European Court of Human Rights: de Carolis and France Télévisions v. France

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The European Court of Human Rights (ECtHR) has confirmed the robust Article 10 protection for investigative journalism expressed in a television documentary, holding that a conviction for defamation of a Saudi Arabian prince violated the right to freedom of expression as guaranteed by Article 10 of the European Convention of Human Rights (ECHR).

In 2006, Prince Turki Al Faisal brought defamation proceedings against France Télévisions, Patrick de Carolis as its director, and a journalist, after the broadcasting on the TV channel France 3 of a documentary entitled "11 September 2001: the prosecution case". The documentary investigated why there had still been no trial five years after the events of 11 September. It focused on the complaints lodged by families of the victims of the 9/11 attacks in the US and the proceedings against persons suspected of having helped or funded al-Qaeda. The documentary highlighted the claimants' concerns that the trial might be jeopardised by the economic links between the US and Saudi Arabia. Mr de Carolis and the journalist who made the documentary were found guilty of public defamation against the Prince and the Court declared France 3 civilly liable for the damage caused. In essence the French courts found that the journalist should have demonstrated prudence and objectivity, because she had referred to extremely serious accusations against Prince Turki Al Faisal, accusations that had not yet been examined by a court of law.

Before the ECtHR, France 3 and its director complained of a violation of their right to freedom of expression. The European Court undertook a detailed examination of the content of the documentary and of the way in which the subject was dealt with, in particular the excerpts accusing Prince Turki Al Faisal of having assisted and financed the Taliban as head of the intelligence service in Saudi Arabia. The Court reached the conclusion that the allegations in the documentary had a sufficient factual basis, and that the documentary was balanced and did not contravene the standards of responsible journalism. As regards the sanctions, the fine to which Mr de Carolis had been sentenced and the civil liability finding against France 3 were considered a disproportionate interference with their right to freedom of expression. The Court is of the opinion that a moderate criminal sanction, combined with civil damages, does not take away the risk of a chilling effect that a criminal conviction may have on the right to freedom of expression. As the interference by the French authorities was not necessary in a democratic

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society, the Court unanimously came to the conclusion that Article 10 has been violated. The French government is ordered to pay the applicants EUR 11,500 in respect of pecuniary damages, and EUR 30,000 in respect of costs and expenses.

Arrêt de la Cour européenne des droits de l'homme, Cinquième section, affaire de Carolis et France Télévisions c. France, requête n° 29313/10 du 21 janvier 2016

Judgment of the European Court of Human Rights, Fifth Section, case de Carolis and France Télévisions v. France, Application no. 29313/10 of 21 January 2016

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