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

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The European Court of Human Rights recently delivered a judgment on the right to freedom of expression of a lawyer convicted for the insult and defamation of a public prosecutor during a television interview. In a case that received considerable media coverage, Georgis Alfantakis, a lawyer in Athens, was representing a popular Greek singer (A.V.). The singer had accused his wife, S.P., of fraud, forgery and use of forged documents causing losses to the State of nearly EUR 150,000. On the recommendation of the public prosecutor at the Athens Court of Appeal, D.M., it was decided not to bring charges against S.P. While appearing live as a guest on Greece's main television news programme 'Sky', Mr Alfantakis expressed his views on the criminal proceedings in question, commenting in particular that he had "laughed" on reading the public prosecutor's report, which he described as a "literary opinion showing contempt for his client". The public prosecutor sued Mr Alfantakis for damages, arguing that his comments had been insulting and defamatory. Mr Alfantakis was ordered by the Athens Court of Appeal to pay damages of about EUR 12,000. Alfantakis applied to the European Court of Human Rights, relying on Article 10 of the European Convention of Human Rights. He complained about the civil judgment against him which he considered an unacceptable interference in his freedom of expression.

According to the European Court it was not disputed that the interference by the Greek authorities with Alfantakis's right to freedom of expression had been 'prescribed by law' - by both the Civil Code and the Criminal Code - and had pursued the legitimate aim of protecting the reputation of others. The Court took notice of the fact that the offending comments were directed at a member of the national legal service, thus creating the risk of a negative impact both on that individual's professional image and on public confidence in the proper administration of justice. Lawyers are entitled to comment in public on the administration of justice, but they are also expected to observe certain limits and rules of conduct. However, instead of ascertaining the direct meaning of the phrase uttered by the applicant, the Greek courts had relied on their own interpretation of what the phrase might have implied. In doing so, the domestic courts relied on particularly subjective considerations, potentially ascribing to the applicant intentions he had not in fact had. Nor had the Greek courts made a distinction between facts and value judgments, instead simply determining the effect produced by the phrases "when I read it, I laughed" and "literary opinion".

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The Greek courts had also ignored the extensive media coverage of the case, in the context of which Mr Alfantakis's appearance on the television news was more indicative of an intention to defend his client's arguments in public than of a desire to impugn the public prosecutor's character. Lastly, they had not taken account of the fact that the comments had been broadcast live and could therefore not be rephrased. The Court came to the conclusion that the civil judgment ordering Mr Alfantakis to pay damages was not based on sufficient and pertinent arguments and therefore had not met a "pressing social need". Hence, there had been a violation of Article 10. The Court awarded Mr Alfantakis EUR 12,939 in pecuniary damages.

Urteil des Europäischen Gerichtshofs für Menschenrechte (Erste Sektion), Rechtssache Alfantakis gegen Griechenland, Antrag Nr. 49330/07 vom 11. Februar 2010

Judgment by the European Court of Human Rights (First Section), case of Alfantakis v. Greece, Application No. 49330/07 of 11 February 2010

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