

FREEDOM OF EXPRESSION AND INFORMATION: STANDARDS, NORMS AND PRACTICE

Note for seminar on 8.7.2013 by Ngo Huong

Many governments, however, tend to apply this notion to justify restrictions on opposition groups, politicians and critical media.

In the case of *Laptsevich v. Belarus* and *Dergachev v. Belarus*, the Government of Belarus confiscated leaflets and posters of political opponents on this ground but the Committee found violation of Art. 19. By limiting and fining print-outs of leaflet in as few as 200 copies, the State has put obstacles to restrict the author's freedom of expression and information as it is protected under Article 19. *Laptsevich v. Belarus* (no. 780/1997) and *Dergachev v. Belarus* (no. 921/2000). Also in the case of *Mukong v. Cameroon*, a journalist and writer opposed the one party system of Cameroon and advocated for multi-party democracy. He was arrested by the Government on the grounds of threat to national security and public order.

Article 19 means FOE/I encompasses oral transmission, print forms, writing or art and other form of media. All are regarded as being equally worthy of protection and no form would bear broader restrictions than the others.

This view is expressed in the case of *Ballantyne, Davison and McIntyre v. Canada* (Communication No. 385/1989; CCPR/C/47/D/385/1989) para 11.3

Criminal prosecution for subversive activities is a violation of Article 19

Several cases against South Korea, *Park v. Republic of Korea*, *Kim v. Republic of Korea*, and *Kang v. Republic of Korea*, *Sohn v. Republic of Korea*, the ground of national security under the National Security law 1980 against threat of North Korean communists used by South Korea, the Committee found violation of Art. 19.

Being 'provided by law'. Meaning the state has to show the legal basis for such restriction. Human Rights Council (HRC) required that restrictions must meet a strict test of justification.

No. 628/1995. CCPR/C/64/D/628/1995 *Tae Hoon Park v. Republic of Korea* para 10.3 states: "The right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification

Case *Toonen v. Australia*. No. 488/1992 View adopted 8 March 1994 is " Even interference provided for by the law should be in accordance with the provisions, aims, and objectives of the Covenant and should be, in any event, reasonable in the circumstance"

States may not extend the notion of state security so far as to penalize and suppress mere expression of opinion.

the Special Rapporteur reiterated that any restriction to the right to freedom of expression on the grounds of protecting national security is only legitimate if the Government can demonstrate that the expression is intended to incite imminent violence, it is likely to incite such violence, and there is a direct

and immediate connection between the expression and the likelihood or occurrence of such violence. Cf. A/HRC/17/27 dated 16 May 2011. Para 36

This view is supported in several cases against Uruguay (no.8/1977 para. 16; no. 11/1977 para 17; no. 33/1978 para 12 and no. 44/1979 para 15). The HRC said that if a person is arrested or sentenced to prison for participating in trades union, political parties, journalism or other 'anti-regime' activities this is, other things equal, violation of freedom of expression under Art. 19. This view is also supported in the case of *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994).

Although it is often seen that anti-state acts, or any preparations to topple a government may likely fall under criminal acts.

No. 458/1991 paras 9.6 – 9.7 and U.N. Doc. CCPR/C/51/D/458/1991, 10 August 1994. For instance, in the case of *Adyayom et al. v. Togo*, two university teachers and a civil servant had been detained and charged in 1985 with the offence of lèse-majesté because of their minor criticisms of the Togolese Government. The Commission on Human Rights observed that they may “criticize or openly and publicly evaluate their Governments without fear of interference or punishment within the limits set out by Article 19(3)”. Also, in case no.422-424/1990 and supra note. 17 (cases of South Korea). As in many similar cases in numbers of non-democratic African regimes, the Committee considered that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances can not be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights”

The Committee reviewed where the restriction of FOE/I was deemed to be permissible

The case *Handyside v. UK*, para 52. The applicant published obscene material, an anti-authoritarian handbook on living addressed to children and adolescence tended to deprave and corrupt' its intended readers and was therefore criminal obscene. The judgment of December 7, 1976 vol 24, the Strasbourg Court found no violation of ECHR art 10 on the ground of public morals. the court ruled that freedom of expression may be limited for the sake of community' morality. So noted that though having differences in political cultures and ideologies, the Western and Eastern have shown to share the same view.

Other case ruled by ECHR was conviction for attempting to re-establish a fascist party of *M.A v. Italy* (Communication No. 117/1981 (21 September 1981), U.N. Doc. Supp. No. 40 (A/39/40) at 190 (1984) was permissible for restriction under art 19(3) because it meet the test of necessity for the purpose of interference.

Europe's principle of democracy overrule restrictions on FOE

The European Court of Justice (ECJ) saw this standard as a general principle enshrined in Articles 8,9,10 and 11 of ECHR to the effect that “no restrictions in the interests of national security of public safety

shall be placed on the rights secured by above articles other than necessary for the protection of those interest in a democratic society'. cf. *Rutily v. Minister for the Interior* (Case 36/75) ECR 1219 papa 32

Indonesia:

The New Order reduced freedom of press through numerous security restrictions. Orde Baru' is used when the former Indonesian President Suharto to characterize his regime as he came to power in 1966. The incident on 1 October 1965 was when six army generals and an officer were kidnapped and killed and the Indonesian Communist Party (PKI) was blamed for the killings. Far from allowing these allegations to be tested in a court of law, almost all the communist leaders were hunted down and killed within days. Hundreds of thousands of people were killed and many more thrown into prison, many for up to fourteen years, and almost all without trial.

Singapore

The Newspapers and Printing Presses Act, ch. 206 (1975) (Sing.) was amended in 1974 to give the Minister discretionary powers to deem if foreign publications were interfering in Singapore's domestic politics. This can be done through the publication of an order in the *Gazette*, which leads to the restriction of its circulation (§ 24)

Public Entertainments and Meetings Act, ch. 257 (1959) (Sing.) § 3 (a police permit is required to hold a public talk or to deliver a political speech) an amendment to § 4 of the Societies Act in 1988 to permit deregistration of any society that made political statement beyond its stated mandate.

See Li-Ann Thio, *Lex Rex or Rex Lex Competing Conceptions of the Rule of Law in Singapore*, 20 UCLA PAC. BASIN L. J. 1, 22, 24 (2002). P 26

A recent case is *Lee Hsien Loong v. Singapore Democratic Party*. Lee Kuan Yew and Lee Hsien Loong sued the Singapore Democratic Party (SDP), its secretary-general, Dr. Chee Soon Juan, and a member of its Central Executive Committee, Ms. Chee Siok Chin, for defamation in respect of two articles and a photograph concerning the NKF scandal published in *The New Democrat*, the SDP's newspaper. Another case related to the NKF scandal is *Review Publishing Co. Ltd. v. Lee Hsien Loong*. The Court of Appeal, in a stunning interpretation of common law legitimacy in these jurisdictions, has demonstrated that there is a need to decide how to strike an appropriate balance between the "competing" interests of freedom of speech and protection of reputation in the context of local conditions but ruled that protection of reputation was not preferred over freedom of speech.

The National Kidney Foundation Singapore scandal, also known as NKF scandal was a July 2005 scandal involving National Kidney Foundation Singapore (NKF) following the collapse of a defamation trial which NKF and T. Durai, the former Chief Executive Officer of the National Kidney Foundation Singapore (NKF) brought against Singapore Press Holdings (SPH) and journalist Susan Long.

Review Publ'g Co. v. Lee Hsien Loong, 1 Sing. L. Rep. 52, 132 (2010 p. 183 Although the court ruled that the defendants were not citizens of Singapore, they were not entitled to enjoy constitutional free speech, and so there was no need to decide what approach the courts should adopt to the interpretation of such freedom. The court suggested that Singapore has no place in its political culture

for the making of “false defamatory statements which damage the reputation of a person (especially a holder of public office) for the purposes of scoring political points”

Thai land

FOE/I is also often viewed as being contrary to the notion of public morals, defined under lèse-majesté law when the government might use this reason to suppress the liberty of individuals to share opinions through different means of communication such as websites. In accordance with article 8 of the 2007 Thai Constitution. The lèse-majesté law is part of Thailand’s criminal code, which also contains general provisions on defamation and libel of private individuals. It provides a non-violable position of the King.

Cases: Mr. Suwisha Thakor was arrested on 14 January 2009 for the criminal charges of having disseminated information and pictures allegedly offensive to His Majesty the King via the Internet. On 26 March 2009 the Attorney-General issued an opinion to institute prosecutions against Mr. Takor on two counts: (1) defaming, insulting or threatening the King.

So far, about 10,000 websites have been blocked on the grounds of national security and breaches of lèse-majesté law. Shutdown of online newspaper Prachatai on 8 April 2010, by order of Deputy Prime Minister Suthep Thaugsuban

6 March 2009, Ms. Chiranuch Premchaiporn, also known as Jiew, was arrested on the basis of a warrant alleging that she violated articles 14(1), 14(3), 14(5) and 15 of the Computer Crimes Act for having allowed readers to post comments on Prachatai’s online discussion forum that allegedly defamed the King of Thailand. On 31 March 2010, she was arrested again for the same alleged offence, but with the additional charge of violating the Lèse majesté provision of the Criminal Code (article 112).

The UN Special Rapporteur especially stressed the in compliance with international human rights law, he says, “these have in no way affected the media in their normal dissemination of facts and information”

Vietnam

Article 69 states: “Citizens are entitled to freedom of speech and freedom of press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law”.

The Penal Code amended in 2009 remained some key provisions on article 87 (undermining the unity policy), article 88 (propaganda against the state), article 89 (disrupting security) and article 245 (causing public order). In the 2009 Penal code, increased sentence from ten to twenty years of imprisonment was imposed, compared with from three to twelve years of imprisonment under the 1999 Penal Code. For instance, article 88 of the Penal Code, which prohibits “conducting propaganda against the Socialist Republic of Vietnam”, does not meet the above-mentioned criterion due to the vagueness of the types of expression or publication which are prohibited. Under article 88 of 2009 Penal Code, more specifically, it is unclear what types of expression or actions would constitute ‘propagating against, distorting and/or defaming the people’s administration, propagating psychological warfare and spreading fabricated news in order to foment confusion among people’, or “making, storing and/or circulating documents and/or cultural products with contents against the Socialist Republic of Vietnam”.

Regarding the case regarding the Polymer money note during 2006 – a government public project containing a rumor on business involvement of family member of the Prime Minister, 8 big newspapers received administrative fines by Ministry of Culture and Information (including Thanh niên, Tuổi trẻ, Người lao động, Nhà báo và Công luận, Thời báo Kinh tế Việt Nam, Sài Gòn tiếp thị, An ninh Thủ đô, Thể thao và Văn hóa)

See Human Rights Council (2009) A/HRC/WG.6/5/VNM/2. Vietnam UPR. Para 40. 700 news outlets in Vietnam are state-controlled.¹ Banning media, publication or use of the internet for communication in the name of state security and social order has been increasing and includes limiting access to social media sites like Facebook

Public and media were demanding information on public officials' duties. But instead of being able to access such information, the journalists were restricted in their freedom as members of the press and received criminal convictions.

Two journalists publically expressing opinions and demanding information in a corruption case of *PMU 18* regarding Mr. Bui Tien Dung, the then PMU18-chief of the government-run construction project. During their search for truth, journalist Chien of the Thanh Nien Newspaper and journalist Nguyen Van Hai of *Tuoi Tre* newspaper, were convicted for 'abuse of power' under Art. 281 of the Penal Code.

Criminal charge on restricting FOE vs. national security

The second case concerns a Father Ly and a Mr Vi Hoi who were founding members of Bloc 8406, which in April 2006 launched an on-line petition signed by 118 democracy activists calling for peaceful political change and respect for human rights in Vietnam. On March 30th 2007, dissident Catholic Priest Thadeus Nguyen Van Ly was sentenced to eight years imprisonment and the court found him guilty of "extremely serious violations against national security" and "having distributed materials intended to undermine the government".

See case of Mr Vi Duc Hoi (Communication was sent to the Human Rights Council on 7 Jan 2011. A/HRC/18/5, 18th Session, distributed 9 September 2011 . available on http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.51_en.pdf)

He was charged for defaming the 'physical and psychological integrity' of the State under the Penal Code. The Court interpreted peaceful expression of political opinions as likely to precipitate violence and was thus a threat to national security. This understanding was nevertheless the same as the international standards.