

Chairs of the Online Safety Bill Committee,
Rt Hon Sir Roger Gale MP and Christina Rees MP
CC: Members of the Committee

25/05/2022

Dear Chairs of the Online Safety Bill Committee,

I am writing regarding comments made by Committee Member and the Minister for Tech and Digital Economy, Mr Chris Philp MP, during an evidence session yesterday.

At the Second Sitting of the Committee, Hansard Column 107, the Minister stated,

“Of course, article 10 of the European convention on human rights expresses the right to freedom of speech. The case law deriving from that ECHR article provides an enhanced level of protection, particularly for freedom of the press relative to otherwise, so there is some established case law which makes that point.”

This might have been perceived to indicate that European Court of Human Rights (ECtHR) case law privileges the press’s (or media’s) right to freedom of expression (above that of citizens’).

Although the context of Article 10 disputes is often journalistic, it is not the case that the ECtHR differentiates press freedom from individual freedom of expression.

In *Editions Plon v France*, for example, the judgment makes clear that Art. 10 is engaged on the basis of the “public interest” in publication, not on the basis of whom was responsible for publication:

‘These principles [of Art. 10] also apply to the publication of books or pieces of writing other than those which are to be published, or have been published, in the periodical press, in so far as they concern matters of public interest.’

Similarly, in *Magyar Helsinki Bizottsag v Hungary*, it said (concerning access to information):

‘The manner in which public watchdogs carry out their activities may have a significant impact on the proper functioning of a democratic society. It is in the interest of democratic society to enable the press to exercise its vital role of “public watchdog” in imparting information on matters of public concern... This does not mean, however, that a right of access to information ought to apply exclusively to ...the press. [The Court] reiterates that a high level of protection also extends to academic researchers... and authors of literature on matters of public concern. The Court would also note that given the important role played by the Internet in enhancing the public’s access to news and facilitating the dissemination of information..., the function of bloggers and popular users of the social media may be also assimilated to that of “public watchdogs” in so far as the protection afforded by Article 10 is concerned.’¹

¹ *Magyar Helsinki Bizottsag v Hungary*, app no 18030/11, [168], <http://hudoc.echr.coe.int/eng?i=001-167828>.

Whereas the ECtHR has spoken previously of the ‘pre-eminent role of the press’,² it has done so only as a means of mass communication, and at a time when the press held the monopoly over such. Plainly, this is no longer true – hence the ECtHR’s more recent recognition of the greater role the internet plays. But the vehicle of distribution is not, and has never been, the ECtHR’s primary concern. Whereas the means of dissemination is important, it is the *category of expression* that animates the decision-making. *If* public interest expression is at stake, *then* any interferences with it require the strictest scrutiny. Thus, ECtHR case law makes no claims about the press as an institution; it essentially approximates special treatment for public interest expression, *regardless of the speaker’s identity*.

In summary, I do not believe the Minister is right to claim that the ECtHR affords special protections to the printed press, such that a newspaper’s right to freedom of expression is worthy of greater protection than the free expression rights of other citizens.

The Online Safety Bill’s exemption for recognised news publishers privileges the free expression rights of publishers in a way which I consider to be not only inconsistent but also incompatible with the European Convention on Human Rights.

This exemption would create a two-tier system of regulation, under which citizens’ rights would be inferior to publishers’.

If Parliament wishes to keep an exemption for news publishers in the bill, it is my view that they must require publishers to be subject to a mandatory specialist, independent system of regulation that oversees standards consistent with those that the Online Safety Bill’s regime would otherwise provide.

In the case of broadcast media, there is such a system in Ofcom (and the bill acknowledges and provides for this). In the case of print & online media, there is such a system in the Royal Charter-backed framework for independent press regulation, as set out in the Crime and Courts Act 2013.

It is membership of either of these bodies which should form the specific basis for publishers to benefit from any media exemption.

Policy should rest on credible systems of existing regulation, not vague notions of the sanctity of press freedom, which are poorly defined and open to abuse.

Yours sincerely,

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PS: Please let me know if I can provide any further information.

² *Thorgeirson v Iceland* (1992) 14 EHRR 843, [63]

I am content for this letter to be published and considered as evidence.