European Court of Human Rights: Ristamäki and Korvola v. Finland

IRIS 2014-1:1/3

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In 2008 Juha Arvo Mikael Ristamäki and Ari Jukka Korvola were convicted of defamation. Ristamäki is an editor working in the news service of a national Finnish broadcaster, while Korvola was his direct superior at the time. The reason for the conviction of the two journalists was the broadcast of a current affairs programme criticising the lack of co-operation between the authorities concerning a specific investigation into economic crime. It was revealed that the tax authorities had refused the request of the National Bureau of Investigation to conduct a tax inspection of the functioning of two companies. Reference was made in that connection to K.U., a well-known Finnish businessman who, at the time, was standing trial for economic offences. The public prosecutor initiated criminal proceedings against Ristamäki and Korvola. He maintained that Ristamäki, by editing the programme, and Korvola by allowing its broadcast, had intentionally made false insinuations about K.U. such that their conduct had been conducive to causing suffering to the latter, subjecting him to contempt and causing him damage. The Helsinki District Court convicted Ristamäki and Korvola of defamation pursuant to Chapter 24, section 9, subsection 1, point 1, of the Penal Code. They were sentenced to 30 day-fines each, amounting to approximately EUR 2,000 and they were ordered to pay K.U. EUR 1,800 for suffering and EUR 1,500 in legal costs. The Court of Appeal and later the Supreme Court dismissed the appeals by the journalists.

The European Court disagrees with the findings of the Finnish courts. The Court refers to its reasoning in Axel Springer AG and Von Hannover no. 2 (see IRIS 2012-3/1) and to the relevant criteria to be applied when balancing the protection of one’s reputation (Article 8) with the freedom of expression (Article 10). The Court emphasises that the TV programme was clearly aimed at disclosing a malfunctioning of the administration in two specific cases that both involved influential persons. Both of these persons, including K.U., were mentioned in the programme rather as examples, as the major part of the programme focused on the tax authorities. The unsuccessful criminal investigation of economic crime, and the unwillingness of the tax authorities to contribute to this investigation, was a matter of legitimate public interest. The facts set out in the programme at issue were not in dispute and they were presented in an objective manner, in a non-provocative style and without exaggeration. There is no evidence, or indeed any allegation, of factual misrepresentation or bad faith on the part of the journalists. Neither are there any indications that details of the programme or the photograph

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of K.U. were obtained by subterfuge or other illicit means: the programme was based on information given by the police authorities and K.U.'s photograph was taken at a public event. From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the media, there were justified grounds for reporting the matter to the public. The Court observes that the domestic courts did not, in their analysis, attach any importance to the journalists' right to freedom of expression, nor did they balance it in any considered way against K.U.'s right to reputation. It is not clear in the reasoning of the domestic courts what pressing social need in the present case justified protecting K.U.'s rights over the rights of the journalists. In the Court's opinion the reasons relied on by the domestic courts, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". Having regard to all the factors of the case, and notwithstanding the margin of appreciation afforded to the State in this area, the Court considers that the Finnish courts failed to strike a fair balance between the competing interests at stake. There has therefore been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of Ristamäki and Korvola v. Finland, Appl. No. 66456/09) of 29 October 2013

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