European Court of Human Rights: Salumäki v. Finland

IRIS 2014-6:1/2

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Can a title of a newspaper article that could be interpreted as damaging the reputation of a public person justify a criminal conviction of the journalist who wrote the article, while the article itself is written in good faith and does not contain any factual errors or defamatory allegations? That is the question the European Court needed to answer in a recent case against Finland. The applicant in this case is Tiina Johanna Salumäki, a journalist working for the newspaper Ilta-Sanomat. Ms Salumäki published an article concerning the investigation into a homicide (of P.O.). The front page of the newspaper carried a headline asking whether the victim of the homicide had connections with K.U., a well-known Finnish businessman. A photograph of K.U. appeared on the same page. Next to the article was a separate column mentioning K.U.'s previous conviction for economic crimes. The Helsinki District Court convicted the journalist, Salumäki, and the newspaper's editor-in-chief at the time, H.S., of defaming K.U. as the title of their article insinuated that K.U. had been involved in the killing, even though it was made clear in the text of the article itself that the homicide suspect had no connections with K.U. Along with H.S., Salumäki was ordered to pay damages and costs to K.U. This judgment was subsequently upheld on appeal and the Supreme Court finally refused leave to appeal. Salumäki complained that her conviction had amounted to a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. She argued that the information presented in the article was correct and that the title of the article only connected K.U. to the victim and did not insinuate that K.U. had connections with the perpetrator, or that he was involved in the homicide.

The Court explains that it had to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention that may come into conflict with each other in certain cases, namely, on the one hand, the freedom of expression protected by Article 10 and, on the other, the right to respect for private life, including the right of reputation, enshrined in Article 8. The Court applies the criteria developed by the Grand Chamber in Axel Springer Verlag and Von Hannover (no. 2) (IRIS 2012/3-1) in order to find out whether the domestic authorities indeed struck a fair balance between the rights protected by Articles 8 and 10 of the Convention. First the Court emphasises that the criminal investigation into a homicide was clearly a matter of legitimate public interest, having regard in particular to the serious nature of the crime: "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 press, there were justified grounds

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for reporting the matter to the public". The Court also recognised that "the article was based on information given by the authorities and K.U.'s photograph had been taken at a public event", while "the facts set out in the article in issue were not in dispute even before the domestic courts. There is no evidence, or indeed any allegation, of factual errors, misrepresentation or bad faith on the part of the applicant". Nevertheless the decisive factor in this case was that, according to the domestic courts, the title created a connection between K.U. and the homicide, implying that he was involved in it. Even though it was specifically stated in the text of the article that the homicide suspect had no connections with K.U., this information only appeared towards the end of the article. The Court was of the opinion that Salumäki must have considered it probable that her article contained a false insinuation and that this false insinuation was capable of causing suffering to K.U. The Court also refers in this context to the principle of presumption of innocence under Article 6 §2 of the Convention and emphasises that this principle may be relevant also in the context of Article 10, in situations in which nothing is clearly stated but only insinuated. The Court therefore concluded that what the journalist had written was defamatory, as it implied that K.U. was somehow responsible for P.O.'s murder. According to the Court, "it amounted to stating, by innuendo, a fact that was highly damaging to the reputation of K.U." and at no time did Salumäki attempt to prove the truth of the insinuated fact, nor did she plead that the insinuation was a fair comment based on relevant facts. Having regard to all the foregoing factors, including the margin of appreciation afforded to the State in this area, the Court considered that the domestic courts struck a fair balance between the competing interests at stake. There has therefore been no violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Fourth Section), case of Salumäki v. Finland, Appl. No. 23605/09 of 29 April 2014

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