European Court of Human Rights: Ricci v. Italy

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In its judgment in the case of Ricci v. Italy the European Court of Human Rights found that the suspended prison sentence of a TV presenter for disclosing confidential images violated Article 10 of the Convention. The Court is of the opinion that the nature and severity of the prison sentence constituted a disproportionate interference with the applicant's right to freedom of expression. The Court's judgment confirms that prison sentences for defamation of public persons or for making confidential information public, in principle amount to a breach of Article 10 of the Convention (see also ECtHR (GC) 17 December 2004, Cumpănă and Mazăre v. Romania, IRIS 2005-2/4 and ECtHR 24 September 2013, Belpietro v. Italy, IRIS 2013-10/1).

The case of Ricci v. Italy concerns a broadcast of the satirical television programme Striscia la notizia on Canale 5, of which Antonio Ricci is the producer and presenter. The programme contained intercepted images of a row between a writer and Gianni Vattimo, a philosopher, during the recording of a programme to be broadcast on RAI. Because Vattimo had not signed a document allowing it to be broadcast on RAI, the pieces of footage used were considered as confidential internal data. However Ricci had obtained access to the footage and he integrated them into a programme on Canale 5, meant to illustrate that the nature of television aimed at creating entertainment rather than informing the public. The RAI lodged a criminal complaint for fraudulent interception and disclosure of confidential communications by Ricci, in breach of Article 617 quater of the Criminal Code. Vattimo also joined the proceedings as a civil party. Ricci was ordered to pay the RAI and Vattimo damages and he was given a suspended prison sentence of four months and five days. However, the Court of Cassation declared the offence time-barred and quashed the Court of Appeal's judgment without remitting it. It upheld the order that Ricci was to compensate the civil parties and to pay RAI's legal costs. The civil courts later ordered Ricci to pay EUR 30,000 damages to Vattimo.

Although the European Court agrees with the Italian judicial authorities that Ricci's programme had breached Article 617 quater of the Criminal Code, it clarifies that the protection of the confidentiality of communications in a data-transmission system had to be balanced against the exercise of freedom of expression. As in many other recent cases, the Court applies a balancing test between the right to privacy protected by Article 8 of the Convention (protection of confidential communication and reputation rights) and the right to freedom of

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expression guaranteed by Article 10. This balancing test leaves a broad margin of appreciation to national authorities, but nevertheless a set of criteria needs to be taken into consideration. The Court accepted Ricci's argument that the broadcast footage concerned a subject of general interest, namely the denunciation of the "real nature" of television in modern society. However other means were available to Ricci to broadcast this message, without involving any breach of the confidentiality of communications. According to the Court the programme was also aimed at ridiculing and stigmatising some individuals. Furthermore Ricci, as a media professional, could not have been unaware that disclosing the footage amounted to a breach of the confidentiality of RAI's communications. Accordingly, Ricci had not acted in accordance with the ethics of journalism. Therefore his conviction had not constituted, in itself, a violation of Article 10. Because of the nature and severity of the sanctions imposed on Ricci, however, the Court is of the opinion that the interference by the Italian authorities was disproportionate, referring to Ricci's sentence of imprisonment for four months and five days. Even though it had been a suspended sentence, which was later annulled by the Court of Cassation, that conviction must have had a significant chilling effect, while there were no exceptional circumstances justifying recourse to such a harsh sanction. Consequently, on account of the nature and quantum of the sentence imposed on Ricci, the Court comes to the conclusion that the interference with his right to freedom of expression was not proportionate to the legitimate aims pursued. The Court for that reason finds a violation of Article 10 of the Convention.

Arrêt de la Cour européenne des droits de l'homme (Seconde section), affaire Ricci c. Italie, requête n° 30210/06 du 8 octobre 2013

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Judgment by the European Court of Human Rights (Second Section), case of Ricci v. Italy, Appl. No. 30210/06 of 8 October 2013

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