

European Court of Human Rights: Case of Independent News and Media v. Ireland

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*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

In a judgment of 16 June 2005, the European Court of Human Rights is of the opinion that a conviction to pay an award of damages of EUR 381.000 because of defamatory statements in a press article criticizing a politician is not to be considered as a violation of Article 10 of the European Convention of Human Rights.

In 1997 a High Court jury in Ireland found an article published in the Sunday Independent robustly criticizing a national politician, Mr. de Rossa, to be defamatory and awarded Mr. de Rossa IEP 300.000 (EUR 381.000) in damages. The award, which was upheld by the Supreme Court, was three times the highest libel award previously approved in Ireland. The litigious article referred to some activities of a criminal nature of Mr. de Rossa's political party and criticised his former privileged relations with the Central Committee of the Communist Party of the Soviet Union. According to the article, Mr. de Rossa's political friends in the Soviet Union "were no better than gangsters (..). They were anti-Semitic". In upholding the award of damages, the Supreme Court took into account a number of factors, including the gravity of the libel, the effect on Mr. de Rossa as leader of a political party and on his negotiations to form a government at the time of publication, the extent of the publication, the conduct of the first applicant newspaper and the consequent necessity for Mr. de Rossa to endure three long and difficult trials. Having assessed these factors, it concluded that the jury would have been justified in going to the top of the bracket and awarding as damages the largest sum that could fairly be regarded as compensation. While IEP 300,000 was a substantial sum, it noted that the libel was serious and grave, involving an imputation that Mr. de Rossa was involved in or tolerated serious crime and personally supported anti-Semitism and violent Communist oppression. "Bearing in mind that a fundamental principle of the law of compensatory damages is that the award must always be reasonable and fair and bear a due correspondence with the injury suffered and not be disproportionate thereto", the Supreme Court was not satisfied that "that the award made by the jury in this case went beyond what a reasonable jury applying the law to all the relevant considerations could reasonably have awarded and is not disproportionate to the injury suffered by the Respondent". The press groups publishing the Sunday Independent lodged an application before the Strasbourg Court, complaining that the exceptional damages award and the absence of adequate safeguards against disproportionate

awards violated their rights under Article 10 of the Convention (freedom of expression). The application was also supported by some other Irish media groups and by the National Union of Journalists (NUJ).

Taking its judgment of 13 July 1995 in the case of *Tolstoy Miloslavsky v. U.K.* as a point of reference, the Court is of the opinion that the present jury award was sufficiently unusual as to require a review by the Court of the adequacy and effectiveness of the domestic safeguards against disproportionate awards. According to the Court, unpredictably large damages awards in libel cases are considered capable of having a chilling effect on the press and therefore require the most careful scrutiny. The Strasbourg Court however, referring to the judgment of the Irish Supreme Court upholding and legitimising the award of damages, comes to the conclusion, by 6 votes to 1, that there has been no violation of the right of freedom of expression in this case: “Having regard to the particular circumstances of the present case, notably the measure of appellate control, and the margin of appreciation accorded to a State in this context, the Court does not find that it has been demonstrated that there were ineffective or inadequate safeguards against a disproportionate award of the jury in the present case”. In his dissenting opinion judge Cabral Barreto of Portugal argues that the amount of damages which the publishing group of the *Sunday Independent* was ordered to pay was so high “that the reasonable relationship of proportionality between the interference and the legitimate aim pursued was not observed”. The 6 judges of the majority however came to the conclusion that there has not been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Third Section), case of Independent News and Media and Independent Newspapers Ireland Limited v. Ireland, Application no. 55120/00 of 16 June 2005

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