European Court of Human Rights: case of Leroy v. France

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In 2002, the French cartoonist Denis Leroy (pseudonym Guezmer) was convicted for complicity in condoning terrorism because of a cartoon published in a Basque weekly newspaper Ekaitza. On 11 September 2001, the cartoonist submitted to the magazine's editorial team a drawing representing the attack on the twin towers of the World Trade Centre, with a caption which parodied the advertising slogan of a famous brand: "We have all dreamt of it... Hamas did it" (Cfr. "Sony did it"). The drawing was published in the magazine on 13 September 2001. In its next issue, the magazine published extracts from letters and emails received in reaction to the drawing. It also published a reaction of the cartoonist himself, in which he explained that when he made the cartoon he was not taking into account the human suffering ("*la douleur humaine*") caused by the attacks on WTC. He emphasized that his aim was to illustrate the decline of the US-symbols and he also underlined that cartoonists illustrating actual events do not have much time for distanced reflection: " *Quant un dessinateur réagit sur l'actualité, il n'a pas toujours le bénéfice du recul* ". He also explained that his real intention was governed by political and activist expression, namely that of communicating his anti-Americanism through a satirical image and illustrating the decline of American imperialism.

The public prosecutor, on request of the regional governor, brought proceedings against the cartoonist and the newspaper's publishing director in application of Article 24, section 6 of the French Press Act of 1881, which penalizes, apart from incitement to terrorism, also condoning (glorifying) terrorism: " *l'apologie du terrorisme* ". The publishing director was convicted for condoning terrorism, while Mr. Leroy was convicted for complicity in condoning terrorism. Both were ordered to pay a fine of EUR 1,500 each, to publish the judgment at their own expense in Ekaitza and in two other newspapers and to pay the costs of the proceedings. The Pau Court of Appeal held that "by making a direct allusion to the massive attacks on Manhattan, by attributing these attacks to a well-known terrorist organisation and by idealising this lethal project through the use of the verb 'to dream', [thus] unequivocally praising an act of death, the cartoonist justifies the use of terrorism, identifies himself through his use of the first person plural ("We") with this method of destruction, which is presented as the culmination of a dream and, finally, indirectly encourages the potential reader to evaluate positively the successful commission of a criminal act."

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The cartoonist lodged an application with the European Court of Human Rights, relying on Article 10 of the Convention guaranteeing freedom of expression. Mr. Leroy complained that the French courts had denied his real intention, which was governed by political and activist expression, namely that of communicating his anti-Americanism through a satirical image. Such an expression of an opinion, he argued, should be protected under Article 10 of the Convention. The Court considered that Mr. Leroy's conviction amounted indeed to an interference with the exercise of his right to freedom of expression. It refused to apply Article 17 of the Convention (prohibition of abuse of rights) in this case, although the French government invoked this article arguing that the cartoon, by glorifying terrorism, should be considered as an act aimed at the destruction of the rights and freedoms guaranteed by the European Convention for the protection of Human Rights and that, therefore, the cartoonist could not rely at all on the freedom of expression guaranteed by the Convention. The Court underlined that the message of the cartoon - the destruction of US imperialism - did not amount to a denial of the fundamental values of the Convention, in contrast e.g. with incitement to racism, anti-Semitism, Holocaust negationism and Islamophobia. Hence, in principle the cartoon was entitled to Article 10 protection. As the conviction of Mr. Leroy was prescribed by French law and pursued several legitimate aims, having regard to the sensitive nature of the fight against terrorism, namely the maintenance of public safely and the prevention of disorder and crime, it especially remained to be determined whether the interference by the French authorities was "necessary in a democratic society", according to Article 10 § 2 of the Convention.

The Court noted at the outset that the tragic events of 11 September 2001, which were at the origin of the impugned expression, had given rise to global chaos, and that the issues raised on that occasion were subject to discussion as a matter of public interest. The Court however considered that the drawing was not limited to criticism of American imperialism, but supported and glorified the latter's violent destruction. It based its finding on the caption which accompanied the drawing and noted that the applicant had expressed his moral support for those whom he presumed to be the perpetrators of the attacks of 11 September 2001. Through his choice of language, the applicant commented approvingly on the violence perpetrated against thousands of civilians and diminished the dignity of the victims, as he submitted his drawing on the day of the attacks and it was published on 13 September, with no precautions on his part as to the language used. In the Court's opinion, this factor - the date of publication - was such as to increase the cartoonist's responsibility in his account of, and even support for, a tragic event, whether considered from an artistic or a journalistic perspective. Also the impact of such a message in a politically sensitive region, namely the Basque Country, was not to be overlooked. According to the Court, the cartoon had provoked a certain public reaction, capable of stirring up violence and demonstrating a plausible impact on public order in the region. All in all, the Court considered that the grounds put forward by the domestic courts in convicting Mr.

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Leroy had been “relevant and sufficient”. Having regard to the modest nature of the fine and the context in which the impugned drawing had been published, the Court found that the measure imposed on the cartoonist was not disproportionate to the legitimate aim pursued. Accordingly, there has not been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des Droits de l’Homme (cinquième section), affaire Leroy c. France, requête n° 36109/03 du 2 octobre 2008

Judgment by the European Court of Human Rights (Fifth Section), case of Leroy v. France, Application no. 36109/03 of 2 October 2008

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