European Court of Human Rights: Case of Laranjeira Marques da Silva v. Portugal

IRIS 2010-3:1/1

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In one of its first judgments of 2010 the European Court of Human Rights has clarified how court and crime reporting can rely on the right to freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Convicting a journalist or a publisher for breach of the secrecy of a criminal investigation or because of defamation of a politician can only be justified when it is necessary in a democratic society and under very strict conditions.

The applicant in this case, Mr Laranjeira Marques da Silva, was the editor of the regional weekly newspaper Notícias de Leiria at the relevant time. In 2000 he wrote two articles about criminal proceedings brought against J., a doctor and politician well-known in the region, for the sexual assault of a patient. In an editor's note he called upon readers to supply further testimonies relating to other possible incidents of a similar nature involving J. A short time later Mr Laranjeira Marques da Silva was charged with a breach of the *segredo de justiça*, a concept similar to confidentiality of judicial investigation, and with the defamation of J. The Leiria District Court held in 2004 that Mr Laranjeira Marques da Silva had overstepped his responsibilities as a journalist and had aroused widespread suspicion of J. by insinuating, without justification, that the latter had committed similar acts involving other victims. He was found guilty of a breach of the *segredo de justiça* and of defamation. He was sentenced to a daily fine payable within 500 days and ordered to pay EUR 5,000 in damages to J. On appeal, the applicant challenged his conviction concerning the *segredo de justiça* on the ground that he had obtained access to the information in question lawfully. On the defamation issue, he argued that he had simply exercised his right to freedom of expression and that his articles had been based on fact and, moreover, were related to a subject of general interest. The Court of Appeal dismissed his appeal in 2005. A constitutional appeal and later an extraordinary appeal seeking harmonisation of the case law with the Supreme Court were also unsuccessful. In Strasbourg, Mr. Laranjeira Marques da Silva complained essentially that his conviction had infringed his right to freedom of expression.

As to the applicant's conviction for breach of the *segredo de justiça*, the European Court was of the opinion that the Portuguese authorities' interference with his freedom of expression had been "prescribed by law" and that the interference in

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question had pursued the legitimate aim of protecting the proper administration of justice and the reputation of others. The Court however pointed out that neither the concern of safeguarding the investigation nor the concern of protecting the reputation of others can prevail over the public's interest in being informed of certain criminal proceedings conducted against politicians. It stressed that in this case there was no evidence of any damaging effects on the investigation, which had been concluded by the time the first article was published. The publication of the articles did not breach the presumption of innocence, as the case of Mr. J. was in hands of professional judges. Furthermore, there was nothing to indicate that the conviction of Mr. Laranjeira Marques da Silva had contributed to the protection of the reputation of others. The Court held unanimously that the interference with the right of freedom of expression of the applicant was disproportionate and that therefore there had been a violation of Article 10.

As to the conviction for defamation, the Court accepted that the disputed articles dealt with matters of general interest, as the public had the right to be informed about investigations concerning politicians, including investigations which did not, at first sight, relate to their political activities. Furthermore, the issues before the courts could be discussed at any time in the press and by the public. As to the nature of the two articles, the Court pointed out that Mr Laranjeira Marques da Silva had simply imparted information concerning the criminal proceedings in question, despite adopting a critical stance towards the accused. The Court observed that it was not its place or that of the national courts to substitute their own views for those of the press as to what reporting techniques should be adopted in the journalistic coverage of a court case. As to the editor's note, the Court took the view that, notwithstanding one sentence that was more properly to be regarded as a value judgment, it had a sufficient factual basis in the broader context of the media coverage of the case. Hence, while the reasons given by the national courts for Mr Laranjeira Marques da Silva's conviction had been relevant, the authorities had not given sufficient reasons justifying the necessity of the interference with the applicant's right to freedom of expression. The Court further noted that the penalties imposed on the applicant had been excessive and liable to discourage the exercise of media freedom. The Court therefore held, by five votes to two, that the conviction for defamation did not correspond to a pressing social need and that there had been a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des droits de l'homme, (deuxième section), affaire Laranjeira Marques da Silva c. Portugal, requête n° 16983/06 du 19 janvier 2010

Judgment by the European Court of Human Rights (Second Section), case of Laranjeira Marques da Silva v. Portugal, Application No. 16983/06 of 19 January 2010

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