PREFERRED PROTECTION ON POLITICAL SPEECH İN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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"I disapprove of what you say, but I will defend to the death your right to say it."

Voltaire

Introduction

The right to freedom of expression which is provided in the European Convention on Human Rights Article 10 is extremely broad. All types of expression are covered in the first paragraph of Article 10 such as paintings[1], books[2], cartoons[3], films[4], vide-recordings. There are mainly four types of expression covered by the Strasburg Court in its case law. These are political expression, religious or moral expression, commercial expression and artistic expression. It is explicitly recognised about the protection of free expression in the text of article 10 and also by the Court in its jurisprudence that free expression is a powerful tool carrying special responsibilities and duties particularly free speech on public debates and mass media. Free speech has a power to promote democracy and also advanced scientific, political, commercial and artistic development. For that reason, it is claimed that to protect the right to free speech is vital in itself. The Court is also aware of that freedom of speech and expression can be used to impinge on individual privacy and also to incite violence of basic rules. As a result, the Strasburg Court's

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1 *Muller v. Switzerland,* (App. 10737/84), 24 May 1988, Series A No 133, (1991) 13 EHRR 212.

2 *Handyside v United Kingdom,* (App. 5493/72), 7 December 1976, Series A No 24, (1979-80) 1 EHRR 737.

3 *Leroy v France,* (App. 36109/03), 2 October 2008.

4 *Otto-Preminger Institute v Australia,* (App. 13470/87), 20 September 1994, Series A No 295-A, (1994) 19 EHRR 34.

case law is an attempt to make a proper balance between these competing interests[5].

From on one side of the balance, there are certain restrictions on the freedom of expression which is allowed by the article 10(1) itself. It provides that Contracting Parties may require the licensing of broadcasting, cinema and television enterprizes. Furthermore, Article 10, second paragraph, which allows Contracting Parties to create limitations on the right set out in the first paragraph. As mentioned in the second paragraph, these limitations are *'prescribed by the law'* and they must be *'necessary in a democratic society'* in pursuit of one of the specified aims[6].

On the other side of the balance is the nature of the expression restricted. It is taken into account by the Strasburg Court that freedom of expression is not only important itself, in the context of the respect for human rights mentioned in the preamble to the European Convention, but also it has a key role in the protection of the other principles of human rights provided in the European Convention. Furthermore, the Strasburg Court consistently gives a higher level of protection to speech and publications, which is related to political and social debate, information and criticism (in the broadest sense). In contrast, other types of expression namely artistic, moral and commercial expression have a lower protection level[7]. This paper will aim to discuss that preferred protection on political expression and public speech in the jurisprudence of the European Court of Human Rights.

Firstly, the Court's popular phrase of *'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'* in the *Lingens* case will be analysed for understanding the ECtHR's justifications for the special protection on the expression[8]. Then, preferred protection of political expression and speech in the ECtHR case-law will be discussed. In the last part, one of the ways of the Court's preferred protection on the political speech, the protection the press from regulation and censorship, will be illustrated.

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5 Eric Barendt, *Freedom of Speech*, (OUP, Second Edition, Oxford 2005).

6 *Wingrove v UK* , (App. 17419/90), 25 November 1996, (1997) 24 EHRR 1.

7 *Vgt Verein gegen Tierfabriken v Switzerland*, (App. 24699/94), 28 June 2001, (2002) 34 EHRR 159, ECHR 2001-VI, p.71.

8 *Lingens v. Austria*, (App. 9815/82), 8 July 1986, 8 EHRR 103. para. 41.

1. Certain Justifications of Special Protection on Freedom of Speech

There are broadly two justification categories for special protection of expression. Firstly, public debates are useful instruments for achieving social objectives. For that reason, speech is recognised as valuable by the authors. Personal expression, as a second category, is also seen as a human good in itself.

Freedom of speech has been associated with two related objectives, in so far as it is valued instrumentally. Generally speaking, it has been justified as the best way of assuring the discovery of the truth. It is claimed that the best way to increase knowledge comprises the uninhibited clash and consequent testing of opinions and ideas. This opinion is well summarised by Milton's in his *Aeropagitica*;

'Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and falsehood grapple; whoever knew truth put to the worse in a free and open encounter?[9]*'*

John Stuart Mill elaborated the same idea in the nineteenth century,[10] and Justice Oliver Wendell captured a similar one[11].

The narrower version of the instrumental view of the free expression focuses on its utility in the functioning of a representative democracy. Justice Brandeis who is the framer of the First Amendment believed *'in the power of reason as applied through public discussion [so] they eschewed silence coerced by law'*[12]. As Alexander Meiklejohn argued, democratic self-government depends on the ability of electors to choose their representatives who best reflect their own interests and convictions and also depends on the ability of the representatives to understand the concern of their constituents. Neither the character of the issue at stake nor the effectiveness of representation is possible without a thorough airing of facts and arguments[13].

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9 John Milton *Aeropagitica: a Speech for Liberty of Unlicensed Printing to the Parliament of England* (1644) (Library of Alexandria, 1644).

10 John Stuart Mill, *On Liberty* (1859) vol. 25 (Harvard Classics, 1859).

11 *Abrams v United States,* 250 U.S. 616,630 (1919) (Oliver Wendell Holmes, Jr. Dissenting).

12 *Whitney v California,* 274 U.S. 357, 375-6 (1927) (concurring opinion).

13 Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (1948) (Law book, 2004).

The second justification category for free expression turns on the idea that free communication of opinions, ideas and feeling is essential for the full development of human personality in society. The ability to challenged, encouraged or provoked by the idea of others may be critical to the formation of these personal beliefs which are core of our capacity for self-definition[14].

These two jurisdictions for freedom of expression, which might be called the instrumental and the intrinsic, are evidenced in judicial opinions applying the relevant constitutional guarantees[15]. This appreciation of the double character of this right has been expressed by the Strasburg Court, which has insisted in the *Lingens* case that 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[16]*.'*

In this context, it is a strong argument that the approach of the ECtHR to give particularly strong protection to political speech can be explained, and indeed justified, by reference to the weight of the argument from democracy[17]. While the rights-based argument concerning the importance of speech to self-development and Mill's argument from truth suggests that artistic and scientific propositions are equally immune from legislative regulation, the argument from democracy overtly elevates political discourse to a special status. Free political speech encourages a well-informed, politically sophisticated electorate able to confront government on more or less equal terms. It also, as Brandeis J. pointed out in his celebrated judgment in the Whitney case, prevents that stifling of debate on political matters, which in the long term might endanger the stability of the community and make revolution more likely[18].

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14 Thomas Scanlon, 'A Theory of Freedom of Expression' *1Phil. & Pub. Aff.* 204 (1972).

15 Mark W. Janis, Richard Kay and Anthony Bradley, *European Human Rights Law Text and Materials*, (Oxford, Third Edition, 2008), p.140.

16 *Lingens v. Austria*, (App. 9815/82), 8 July 1986, 8 EHRR 103. para. 41.

17 Michael O'Boyle & Anna Austin, "Freedom of expression: essays in honour of Nicolas Bratza, president of the European Court of Human Rights" (Oisterwijk, 2012).

18 *Ibid.*

2. The Special Protection of Political Expression

Despite the fact that Article 10 provides 'freedom of expression' without specifying any kind of expression as less or more deserving of protection, judicial application of article 10 has varied the strictness with which the European Convention will be applied, depending on the particular kind of expression involved. As illustrated in the *Lingens* case;

'...freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

...The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual[19]*'.*

According to the Strasburg Court, speech relating to political figures and issues has a key role functioning in the democratic societies. As a result, it will be really hard to maintain such an argument which argues that a restriction of such public debate in a democratic society is necessary. For instance, the Strasburg Court found a violation of Article 10 in the *Bowman* case[20]; the applicant printed and distributed 25.000 copies of a leaflet arguing the positions of the candidates in the parliamentary constituency on issues relating to abortion. When, section 75 of the Representation of the People Act 1983 was applied to the applicant. The statute has prohibited expenditures in excess of £5 by any person other than the candidate *'with a view to promoting or procuring the election of a candidate'*. This prohibition, of course, did not apply to print or broadcast media. This restriction was found as disproportionate to the legitimate aim of promoting equality among candidates by the Strasburg Court because it *'operated for all practical purposes as a total barrier to publishing information with a view to influencing the voters*[21]'.

The preference for political speech in the jurisprudences of the ECtHR already has its counterparts in other law systems. For instance, in the United States, this kind of expression is at the *'core'* of the First Amendment of the constitutional guarantee. Communications on issues of public interest is of a kind *'entitled to the most exacting degree of First Amendment protection*[22]'. Justice McLachlin of the Supreme Court of Canada has captured the reasons

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19 *Lingens v. Austria,* (App. 9815/82), 8 July 1986, 8 EHRR 103. para. 42.

20 *Bowman v United Kingdom,* 19 February 1998, Reports 1998-1 175, 26 EHRR 1.

21 *Ibid,* para.47.

22 *FCC v. League of Women Voters*, 468 U.S. 364, 375-6 (1984).

for this focus in terms that seems equally applicable to the judgments of the ECHR;

The right to fully and openly express one's views on social and political issues is fundamental to our democracy and hence to all the other rights and freedoms guaranteed by the Charter. Without free expression, the vigorous debate on policies and values that underlines participatory government is lacking. Without free expression, rights may be trammelled with no recourse in the court of public opinion. Some restrictions on free expression may be necessary and justified and entirely compatible with a free and democratic society. But restrictions which touch the critical core of social and political debate require particularly close consideration because of the dangers inherent in state censorship of such debate. This is of particular importance under article 1 of the Charter which expressly requires the court to have regard to whether the limits are reasonable and justified in a free and democratic society[23].

It is, of course, not always obvious whether a particular instance of conduct amounts to political expression or not. For instance, in the *Thorgeir Thorgeirsan* [24]case, the Court decided that a conviction for defamation based on a publication charging unspecified police officers with acts of brutality violated Article 10. The Government alleged that the strict rule of the *Lingens* case which is applicable to limitations of 'political discussion' did not apply to 'other matters of public interest' or matters did not concern 'direct or indirect participation of citizens in the decision making process'. The Strasburg Court has rejected this distinction with no discussion other than to state that it was not warranted by the case-law of the Court[25].

From the other side, the Court found, in the *Janowski* case[26], that prosecution for *'insulting a civil servant ... during and in connection with carrying out of his official duties'* did not violate Article 10. The applicant had upbraided police men publicly whom he believed to be misusing their authority, calling them 'dumb' and 'oafs'. Because of that his statements were directed to the officers and were witnessed by a few bystanders, they '*did*

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23 *R. v. Keegstra* [1990] 3 S.C.R. 697, 849-50.

24 *Thorgeir Thorgeirsan v. Iceland,* (App. 13778/88), 25 June 1992, 14 EHRR 843.

25 *Ibid,* paras. 61-64.

26 *Janoswki v Poland,* (App. 25716/94), 21 January 1999 available at; http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58909#{"itemid":["001-58909"]} (Last accessed at 02/02/2014).

not form part of an open discussion of matters of public concern[27]*'*. The Strasburg Court noted the limits of criticism that;

'[Many] in some circumstances [are] wider with regard to civil servants exercising their powers than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions... What is more, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty[28]*'.*

As illustrated in the *Barford* case[29] the special characteristics and role of the judiciary raise a few different questions with respect to public discussion of the actions of courts. Particularly, it may not be appropriate to treat such expression in the same way as criticism of some other public agencies. The difference is highlighted as one of the public aims for which expression may properly be limited by Article 10 (2)'s designation of *'maintaining the authority and impartiality of the judiciary'*. The Strasburg Court's discussion, in the 1979 *Sunday Times* case, considered the risks to fair adjudication arising from a public discussion of the issues in litigation;

If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in the courts. Again, it cannot be excluded that the public's becoming accustomed to the regular spectacle of pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes[30].

However, the Court stated that the courts *'cannot operate in a vacuum'* and *'it is incumbent on –the media – to impart information and ideas concerning matters that come before the courts just as in other areas of public interest*[31]*'*. With balancing state interest against the freedom of expression

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27 *Ibid*, para. 32.

28 *Ibid*, para. 33.

29 *Barfod v Denmark*, (App. 11508/85), 22 February 1989, 13 EHRR 493.

30 *Sunday Times v. United Kingdom*, (App. 6538/74), 26 April 1979, 2 EHRR 245, para. 63.

31 *Ibid*, para. 65.

the extent of the public attention devoted to a particular matter was a proper factor to be considered[32].

In *Worm v. Australi*[33], similar considerations were brought to the court. The applicant wrote an article about the trial of a public figure for tax evasion, it was strongly suggesting that the defendant was guilty. The authority convicted the writer of attempting to influence the outcome of criminal proceedings and the writer was also sentenced to pay a fine. According to the Strasburg Court, the conviction was justified under Article 10(2) of the Convention. The Court did not distinguish its holding in the *Sunday Times* case but it has emphasized that *'public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceeding include the right to an impartial tribunal, on the same basis as every other person*[34]'. Moreover, the Court held that such prosecutions were compatible with the Convention, even when states had not demonstrated *'an actual result of influence on the particular proceedings*[35]'.

The Strasburg Court has also illustrated the importance of protecting the authority of the judiciary not merely in cases concerning comments on ongoing proceedings, however, as illustrated by *Barfod,* in critical statements on judicial decisions after the fact. For instance, in *Prager Oberschlick* case[36], the applicants were writers who had been convicted of criminal defamation on the complaint of the judges who had been harshly criticised in an article. This magazine article had condemned the judge's court room actions describing the judge as 'rabid' and prone to 'arrogant bullying'. The Court was agreeing that press criticism of the judges and courts was proper and protected. However, the Court also stressed that the judiciary as the guarantor of justice... *'must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty*

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32 *Ibid.*

33 *Worm v. Australia,* 29 August 1997, (App. 76573/01), Reports, 1997-V 1534, 25 EHRR 464.

34 *Ibid,* para. 50.

35 *Ibid,* para 54.

36 *Prager Oberschlick v Austria,* (App. 15974/90), 26 April 1995, 21 EHRR 1.

of discretion that precludes them from replying[37]'. These actions of state were not directed to criticism of the system of justice in this case but to the *'excessive breadth of the accusations, which, in the absence of a sufficient factual basis, appeared unnecessarily prejudicial*[38]'.

In the De *Haes Gijsels* case[39], the Court found to be protected the press criticism of the courts by article 10. The applicants were authors and editors of article series criticizing the Antwerp Court of Appeal in a controversial child custody case. The Advocate General of the court and also some judges brought a civil defamation action. The judges had been accused of bias by the articles. Furthermore, they suggested that the judges were swayed by sympathy for the father because they held similar political views and were of the same social class. As mentioned above, in the *Prager Oberschlik* case, the Strasburg Court has repeated its language about the special protection needed for the courts to maintain public confidence. However, in this case, the journalist had engaged in extensive research and the decleration published was generally accurate. The Court, on the personnel attacks, noted that they constituted only one aspect among many of the arguments of the applicants. The interference of state in this case was not necessary under Article 10(2), because they amounted to an opinion which, in light of the factual basis of the whole article series, was not 'excessive[40]'.

3. Press as a tool of Political Expression

The central place of political discussion in freedom of expression has naturally led to a special emphasis on the need to protect the press from regulation and censorship. There are many ways to protect political speech and expression in the ECtHR's jurisprudence. Protection of press from regulations is one of them. In this part, the preferred protection of political expression will be illustrated by the special protection on the press. Although, the relevant clause has not been interpreted to provide any preferred status for

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37 *Ibid*, para. 34. Judge Martens joined by Judges Pekkanen and Makarczyk argued in his dissent that *'I agree that public confidence in the judiciary is important... but rather doubt whether that confidence is to be maintained by resorting to criminal proceedings to condemn criticism which the very same judiciary may happen to consider as ''destructive''.'Ibid,* para. 3.

38 *Ibid*, para. 37.

39 *Haes Gijsels v Belgium*, (App. 19983/92), 24 February 1997, Reports 1997-I 198, 25 EHRR 1.

40 Ibid, para. 39, 44-9.

the press over other speakers, the First Amendment to the United States Constitution mentioned the press separately in its text[41]. The importance of the press has been stressed by the Strasburg Court in realizing the values Article 10 was intended to safeguard. Paragraphs 41 and 42 of the *Lingens* case are illustrative;

'Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention[42]*'.*

The Court also referred to the press having the *'vital role of public watchdog'* in the *Spycather* case[43]. It is a possibility, suggested by the importance of an independent press, that Article 10 may prohibit more than direct regulation of the actual materials or publication. Furthermore, it might bar actions that interfere with the ordinary gathering-information and disseminating function of media specifically, newspapers. For instance, the case of *Goodwin v. UK*[44] is such a case. A reporter received confidential information about some financial conditions of a company. This company then gained an order requiring the correspondent to make the press' sources known and an injunction prohibiting the publication of the information. Finally, the Strasburg Court noted that free press means, indeed, more than a right to publish;

Protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the law and the professional codes of conduct in a number of Contracting States... Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exer-

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41 See for details; *First National Bank v. Bellotti*, 435 U.S. 765, 795-802 (1978) (Burger C.J. concurring).

42 *Lingens v. Austria*, (App. 9815/82), 8 July 1986, 8 EHRR 103, para. 42.

43 *Observer and Guardian v. United Kingdom,* (App. 13585/88), 26 Nov. 1991, 14 EHRR 153, para, 59.

44 *Goodwin v. United Kingdom,* (App. 17488/90), 27 March 1996, Reports, 1996-II 483, 22 EHRR 123.

cise of that freedom, such a measure cannot be compatible with article 10 of the Convention unless it is justified by an overriding requirement of public interest[45].

As seen that case the Court agreed that preventing economical injury to the company and its employees was a legitimate public interest. On the other hand, identifying the source would only deal with the *'residual threat of damage through dissemination of the confidential information otherwise than by the press'* and also aid *'in obtaining compensation and in unmasking a disloyal employee or collaborator... Even if considered cumulatively sufficient* –these interests were not- *to outweigh the vital public interest in the protection of the applicant journalist's source*[46]*'.*

After just a few months, one of the English Courts, in a similar case, affirmed another approach. It was held by the English Court that the standards of *Goodwin* case including English law were less or more identical, on the other hand, the facts' interpretation caused it to come to another result. It referred to additional conclusions why the lacking employee's identification may be significant to the submitting company, the National Lottery's operator. The Court of Appeal noted that *'unease and suspicion'* between employees would follow from *'the risk that employees who had proved untrustworthily in one regard may be untrustworthy in a different respect and reveal the name of, say, public figure who has won a huge lottery prize'* and the presence of the unidentified source[47].

These approaches to this question in both the European and English courts might be contrasted with that adopted in the dissenting opinion of Judge Walsh in the *Goodwin* case. Despite the other dissenting opinion adopted by seven judges that accepted the Court's conclusion that it was necessary to assess the competing interests, Walsh questioned whether any right in Article 10 could be asserted in these circumstances;

[I]t appears to me that the Court in its decision has decided in effect that under the Convention a journalist is by virtue of his profession to be afforded a privilege not available to other persons. Should not the ordinary citizen writing a letter to the paper for publication be afforded an equal privilege even though he is not by profession a journalist? ...

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45 *Ibid,* para. 39.

46 *Ibid,* para. 45.

47 *Camelot Group P.L.C v. Centaur Communications Ltd.* [1998] 1 All E.R. 251 (C.A).

In the present case, the applicant did not suffer any denial of expressing himself. Rather he has refused to speak. In consequence a litigant seeking the protection of the law for his interests which were wrongfully injured is left without the remedy the courts had decided he was entitled to[48].

The majority of the US Supreme Court adopted another similar approach. It was held by the Court that the First Amendment of USA Constitution does not protect any correspondent or journalist from the responsibility to examine his sources from any court or higher jury. It was also noted by the Court that any issues did not arise as for *'any inhibition on the use of any investigative procedure,'* nor on publication[49]. Similarly to Judge Walsh's opinion, it was stressed that ordinary citizens did not have a right to hide confidential source, document and information from a chamber or jury[50].

It is clear that First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability. Under prior cases, otherwise valid laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed...

Nothing before us indicates that a large number or percentage of all confidential news sources... would in any way be deterred by our holding that the Constitution does not, as it never has, exempt the newsman from performing the citizen's normal duty of appearing and furnishing the information relevant to the grand jury's task...

[W]e cannot accept the argument that the public interest in possible future news about crime from undisclosed unverified sources must take precedence over the public interest in pursuing and prosecuting those crimes reported to the press by informants and in thus deterring the commission of such crimes in the future[51].

In the meantime, Judge Powell took a narrower position which similar to that employed by the European Court in *Goodwin* case. It was argued by the Justice Powell that the *'asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to crimi-*

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48 *Goodwin v. United Kingdom*, (App. 17488/90), 27 March 1996, Reports, 1996-II 483, 22 EHRR 123 (separate dissenting opinion of judge Walsh, para. 1-2).

49 *Branzburg v. Hayes*, 408 United States Supreme Court 665, 681-2 (1972).

50 *Ibid.*

51 *Ibid*, 682-3, 691,695.

nal conduct[52]'. Such a kind of balance can be undertaken by just one way; *'case by case basis*[53]'.

In conclusion, it is clear that there is a special protection on the press from regulations in the ECtHR's jurisprudence. As shown above, the journalists' acts and their sources are more protected when the subject is about the public interest and politicians. According to the American Court, free press is able to cope with the political, one of the means of forming and discovering of opinions, ideas and approaches of public figures[54]. In other words, this emphasis on the need to protect the press from regulations is a necessity for the preferred protection on public speech and expression. As sum, the Court protects the political expressions by the way of the special protection of the press.

Conclusion

In sum, the Strasburg Court consistently gives a higher protection level, in the broadest sense, to speech and publications relating to political and social debate, information and criticism. In contrast, other types of expression namely artistic, moral and commercial expression have a lower protection level. This approach has already been taken by some other national legal systems such as the USA. However, this preferred protection on political expression is not, of course, absolute. As illustrated above, there are some legal restrictions on the political expression too. It is a strong argument that the approach of the ECtHR to give particularly strong protection to political speech can be explained, and indeed justified, by reference to the weight of the argument from democracy rather than other arguments which are based on right and truth. It can be clearly argued that the argument from democracy elevates political expression and speech to a special status. Practically, there are many ways to protect political speech and expression in the ECtHR's jurisprudence. One of them is protection of press from regulations as discussed above. The Court's approach is that a special emphasis on the need to protect the press from regulations is required for the preferred protection of political expression.

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52 *Ibid,* 710 (Powell concurring).

53 *Ibid.*

54 *Lingens v. Austria*, (App. 9815/82), 8 July 1986, 8 EHRR 103, para. 42.