

European Court of Human Rights: Case of Perna v. Italy

IRIS 2001-8:1/4

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In its judgment of 25 July 2001, the European Court of Human Rights held unanimously that there had been a violation of Article 10 on account of the applicant's conviction for alleging, by means of symbolic expression, that a senior Italian judicial officer had sworn an oath of obedience to the former Italian Communist Party.

The applicant, Giancarlo Perna, who is a journalist, published an article in the Italian daily newspaper *Il Giornale* sharply criticising the communist militancy of a judicial officer, Mr G. Caselli, who was at that time the public prosecutor in Palermo. The article raised in substance two separate issues. Firstly, Perna questioned Caselli's independence and impartiality because of his political militancy as a member of the Communist Party. Secondly, Caselli was accused of an alleged strategy of gaining control of the public prosecutors' offices in a number of cities and the use of the pentito (i.e. criminal-turned-informer) T. Buscetta against Mr Andreotti, a former Prime Minister of Italy. After a complaint by Caselli, Perna was convicted for defamation pursuant to Articles 595 and 61 § 10 of the Criminal Code and Section 13 of the Italian Press Act. Throughout the defamation proceedings before the domestic courts, the journalist was not allowed to admit the evidence he sought to adduce. In 1999 Perna alleged a violation of Article 6 and Article 10 of the European Convention on Human Rights.

The refusal by the Italian Courts was not considered by the Strasbourg Court as a breach of Article 6 § 1 and 3(d) of the Convention, which guarantee everyone charged with a criminal offence the right to examine witnesses or to have witnesses examined on their behalf. The Court was of the opinion that the applicant had not explained how evidence from the witnesses he wished to call could have contributed any new information whatsoever to the proceedings.

After repeating the general principles of its case law on Article 10 of the Convention, the Court emphasised the distinction that is to be made between facts and value judgments in order to decide if there has been a breach of Article 10. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The Court noted that the criticism directed at the complainant had a factual basis that was not disputed, namely Caselli's political militancy as a member of the Communist Party. By such conduct, a judicial officer inevitably exposes himself to criticism in the press, which may

rightly see the independence and impartiality of the State legal service as a major concern of public interest. The Court agreed that the terms chosen by Perna and the use of the symbolic image of the "oath of obedience" to the Communist Party was hard-hitting, but it also emphasised that journalistic freedom covers possible recourse to a degree of exaggeration or even provocation. According to the Court, the conviction of Perna was a violation of Article 10 of the Convention as the punishment of a journalist for such kinds of criticism of a member of the judiciary is not necessary in a democratic society.

With regard, however, to Perna's assertions about the alleged strategy of gaining control over the public prosecutors' offices in a number of cities and especially the use of the pentito Buscetta in order to prosecute Mr Andreotti, the Court came to the conclusion that the conviction of Perna was not in breach of Article 10 of the Convention. In contrast to the general criticism in the impugned newspaper article, these allegations obviously amounted to the attribution of specific acts to the complainant. As this part of the article did not mention any evidence or cite any source of information, the Court considered that these allegations were not covered by the protection of Article 10. Referring to the extremely serious character of such allegations against a judicial officer, with a lack of factual basis, the Court came to conclusion that this part of Perna's article indeed overstepped the limits of acceptable criticism.

This judgment will become final in the circumstances set out in Article 44 of the Convention. Any party to the case may request a rehearing by the Grand Chamber of the Court within three months.

Judgment by the European Court of Human Rights, Case of Perna v. Italy, Application no. 48898/99 of 25 July 2001 (Second Section)

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