European Court of Human Rights: Pinto Coelho v. Portugal (No. 2)

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In a judgment of 22 March 2016 the European Court of Human Rights (ECtHR) found that Portugal has violated a journalist's right to report about the hearing in a criminal case. The ECtHR emphasised that the domestic court hearing was public and that the criminal conviction of the journalist for having broadcast unauthorised recordings of the statements of witnesses during the hearing was not necessary in a democratic society. Therefore the journalist's conviction amounted to a breach of Article 10 of the European Convention of Human Rights (ECHR).

The applicant in this case was Sofia Pinto Coelho, a TV-journalist and legal affairs correspondent. She was convicted for having broadcast in news report excerpts that included sound recordings from a court hearing, obtained without permission from the judge. The case on which Pinto Coelho had reported concerned the criminal conviction of an 18-year-old man for aggravated theft of a mobile phone. In her TV-report Ms Pinto Coelho argued that the defendant should have been acquitted, alleging a judicial error. She included in her report shots of the courtroom, extracts of sub-titled sound recordings, and the questioning of prosecution and defence witnesses, in which their voices and those of the three judges were digitally altered. The excerpts were followed by Ms Pinto Coelho's commentary, in which she tried to demonstrate that the victims had not recognised the defendant during the trial, supporting the defendant's claim that he had been at work at the time of the incident.

A short time later the president of the domestic court, who had presided over the case, lodged a complaint against Ms Pinto Coelho. No permission had been given to broadcast extracts of the recordings of the court hearing, and the failure to obtain such authorisation breached Article 348 of the Criminal Code. After being convicted of non-compliance with a legal order and ordered to pay a fine of EUR 1,500, and after exhausting all national remedies, Ms Pinto Coelho submitted an application to the ECtHR in Strasbourg, alleging a breach of her right as a journalist to freedom of expression and information, under Article 10 of the ECHR.

In essence, in this case the ECtHR had to balance the right of the journalist to inform the public and the public's right to receive information against the right of those who testified to respect for their private lives and against the interest of maintaining the authority and impartiality of the judiciary. The Court reiterated

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that in principle journalists must obey the law, which includes when reporting on a criminal case of public interest. The Court stated that although Ms Pinto Coelho had not obtained the recordings of the hearing in an illicit way, as a journalist she must have been aware that the unauthorised broadcasting of the recordings violated Article 348 of the Criminal Code. The Court took into consideration, however, the fact that when the news report was broadcast the case had already been decided, and hence there was no indication that the broadcast of the audio extracts could have negatively influenced the proper administration of justice. Furthermore, the hearing was public and none of the witnesses whose evidence had been broadcast had filed any complaint. The Court also considered it relevant to emphasise that the witnesses' voices were distorted, which reduced the interest invoked by the Portuguese judicial authorities referring to the right to have the witnesses' and judges' voices protected under the right of privacy. The Court reiterated that Article 10 also protects the mode of expression of ideas and information, and that it is not for judges to substitute their own views for those of the press as to how a story should be presented. According to the ECtHR the domestic authorities had not sufficiently justified the criminal sanction imposed, despite the fact that it might have a chilling effect on journalistic reporting on matters of public interest. By six votes to one, the Court found a violation of Article 10 of the Convention. The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by Ms Pinto Coelho. It further awarded her EUR 1,500 in respect of pecuniary damage and EUR 4,623.84 in respect of costs and expenses.

Arrêt de la Cour européenne des droits de l'homme, quatrième section, affaire Pinto Coelho c. Portugal (n° 2), requête n° 48718/11 du 22 mars 2016

Judgment by the European Court of Human Rights, Fourth Section, case Pinto Coelho v. Portugal (no. 2), Application no. 48718/11 of 22 March 2016

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