European Court of Human Rights: Case Thoma v. Luxembourg

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In a judgment of 29 March 2001, the European Court of Human Rights once again recognised the importance of journalistic freedom in reporting on matters of public interest. Marc Thoma, a radio journalist working for RTL, alleged that his civil conviction for making a defamatory statement in a radio programme violated his right to freedom of expression. In that radio programme, he reported on alleged fraudulent practices in the field of reafforestation work. These allegations were based on an article published in the newspaper Tageblatt. Following legal action by 63 Forestry Commission officials, the journalist was convicted of defamation by the Luxembourg courts.

The European Court held unanimously that there had been a violation of Article 10 of the European Convention on Human Rights. The Court recalled its general principles, emphasising the important role of the press in a democratic society. Although the European Court recognised that some of the applicant's remarks were very serious and that the officials of the Water and Forestry Commission were indirectly identifiable, it noted at the same time that the issue raised in the radio programme had been widely debated in the Luxembourg media and concerned a problem of public interest.

In particular, the fact that Thoma had based his defamatory remarks on an article published by a fellow journalist was a decisive element in this case. The European Court reiterated that punishing a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to the discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. The Luxembourg courts had decided that a journalist who merely quoted from an article that had already been published would only escape liability if he formally distanced himself from that article. The European Court, however, is of the opinion that such a requirement for journalists to distance themselves systematically and formally from the content of a quotation that might defame or harm a third party was not reconcilable with the role of the press in providing information on current events, opinions and ideas. The Court noted that the applicant had taken the precaution of mentioning that he was quoting from a press article and that he had underlined that this article contained some "strongly worded" allegations. The Court also took into consideration the fact that the journalist had interviewed a third party, a woodlands owner, about whether he

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thought that the allegations of fraud in the reafforestation sector were true. Under these circumstances, the Court was not sufficiently convinced that the conviction of the applicant was necessary in a democratic society in order to protect the reputation and rights of others.

Arrêt de la Cour européenne des Droits de l'Homme (Deuxième section), affaire Thoma c. Luxembourg, n° 38432/97 du 29 mars 2001

Judgment by the European Court of Human Rights (Second Section), Case Thoma v. Luxembourg, Application no. 38432/97 of 29 March 2001

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