign imported vehicles. As he witnessed that Mr D – a senior official of the traffic police in charge of supervising the event – parked his vehicle on a pedestrian crossing, he and some other journalists made video recordings. Basok also wanted to take photographs of the vehicle and of Mr D, and at that moment, the police officer shouted obscenities at Basok, slapped him in the face, tried to grab his neck, and damaged his camera. According to Basok, those actions were seen by journalists and other officers, and the incident received some media coverage. Several applications and complaints by Basok against Mr D were dismissed or suspended and a criminal investigation against Mr D was stopped after the public prosecutor decided to drop the charges against the senior police official. Finally, Basok lodged an application with the ECtHR, complaining that Russia should be held liable for a violation of Article 10 ECHR in relation to his mistreatment by an on-duty public official while Basok himself was acting as a journalist gathering material intended to be used for news reporting. Basok also complained of a violation of his right to liberty (Article 5 ECHR), but this part of the complaint was unrelated to the facts which amounted to the alleged violation of his rights under Article 10 ECHR.

The ECtHR started by reiterating that "the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom" (see also *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, IRIS 2017-8/1 and *Butkevich v. Russia*, IRIS 2018-4/2). It observed that Basok was present at the venue of an upcoming protest rally and seeing a potential news story in what might have been perceived as unlawful conduct on the part of an on-duty public officer. Hence, Basok tried to take photographs with the clear intention of using them for the purpose of news reporting, namely, as a freelance journalist for a

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specific Internet news portal. The ECtHR confirms that the journalist's act of taking photographs constituted the exercise of his freedom to "receive and impart information and ideas." It also emphasised that it was not the Court's task under Article 10 ECHR in the present case to establish the fact and extent of criminal liability on the part of any public official, but that it had to determine whether Basok's freedom of expression was "interfered with" by the "state" in a manner that was not "prescribed by law" and/or that was not "necessary in a democratic society" in the pursuance of a legitimate aim listed in Article 10, paragraph 2 ECHR.

The ECtHR found that Mr D, as a public official, has applied some degree of physical force against Basok, also causing damage to his property, namely his camera. Nothing indicated that it was justifiable in the circumstances of the present case, *inter alia*, on account of the journalist's own conduct. Having examined the available material, the ECtHR considered that the circumstances of the case revealed a disproportionate interference with Basok's freedom to impart information and ideas on account of his attempt to take photographs of what he reasonably perceived at the time to be unlawful conduct on the part of a public official. On this ground, the ECtHR reached the conclusion that Article 10 has been violated. Apart from non-pecuniary damages and costs and expenses (the latter to be paid to Basok's lawyer), the ECtHR also awarded Basok a sum of EUR 120 in respect of pecuniary damage, compensating the cost of repairing his camera, as a form of "just satisfaction".

ECtHR, Third section, sitting as a Committee, Basok v. Russia, Application no. 10252/10, 24 March 2020

https://hudoc.echr.coe.int/eng?i=001-201863

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