European Court of Human Rights: Erla Hlynsdóttir v. Iceland (no. 3)

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Once again, the European Court of Human Rights (ECtHR) has rejected a finding by national courts that journalistic reporting about a criminal case had overstepped the limits of freedom of expression. The Court emphasised the role of the media in a democratic society in informing the general public of serious criminal proceedings and it referred again to the notion of "responsible journalism". The Court found unanimously that the interference with the journalist's rights had violated Article 10 of the European Convention on Human Rights (ECHR).

The applicant in this case was Ms. Erla Hlynsdóttir. She was a journalist, working for the newspaper DV. In 2007, the newspaper DV published an article on the ongoing criminal proceedings against Mr. A and his co-accused, Mr. B, before the Reykjavík District Court. A picture of Mr. A was published on the front page of the newspaper showing him walking into the courtroom. There was a large headline under the photograph which read "Scared cocaine smugglers" and underneath it was written that both the accused were afraid of retaliation by their accomplices and had therefore refused to identify them. Mr. A´s name also appeared on the front page. Both on the front page and in the newspaper's article written by Erla Hlynsdóttir it was mentioned that Mr. A and his co-accused could expect prison sentences. Reference was made to the indictment by the Director of Public Prosecutions requesting a punishment of seven to eight years´ imprisonment in respect of Mr. A, for importing nearly 3.8 kilograms of cocaine, intended for sale, together with an unknown accomplice. A punishment of three to four years was requested in respect of Mr. B, who was charged in the case with removing the alleged drugs from a vehicle, in cooperation with Mr. A. After being acquitted by the Icelandic courts, Mr. A lodged defamation proceedings against Mr. SME, the editor of DV at the time, and the journalist who wrote the article, Erla Hlynsdóttir. The Supreme Court declared null and void the words "cocaine smugglers" on the front page and the statement referring to the removal of drugs in a vehicle. Both Erla Hlynsdóttir and the editor were ordered to pay approximately EUR 575 in compensation for non-pecuniary damage and about EUR 290 for the costs of publishing the judgment.

The ECtHR first reiterated that the most careful scrutiny on the part of the Court is called for when, as in the present case, the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the

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press in debates over matters of legitimate public concern. In the Court's view, a journalist's good faith should be assessed on the basis of the knowledge and information which was available to him or her at the time of writing the item(s) in question. Thus, it is not decisive for the purpose of the present case that Mr. A was later acquitted of the charges brought against him by the Director of Public Prosecutions. Although the ECtHR fully agreed with the Icelandic Supreme Court that it is for the courts and not the media to determine whether an accused is guilty of an offence, it also recognised the right of the media to report on ongoing court cases on the basis of available and correct information, such as an indictment by the public prosecutor and information gathered at the public hearing. The Court was of the opinion that the rendering of an indictment in a media coverage after it has been read out at a trial hearing is a kind of situation where there may be special grounds for dispensing the press from its ordinary obligation to verify factual statements that are defamatory of private individuals. With regard the labelling on the front page of the accused as "cocaine smugglers", the ECtHR emphasised that was not the applicant journalist, but to the editor who was deemed to have defamed Mr. A thereby. The journalist cannot be found responsible and liable for this statement in the newspaper and therefore the interference with her right to freedom of expression in this manner cannot be justified. The European Court came to the conclusion that the respondent State failed to sufficiently show that Erla Hlynsdóttir acted in bad faith or otherwise inconsistently with the diligence expected of a responsible journalist reporting on a matter of public interest. Therefore, there has been a violation of Article 10 of the European Convention on Human Rights. The Court reiterated though that, in assessing the relevance and sufficiency of the national courts' findings, the Court, in accordance with the principle of subsidiarity, must take into account the extent to which the domestic courts balanced the conflicting rights implicated in the case, in the light of the Court's established case-law in this area. As the European Court found that the reasoning of the national courts demonstrated a lack of sufficient engagement with the general principles of the Court under Article 10 of the ECHR, it disagreed with the domestic courts' finding that the interference with the applicant's rights could be justified as being necessary in a democratic society. The judgment shows once again how diligent and responsible journalism reporting on issues of public interest receives a very high level of protection by the ECtHR and that in such cases, notwithstanding its references to the subsidiarity principle, the Court applies a strict scrutiny over the findings and arguments by the domestic courts.

Judgment by the European Court of Human Rights (Second Section), case of Erla Hlynsdóttir v. Iceland (no. 3), Application no. 54145/10 of 2 June 2015

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