European Court of Human Rights: Belpietro v. Italy

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The European Court of Human Rights has delivered a new judgment against Italy for interfering with the freedom of expression and public statements related to the "war" between judges, prosecutors and the police in the context of combating the Mafia (see also Perna v. Italy (GC), see IRIS 2003-8/2). The judgment reflects a tension between the freedom of parliamentary speech on the one hand, and the restrictions and obligations on the media reproducing or publishing statements by politicians covered by their parliamentary immunity on the other hand (see also Cordova no.1 and no.2 v. Italy, see IRIS 2003-7/2).

The applicant in this case is Maurizio Belpietro, who at the relevant time was editor of the national daily newspaper Il Giornale. In court in Strasbourg he complained about his conviction for defamation after publishing an article by an Italian Senator, R.I. The article by the Senator was a robust opinion piece analysing the lack of results in combating the Mafia in Palermo. The Senator more particularly criticised the Italian judiciary and especially accused some members of the public prosecutors' office in Palermo of using political strategies in their fight against the Mafia. Two prosecutors, Guido Lo Forte and Giancarlo Gaselli considered some of the allegations in the Senator's article as damaging to their professional and personal reputations. They lodged a complaint for defamation against Senator R.I. and Belpietro. Regarding the liability of the editor of Il Giornale, the prosecutors relied on Article 57 of the Criminal Code, making the editor or assistant editor of a newspaper responsible for lack of control when publishing defamatory statements without a sufficient factual basis.

Separate proceedings were brought against Senator R.I. which ended in 2007 with a finding that there was no case to answer, on the grounds that the Senator had expressed his views in his capacity as a member of the Senate, and was thus shielded by his parliamentary immunity based on Article 68§1 of the Italian Constitution. The Senate accepted that the statements published by Senator R.I. were related to the exercise of his parliamentary functions. Belpietro however was sentenced to a suspended term of four months' imprisonment and he was ordered to pay substantial sums to each of the civil parties, adding to a total amount of EUR 110,000. The Court of Appeal of Milan considered some of the allegations against the members of the judiciary as defamatory of Lo Forte and Caselli.

Belpietro made an application to the Strasbourg Court, alleging that his conviction for defamation had amounted to a violation of his freedom of expression

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guaranteed by Article 10 of the Convention. After reiterating extensively the general principles of its relevant case law on the issue, including the balance that has to be found between the prosecutors' right to his reputation based on Article 8 and the newspaper editor's right to freedom of expression based on Article 10, the European Court is of the opinion that the Italian authorities did not breach Article 10 in finding Belpietro liable for publishing the defamatory article of Senator R.I. Although the Court recognises that the article concerned an issue of importance to society that the public had the right to be informed about, it emphasises that some of the allegations against Lo Forte and Caselli were very serious, without sufficient objective basis. Furthermore, the Court refers to the obligation of an editor of a newspaper to control what is published, in order to prevent the publication of defamatory articles in particular. This duty does not disappear when it concerns an article written by a member of parliament, as otherwise, according to the Court, this would amount to an absolute freedom of the press to publish any statement of members of parliament in the exercise of their parliamentary mandate, regardless of its defamatory or insulting character. The Court also refers to the fact that Senator R.I. had already been convicted in the past for defamation of public officials and to the fact that the newspaper had given a prominent place to the Senator's article in the newspaper. However, as the Court considers the sanction of imprisonment and the high award of damages as disproportionate to the aim pursued, it comes to the conclusion that solely for that reason the interference by the Italian authorities amounted to a breach of Article 10 of the Convention. The Court especially draws attention to the fact that a sentence of imprisonment (even if suspended) can have a significant chilling effect and that the conviction was essentially because of not having executed sufficient control before publishing a defamatory article. Therefore there were no exceptional circumstances justifying such a severe sanction. A unanimous Court concludes that Italy has violated Article 10 of the Convention, awarding Belpietro just satisfaction in terms of EUR 10,000 non-pecuniary damage and EUR 5,000 for costs and expenses.

Arrêt de la Cour européenne des droits de l'homme (deuxième section), Affaire Belpietro c. Italie, requête n° 43612/10 du 24 septembre 2013

https://hudoc.echr.coe.int/eng?i=001-126450

Judgment by the European Court of Human Rights (Second Section), case of Belpietro v. Italy, Appl. No. 43612/10 of 24 September 2013

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