

European Court of Human Rights: Cordova no. 1 and Cordova no. 2 v. Italy

IRIS 2003-7:1/2

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In two judgments of 30 January 2003, the European Court of Human Rights made a restrictive application of defamatory and insulting allegations expressed by two Members of Parliament. In the case of Cordova no. 1, the senator and former Italian president, Francesco Cossiga, had insulted by way of some sarcastic letters a public prosecutor, Mr. Cordova, while in the case of Cordova no. 2, the same public prosecutor had been criticised in very offensive terms by a member of the Italian parliament, Mr. Vittorio Sgarbi. In both cases Mr. Cordova lodged a criminal complaint because of these insulting and defamatory statements. In the case of Cordova no. 1, the Italian Senate considered that the acts of which Mr. Cossiga was accused were covered by parliamentary immunity, as his opinions had been expressed in the performance of his parliamentary duties. In the case of Cordova no. 2, the Court of Cassation accepted also the immunity of Mr. Sgarbi, referring to the decision of the Italian Chamber of Deputies interpreting the concept of "parliamentary duties" as encompassing all acts of a political nature, even those performed outside Parliament. These findings made it impossible to continue the proceedings that were under way and deprived Cordova of the opportunity to seek compensation for the damages he alleged he had sustained.

The European Court of Human Rights, however, is of the opinion that the decisions applying parliamentary immunity to Mr. Cossiga's and Mr. Sgarbi's acts constituted a violation of Article 6 of the Convention (right to a fair trial right of access to a court). The European Court, affirming its approach developed in the case of *A. v. United Kingdom* (ECourHR 17 December 2002, see IRIS 2003-3: 3), accepts that a State affords immunity to Members of its Parliament, as this principle constitutes a long-standing practice designed to ensure freedom of expression among representatives of the people and to prevent the possibility of politically-motivated prosecutions, interfering with the performance of parliamentary duties. Hence, the restriction on the applicant's right to a fair trial pursued the legitimate aims of protecting free speech in parliament and maintaining the separation of powers between the legislature and the judiciary. In both the Cordova no. 1 and Cordova no. 2 cases, the European Court notes, however, that the statements by Mr. Cossiga and Mr. Sgarbi were not related to the performance of their parliamentary duties in the strict sense, but appeared to have been made in the context of personal disputes. According to the Strasbourg Court, a denial of access to a court cannot be justified solely on the ground that the dispute might have a political character or might relate to political activity.

The Court considers that the decisions that Mr. Cossiga and Mr. Sgarbi could not be prosecuted for their alleged insulting or defamatory statements with regard to Mr. Cordova, had upset the fair balance that should be struck between the demands of the general interest of the community and the requirements of protection of the individual's fundamental rights, such as the right to enjoy a good reputation and to have this enforced before an impartial judge. The Court attaches importance to the fact that, after the relevant resolutions had been passed by the Senate and the Chamber of Deputies, Mr. Cordova had no other reasonable alternative means available for the effective protection of his rights under the Convention. The Court accordingly held that there had been a violation of Article 6 of the Convention.

Arrêt de la Cour européenne des Droits de l'Homme (première section), affaire Cordova n° 1 c. Italie, requête n° 40877/98 du 30 janvier 2003

Judgment by the European Court of Human Rights (First Section), case of Cordova no. 1 v. Italy, Application no. 40877/98 of 30 January 2003

<https://hudoc.echr.coe.int/eng?i=001-60913>

Urteile des Europäischen Gerichtshofs für Menschenrechte (Erste Sektion), Rechtssachen Cordova Nr. 2 gegen Italien, Anträge Nr. 45649/99 vom 30. Januar 2003

Judgment by the European Court of Human Rights (First Section), case of Cordova no. 2 v. Italy, Application no. 45649/99 of 30 January 2003

<https://hudoc.echr.coe.int/eng?i=001-60914>

