EHRC EUROPEAN HUMAN RIGHTS CASES UPDATES

ANNOTATIE

Szurovecz t. Hongarije (EHRM, nr. 15428/16) - Court underscores importance of direct news-gathering by journalists

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Annotatie bij Europees Hof voor de Rechten van de Mens, 08-10-2019, ECLI:CE:ECHR:2019:1008JUD001542816 (EHRC-2020-0014)

1. In its *Szurovecz* v. *Hungary* judgment, the European Court of Human Rights has underscored the importance of public watchdog journalism in democratic societies. The Court held, unanimously, that a refusal to grant a journalist access to a reception centre for refugees and asylum-seekers for reporting purposes amounted to a violation of his right to freedom of expression.

2. The applicant, a journalist for an online news portal, was denied authorisation to enter the premises of a number of reception centres, including the Debrecen Reception Centre – the focus of his complaint before the Strasbourg court. His request for authorisation to enter the Reception Centre was turned down by the Office of Immigration and Nationality (OIN) on the grounds of protection of the personality rights, privacy and security of inhabitants of the centres. His reporting would have included conducting interviews and taking photos. He had informed the OIN that he would only take photos with the permission of the individuals concerned, and if necessary having obtained written waivers each time.

3. The case was a no-brainer for the Court – it concerned precisely the type of "public watchdog" journalism that the Court has been championing since it first introduced the term in its *Barthold* v. *Germany* judgment,[1] and even earlier (without using the term) in its *Sunday*

Times v. *the United Kingdom judgment*.[2]

4. In Sunday Times, the Court held that the public has the right to receive information and ideas on matters of general interest to society and journalists/the media have the task to impart such information. In order to carry out this task effectively, journalists need to be safe and to benefit from particular freedoms that support the news-gathering and publication processes (see further: D. Voorhoof, 'Krijgen journalisten een streepje voor in Straatsburg?', *Mediaforum* 2008/5, p. 197-203).

5. Thus, journalists should have the freedom to determine for themselves what the most effective reporting techniques are in given circumstances *(Jersild* v. *Denmark*, para. 31[3]). The freedoms enjoyed by journalists "in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism" (*Bladet Tromsø* v. *Norway*, para. 65[4]).

6. The Court re-affirmed that the various activities performed by journalists as part of the news-gathering process that precedes publication must be protected (para. 52, citing *Dammann* v. *Switzerland*[5]). It further specified that "the refusal to authorise the applicant to conduct interviews and take photos inside the Reception Centre prevented him from gathering information first hand and from verifying the information about the conditions of detention provided by other sources and constituted an interference with the exercise of his right to freedom of expression in that it hindered a preparatory step prior to publication, that is to say journalistic research" (para. 54).

7. Freedom of movement and access rights are key elements of news-gathering processes. It is therefore very apt that the Court referenced a selection of international and European standards that safeguard journalists' right to access particular areas, such as conflict zones, sites and forums (paras. 14-16, including the (UN) Human Rights Committee's General Comment No. 34 (Freedoms of opinion and expression), 2011, and the Council of Europe's Committee of Ministers' Recommendation CM/Rec(2016)4 to member States on the protection of journalism and safety of journalists and other media actors). The Court's case-law similarly underlines the importance of access to parliaments (*Selmani and others* v. *the former Yugoslav Republic of Macedonia*[6]) and protests (*Pentikäinen* v. *Finland*[7]) for information- and news-gathering purposes.

8. The *Szurovecz* judgment extends that 'journalistic-access' case-law to reception centres for

asylum-seekers and refugees. The Court recognised the acute public interest in the human rights and living conditions of residents of the reception centres during the "refugee crisis" (para. 60). Moreover, the [Hungarian] Commissioner for Fundamental Rights had found, after an investigation, that the living conditions in the Reception Centre in question "had amounted to inhuman and degrading treatment" (*ibid*., and para. 8). According to the Court, the matter of "how residents were accommodated in State-run reception centres, whether the State fulfilled its international obligations towards asylum-seekers and whether this vulnerable group had the ability to fully enjoy their human rights was therefore *undisputedly newsworthy and of great public significance*" (emphasis added, para. 61; for an exploration of the concept of "vulnerable groups", see: L. Peroni and A. Timmer, 'Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law', *International Journal of Constitutional Law*, Volume 11, Issue 4, October 2013, p. 1056-1085). These are clear cases of the public watchdogs looking out for the societal underdogs.

9. Physical access issues are also of topical concern in the Netherlands. In August 2019, in the context of the trial of Jos B. for the murder of Nicky Verstappen, the District Court in Limburg ordered that journalists should not be allowed to accompany the judges, the accused and the Verstappen Family to the scene of the crime. The aim of this measure was to prevent disturbance during the site visit. The Dutch Society of Editors-in-Chief and the Dutch Association of Journalists (unsuccessfully) sought an interim order to overturn the ban. In recent years, local authorities have on occasion attempted to restrict journalists' ability to report on meetings about (planned) centres for asylum-seekers (for details, see: O. Volgenant and T. McGonagle, 'Persvrijheidsmonitor 2015', *Villamedia*, May 2016, p. 26-7).

10. The Court noted in the present case that the (patchy) comparative data available to it (paras. 17-19) did not reveal a clear, shared approach to the regulation of media access to reception centres across Council of Europe member States. In the absence of such a common approach, the Court recognised that some leeway was available to States when regulating such access. Nevertheless, it was not persuaded by the stated risks for the privacy and security of residents of the Reception Centre and was of the view that the domestic authorities had not given sufficient consideration to whether it was "effectively necessary in practice" to deny the applicant access to the Reception Centre (para. 67; see also paras. 69 and 70).

11. Furthermore, the Court found that the applicant had requested access in order to gather information, not for sensationalist purposes but to serve a significant public interest; his (proposed) conduct was in accordance with the ethics of the profession (paras. 68 and 69).

12. This judgment re-affirms that journalists are the eyes and ears of the public. As the internationally-acclaimed journalist, Fergal Keane, has asked, rhetorically, "If the story is to be told, if we are to give witness, what can we do but focus, switch on the record button and let the tape or film run?" (F. Keane, *Letter to Daniel: Despatches from the Heart*, London: BBC Books/Penguin Books 1996, p. 160).

13. In an age of information intermediation, it is crucial that journalists have direct access to places and people for reporting purposes. That alternative (second-hand) sources were available to the applicant was not sufficient: such sources did not necessarily have the same focuses as those of the applicant and "information obtained outside the Reception Centre might not have had, in the eyes of the public, the same value and reliability as first-hand data that the applicant could have obtained by accessing the Reception Centre in person" (para. 73, and more generally, paras. 71 *et seq*.). By underscoring the importance of face-to-face encounters, first-hand opportunities to collect data and verify the authenticity of information, the Court has now made some amends for having underappreciated similar arguments in its *Pentikäinen* judgment (see McGonagle's case-note).

14. A few general observations can also be made about this case. It is a textbook example of shoe-leather journalism. It involves hard graft and engagement and it is resource intensive. For many years, the news sector has been trapped in a trend towards 24/7 journalism, with its relentless pressures to be first to publish. This trend favours automated shortcuts, lifting news from other sources and churning out stories. Such turbo-"churnalism" is cheap to produce and without craft; it typically has little added value for public debate.

15. A draft Council of Europe Recommendation seeks to provide political impetus to buck this trend. The text was drafted by a Council of Europe committee of experts and it is expected to be adopted by the Committee of Ministers in March as a new Recommendation to the 47 Member States of the Council of Europe on promoting a favourable environment for quality journalism in the digital age (7th draft, 26 September 2019). The Recommendation comprises Guidelines addressed to States, which focus on: funding, ethics and quality, and education and training.

16. Against this backdrop, the *Szurovecz* judgment is a timely victory for public-interest journalism. To borrow from the sobering title of a recent opinion piece by former editor-in-chief of *The Guardian*, Alan Rusbridger: in the face of disinformation and deceit distorting public debate, "good journalism is all we have" (A. Rusbridger, "The election in the media: against evasion and lies, good journalism is all we have", *The Guardian*, 14 December 2019.).

Voetnoten

1 Barthold v. Germany, ECtHR 25 March 1985, no. 8734/79, ECLI:CE:ECHR:1985:0325JUD000873479.

2 Sunday Times v. the United Kingdom, ECtHR 26 April 1979, no. 6538/74, ECLI:CE:ECHR:1979:0426JUD000653874.

3 Jersild v. Denmark, ECtHR (GC) 23 September 1994, no. 15890/89, ECLI:CE:ECHR:1994:0923JUD001589089.

4 Bladet Tromsø and Stensaas v. Norway, ECtHR (GC) 20 May 19999, no. 21980/93,

ECLI:CE:ECHR:1999:0520JUD002198093.

5 Dammann v. Switzerland, ECtHR 25 April 2006, no. 77551/01, ECLI:CE:ECHR:2006:0425JUD007755101.

6 Selmani and others v. Former Yugoslav Republic of Macedonia, ECtHR 9 February 2017, no. 67259/14, ECLI:CE:ECHR:2017:0209JUD006725914.

7 Pentikäinen v. Finland, ECtHR (GC) 20 October 2015, nr. 11882/10, ECLI:CE:ECHR:2015:1020JUD001188210, «EHRC» 2016/52 case note McGonagle.