

20)/1997. (III. 19.) AB decision

Summary

Headnotes:

It is unconstitutional that on the prosecutor's proposal the court is entitled to prohibit publication of any printed matter which contravenes the provisions of Articles 3.1 and 12.2 of the Law on the Press, and that the prosecutor has the right to suspend publication of such printed matter immediately.

Summary:

According to Article 3.1 of the Law on the Press, information published by the press may not be aimed at committing crimes or subordinated to the commission of crimes, and may not damage others' personal rights and public morals. The provision of Article 12.2 provides that before starting a periodical it is necessary to register the intention of establishing and publishing it. Prior to registration, the periodical should not be distributed.

In the petitioner's view, all forms of censorship, including the prior restraints under Article 15.3 of the Law on the Press, are against the constitutional requirement of a free press ([Article 61.2 of the Constitution](#)). Instead of suspending or prohibiting publication of press products in the abovementioned cases, the acceptable and proportional remedy could be the press correction in the frame of due process. Since personal rights may be typically enforced personally, the prosecutor's right to propose the prohibition of publication of printed matter which contravenes Articles 3.1 and 12.2 of the Law on the Press, infringes the right to self-determination.

According to the petitioner, the Law, by authorising the court to exercise the right to prohibit publication of the printed matter, damages public morals and is also against the freedom of the press.

The provision according to which the prosecutor has the right to suspend publication of printed matter immediately is clearly unconstitutional according to the petitioner, since the court can not reverse the act of the prosecutor even with its interim decision.

The Court found only one part of the petition justified.

In Decision 1 of 1994 (I.17), *Bulletin* 1994/1 [HUN-1994- 1-001] the Constitutional Court declared that the right to personal dignity includes the right to self-determination, specifically the person's right to enforce or not to enforce his or her rights either before the court or the state bodies. In the present case the Court held that the provision authorises the prosecutor to propose the prohibition of publication of printed matter if it injures others' personal rights, and the Article according to which the prosecutor has the right to suspend this kind of printed matter, infringes the abovementioned provisions of the Civil Code which limit the right to self-determination without it being in fact necessary for the validation of any other constitutional right without, that is, the limitation meeting the obligation for proportionality under [Article 8.2 of the Constitution](#).

The Constitutional Court held that Article 3.1 of the Law on the Press is in accordance with the restrictions worded by [Article 19 of the International Covenant on Civil and Political Rights](#), and [Article 10 ECHR](#). Under these provisions the exercise of freedom of expression can be restricted by law if it is necessary in a democratic society for the prevention of disorder or crime. Despite that, the Court declared that it is unnecessary and against the injured party's right to self-determination that the prosecutor could propose and on the prosecutor's proposal the court could prohibit publication of a newspaper or a periodical if it aimed at committing a crime or the aim was an incitement to commit a crime and the crime punishable upon private motion.

According to the Covenant and the European Convention of the Human Rights public morals may also be subject to certain restriction, hence the Article 3.1 of the Law on the Press is not unconstitutional. Neither did the Constitutional Court hold unconstitutional Article 12.2 of the Law on the Press. According to the Court's opinion the registration of press products is traditional and crucial with regards to press policing, therefore it is not contrary to the freedom of press.

Three judges wrote dissenting opinions, and one of these opinions was concurred by another judge.

In two judges' opinions - including the opinion of the President of the Court - the prosecutor's right to suspend the printed matter at once if according to the prosecutor it damages public morals, is unconstitutional. Public morality is an abstract value, therefore in the interests of this the exercise of free expression could not be restricted. The Constitutional Court, in an earlier decision, had held that the laws restricting the freedom of expression are to be assigned greater weight if they directly serve the realisation or protection of another basic right, a lesser weight if they protect such rights only indirectly through the mediation of some institution, and the least weight if they merely serve some abstract value as an end in itself (public order) (decision 30/1992 of 26.05.1992).

According to the two judges the fact that there is no guarantee that the procedure on the prohibition of publication of press products will be finished soon or at least in a reasonable time and that the prosecutor acts as a party in this type of procedure, violates the right to self-determination.

In his dissenting opinion which was concurred in by another judge, one of the judges of the Constitutional Court stated that the prosecutor's right to propose that the court prohibit publication of press products is not unconstitutional. The decision of the court at the end of this procedure does not mean *res iudicata* concerning the persons' entitlement to enforce their rights before the court. Regardless of the prosecutor's right, persons can decide themselves whether they will bring the case before the court or not. According to the judge Article 15.3 of the Law on the Press does not create a «clear and present danger», therefore the Court should not have had to annul this provision.