European Court of Human Rights: Otegi Mondragon v. Spain

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In a judgment of 15 March the European Court of Human Rights decided that an elected representative's conviction for causing serious insult to the King of Spain was contrary to his freedom of expression. The case concerns the criminal conviction of a politician of a Basque separatist political party, Mr. Arnaldo Otegi Mondragon, following comments made to the press during an official visit by the King to the province of Biscay. During a press conference Otegi Mondragon, as spokesperson for his parliamentary group, Sozialista Abertzaleak, stated in reply to a journalist's question that the visit of the King to Biscay was a "genuine political disgrace". He said that the King, as "supreme head of the Guardia Civil (police) and of the Spanish armed forces" was the person in command of those who had tortured those detained in a recent police operation against a local newspaper, amongst them the main editors of the newspaper. Otegi Mondragon called the King "he who protects torture and imposes his monarchical regime on our people through torture and violence". Otegi Mondragon was convicted for insult of the King on the basis of Article 490 §3 of the Criminal Code and sentenced to one year's imprisonment and suspension of his right to vote during that period. The Spanish courts categorised the impugned comments as value judgments and not statements of fact, affecting the inner core of the King's dignity, independently of the context in which they had been made. The European Court of Human Rights, however, considers this criminal conviction a violation of Article 10 of the Convention, as Otegi Mondragon's remarks had not been a gratuitous personal attack against the King nor did they concern his private life or his personal honour. While the Court acknowledged that Otegi Mondragon's language could be considered provocative, it reiterated that it was permitted, in the context of a public debate of general interest, to have recourse to a degree of exaggeration, or even provocation. The King being the symbol of the State cannot be shielded from legitimate criticism, as this would amount to an over-protection of Heads of State in a monarchical system. The phrases used by Otegi Mondragon, addressed to journalists during a press conference, concerned solely the King's institutional responsibility as Head of State and a symbol of the State apparatus and of the forces which, according to Otegi Mondragon, had tortured the editors of a local newspaper. The comments in issue had been made in a public and political context that was outside the "essential core of individual dignity" of the King. The European Court further emphasised the particular severity of the sentence. While the determination of sentences was in principle a

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matter for the national courts, a prison sentence imposed for an offence committed in the area of political discussion was compatible with freedom of expression only in extreme cases, such as hate speech or incitement to violence. Nothing in Otegi Mondragon's case justified such a sentence, which inevitably had a dissuasive effect. Thus, even supposing that the reasons relied upon by the Spanish courts could be accepted as relevant, they were not sufficient to demonstrate that the interference complained of had been "necessary in a democratic society". The applicant's conviction and sentence were thus disproportionate to the aim pursued, in violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Third Section), case of Otegi Mondragon v. Spain (no. 2034/07) of 15 March 2011

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