European Court of Human Rights: Case of Lionarakis v. Greece

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In 1999 Nikitas Lionarakis, the presenter and coordinator of a radio programme broadcast live by the Hellenic Broadcasting Corporation ERT, invited the journalist E.V. to debate various aspects of Greek foreign policy. During the broadcast, E.V. raised the subject of “the Öcalan case”. He referred to the fact that Öcalan, the ex-leader of the PKK who was prosecuted by the Turkish authorities for terrorism, had been helped by certain persons in Greece to illegally enter the country and to escape to Kenya. E.V. referred to F.K., a lawyer who had stood as a candidate in past legislative and European elections and who had been actively involved in the Öcalan case, being a contact for Öcalan after he escaped to Kenya. F.K. also had given several interviews in the press after Öcalan had been arrested by the Turkish authorities. According to the interviewed journalist, F.K. was, along with several others, to be considered as belonging to a “para-state”, belonging to a network of “vociferous criminals of the press” and being “neurotic pseudo-patriots”. In June 1999 F.K. brought an action for damages alleging insult and defamation by Lionarakis, ERT and E.V. The domestic courts found against Lionarakis and ordered him to pay EUR 161,408 for the damage sustained, an amount that was, after a settlement reached with F.K. in the domestic courts, reduced to EUR 41,067.48.

Lionarakis complained under Article 10 of a violation of his right to freedom of expression, arguing that he should not be held liable for remarks made by a third party during a radio programme of a political nature. The Court held unanimously that there had been a violation of Article 10 of the Convention, particularly when taking into account the fact that the insulting or defamatory statements were to be considered as value judgments, which had some factual basis. According to the Court, the domestic courts had failed to make a distinction between allegations of facts and value judgments. The Court also underlined the fact that these value judgments had been expressed orally, during a political type programme being broadcast live, while the programme also had a format that invited the participants to a free exchange of opinions. The Court considered, in particular, that the journalist and coordinator could not be held liable in the same way as the person who had made remarks that were possibly controversial, insulting or defamatory. It reiterated that requiring that journalists distance themselves systematically and formally from the content of a statement that might defame or harm a third party is not reconcilable with the press’s role of providing information on current events, opinions and ideas. Finally, the Court

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referred to the fact that F.K. was not a “simple private” person, but a contemporary public figure and that the amount of damages the journalist was compelled to pay as compensation was rather arbitrary and possibly too high. As the interference in the freedom of expression of Lionarakis had not sufficiently and pertinently been justified by the Greek authorities, the Court concluded that the inference was not necessary in a democratic society and amounted to a violation of Article 10 of the Convention. The Court also found a violation of Article 6 § 1 in this case (right to a fair hearing), as Lionarakis had been denied the right of access to the Court of Cassation.

Arrêt de la Cour européenne des Droits de l’Homme (première section), affaire Lionarakis c. Grèce, requête n° 1131/05 du 5 juillet 2007

Judgment by the European Court of Human Rights (First Section), case of Lionarakis v. Greece, Application no. 1131/05 of 5 July 2007

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