

6. Summary

“Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment.”³²⁰ A journalist is a person who tests the above mentioned statement through his work almost every day. “Although journalists, or the media for that matter, are not mentioned in paragraph 1 of Article 10 of the European Convention on Human Rights, which is devoted to freedom of expression, a great deal of the case-law of the European Court of Human Rights concerns journalists and the proper functioning of the mass media. Media professionals are typically the main beneficiaries of a liberal freedom of expression regime. When States decide to clamp down on freedom of expression the journalists are the first to be affected. In this body of case-law the Court has laid down several principles that apply in cases concerning journalists and the media.”³²¹

This thesis entitled *Journalists’ Freedom of Expression in the Light of European Convention on Human Rights*³²² and *Case Law of European Court of Human Rights*³²³ reacts on fact that this subject-matter has not been so far systematically analysed in Czech written literature. The intention of this paper was to fulfill the gap because it is undisputed that journalists’ freedom of expression is in the world of present days important and could be very powerful.

At the beginning the author sets hypothesis that interpretation and application of Art. 10 of the ECHR with regard to journalists are problematic for the Contracting States. Further it deals with the definition of terms essential for scholarly and exact analysis of the topic. Firstly, the freedom of expression in general and term journalist were examined. The term journalist is further specified and explained in the activity level, where features as newness, authorship, truthfulness and actuality were mentioned, the result level and the institution level formed by its functions, which are the function of forum, information, acceleration and supervision. Journalists are also described as an element fellow-creating specific institutional system.

³²⁰ Perna v. Italy judgment of 6 May 2003, Appl. No. 48898/99, s. 19, § 39

³²¹ The Media Division, Directorate General of Human Rights, Council of Europe. Journalistic freedoms [cited 13th March 2009]. Available from <http://www.humanrights.coe.int/Media/topics/journalistic%20freedoms/main.htm>

³²² Hereinafter “ECHR”

³²³ Hereinafter “Court”

The middle part of the work is focused on the ECHR from the point of view of journalists. The position of freedom of expression in the ECHR is discussed and an analysis of Art. 10 of the ECHR is given. After that, conditions justifying interference with journalists' freedom of expression are outlined.

The first one is the prescription interference by law. For fulfillment of this requirement it is necessary to answer successfully whether the domestic legal system sanctions the infraction, the legal provision is accessible to the citizen, the legal provision is sufficiently precise to enable the citizen reasonably foresee the consequences entailed by legal provision and whether the law provide effective safeguards against arbitrary interference with journalists freedom of expression.

The second condition is a necessity in democratic society, which could be fragmented into three levels. These levels are the nature of democratic society, burden of proof in the light of proportionality and the margin of appreciation.

The third condition which is necessary to fulfill to justify interference with journalists' freedom of expression is legitimate aim. The legitimate aims have been enumerated and classified. A short look at the interference with journalists' freedom of expression from real life is also given.

The final part of this thesis deals with case law created by the Court and is pivot for understanding how journalists' freedom of expression is protected under the ECHR in reality. Attention is given to admissibility of journalist complaint, but the most important in this chapter was the analysis of cases which were chosen to further examination as models of various types of features, together creating journalists' freedom of expression as a whole.

The first important feature dealt with journalists and presentation of ideas of others. Under this chapter *Dyundin v. Russia*³²⁴ and *Jersild v. Denmark*³²⁵ cases were analysed.

³²⁴ *Dyundin v. Russia* judgment of 14 October 2008, Appl. No. 37406/03

³²⁵ *Jersild v. Denmark* judgment of 23 September 1994, A 298

The relation between the journalist and the severity of the penalty was explained in *Mahmudov and Agazade v. Azerbaijan*³²⁶ and *Tammer v. Estonia*³²⁷ cases.

Thoma v. Luxembourg,³²⁸ *Pedersen and Baadsgaard v. Denmark*³²⁹ and *Selistö v. Finland*³³⁰ cases show how the requirement of good faith must be involved in journalists' work.

The *Janowski v. Poland*³³¹ case shows that a mere fact of being a journalist by profession does not guarantee the claim to journalistic freedoms.

*Oberschlick v. Austria*³³² and *Feldek v. Slovakia*³³³ cases dealt with differences between the statement of facts and a value judgment. Next feature of these cases was finding out how the right to protect the reputation of politicians should be treated when journalists' freedom of expression is at stake.

The journalists' right to impart information was stressed in *Obukhova v. Russia*³³⁴ and *Cumpana and Mazare v. Romania*³³⁵ cases.

Finally, *Goodwin v. United Kingdom*³³⁶ and *Roemen and Schmit v. Luxembourg*³³⁷ cases dealt with the protection of journalists' sources of information.

“Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart information and ideas on all matters of public interest. The Court has stressed that the media must have freedom to decide in which form to present journalistic material, saying that the "journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation". The Court has also found that "the protection of journalistic sources is one of the

³²⁶ *Mahmudov and Agazade v. Azerbaijan* judgment of 18 December 2008, Appl. No. 35877/04

³²⁷ *Tammer v. Estonia* judgment of 6 February 2001, Appl. No. 41205/98

³²⁸ *Thoma v. Luxembourg* judgment of 29 March 2001, Appl. No. 38432/97

³²⁹ *Pedersen and Baadsgaard v. Denmark* judgment of 17 December 2004, Appl. No. 49017/99

³³⁰ *Selistö v. Finland* judgment of 16 November 2004, Appl. No. 56767/00

³³¹ *Janowski v. Poland* judgment of 21 January 1999, Appl. No. 25716/94

³³² *Oberschlick v. Austria* judgment of 23 May 1991, A 204

³³³ *Feldek v. Slovakia* judgment of 12 July 2001, Appl. No. 29032/95

³³⁴ *Obukhova v. Russia* judgment of 8 January 2009, Appl. No. 34736/03

³³⁵ *Cumpana and Mazare v. Romania* judgment of 17 December 2004, Appl. No. 33348/96

³³⁶ *Goodwin v. Great Britain* judgment of 27 March 1996, Appl. No. 17488/90

³³⁷ *Roemen and Schmit v. Luxembourg* judgment of 25 February 2003, Appl. No. 51772/99

basic conditions of press freedom". Although the Court has stressed the need to give extensive protection to journalists, it has also underlined their duties and responsibilities. Thus, it said in a recent case that Article 10 "protects journalists' rights to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism."³³⁸

In the conclusion, the author stated that hypothesis "interpretation and application of Art. 10 of the ECHR with regard to journalists are problematic for the Contracting States" was verified. Finally, the ways how to use collected information were explained.

³³⁸ The Media Division, Directorate General of Human Rights, Council of Europe. Journalistic freedoms [cited 13th March 2009]. Available from <http://www.humanrights.coe.int/Media/topics/journalistic%20freedoms/main.htm>