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

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In a judgment of 6 May 2003, the Grand Chamber of the European Court of Human Rights has overruled the Court in the case of Perna v. Italy (see IRIS 2001-8: 3). While the Strasbourg Court in 2001 had come to the conclusion that the conviction of the Italian journalist Giancarlo Perna violated Article 10 of the Convention, the Grand Chamber has now reached the conclusion that the conviction of the journalist for defamation was in accordance with the European Convention on Human Rights.

The case goes back to an article published in the newspaper *Il Giornale* in which Perna sharply criticised 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 (PCI). Secondly, Caselli was accused of a strategy of gaining control of the public prosecutors' offices in a number of cities and of the manipulative use of a *pentito* (criminal-turned-informer) against Mr. Andreotti (a former Italian prime minister). After a complaint by Caselli, Perna was convicted for defamation in application of Articles 595 and 61 paragraph 10 of the Italian Criminal Code and Section 13 of the Italian Press Act. Throughout the defamation proceedings before the domestic courts, the journalist was refused admittance of the evidence he sought to adduce. In 1999 Perna alleged a violation of Article 6 and Article 10 of the European Convention.

The refusal to allow the journalist to prove the truth of his statements before the Italian Courts was not considered by the Strasbourg Court to be a breach of Article 6 paragraphs 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, in its judgment of 25 July 2001, was of the opinion that there were no indications that the evidence concerned could have contributed any new information whatsoever to the proceedings. The Grand Chamber has now confirmed this decision, emphasizing that it was not established that Perna's request to produce evidence would have been helpful in proving that the specific conduct imputed to Caselli had actually occurred.

With regard to Article 10 of the Convention, the Second Section of the European Court, in its judgment of 25 July 2001, argued that the criticism directed at Caselli

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had a factual basis which was not disputed, namely Caselli's political militancy as a member of the Communist Party. 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 emphasized 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 was considered not to be necessary in a democratic society. With regard, however, to Perna's speculative allegations 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.

The Grand Chamber, in its judgment of 6 May 2003, has now come to the overall decision that the conviction of Perna did not violate Article 10 at all. The Court focuses on the article's overall content and its very essence, of which the unambiguous message was that Caselli had knowingly committed an abuse of authority, notably connected with the indictment of Mr. Andreotti, in furtherance of the alleged PCI strategy of gaining control of public prosecutors' offices in Italy. The Court is of the opinion that Perna at no time tried to prove that the specific conduct imputed to Caselli had actually occurred and that in his defence he argued, on the contrary, that he had expressed critical judgments that there were no need to prove. According to the Grand Chamber of the Court, the interference in Perna's freedom of expression could therefore be regarded as necessary in a democratic society to protect the reputation of others within the meaning of Article 10 paragraph 2 of the Convention.

Judgment by the European Court of Human Rights (Grand Chamber), Case of Perna v. Italy, Application no. 48898/99 of 6 May 2003

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