European Court of Human Rights: Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece

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On 22 February 2018, the European Court of Human Rights (ECtHR) delivered its judgment in Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece concerning the fining of a broadcaster over hidden camera footage of a politician. The applicant in the case was the owner of a Greek television channel, ALPHA. In January 2002, ALPHA broadcast a television show named “Jungle” (Ζούγκλα) in which three videos filmed with a hidden camera were broadcast. In the first video, A.C., then a member of the Hellenic Parliament and chairman of the parliamentary committee on electronic gambling, was shown entering a gambling arcade and playing on two machines. The second video showed a meeting between A.C. and associates of the television host of “Jungle”, M.T., during which the first video was shown to A.C. The third video showed a meeting between A.C. and M.T. in the latter’s office.

Following a hearing in May 2002, the National Radio and Television Council (NRTC) found that the use of a hidden camera by the broadcaster in the three videos had not been in accordance with the law. The NRTC ordered the applicant company to pay EUR 100,000 for each of the two television shows in which the videos were shown, and to broadcast on three days in a row on its main news show the content of its decision. The applicant company appealed against the decision to the Supreme Administrative Court, and in April 2010, the court dismissed the appeal. The court held that broadcasting a secretly recorded image can only be justified if the legitimate broadcasting of such news is completely impossible or particularly difficult without broadcasting the image that was recorded by hidden means and which constitutes the source of the news. The Court found that the applicant company had not disputed that the images had been recorded by secret means and had not claimed that broadcasting of the news was absolutely impossible or extremely difficult without broadcasting the relevant images. Therefore, the applicant company’s allegation that it had broadcast the impugned images for reasons of journalistic interest and of public interest was dismissed.

The applicant made an application to the ECtHR, claiming a violation of its right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The main question was whether the interference with the applicant’s right to freedom of expression had been necessary in a democratic society. In this regard, the Court examined a number of criteria. Firstly, the Court held that the report contributed to a debate of public interest, including the

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conduct vis-à-vis electronic gambling of an elected representative who, additionally, was chairman of an inter-party committee on electronic gambling. Secondly, the Court found that A.C. was undeniably a prominent political figure. Thirdly, the Court examined the method of obtaining the information and its veracity - namely the circumstances under which the videos were taken. With regard to the first video, the Court held that the domestic authorities had failed to take into consideration the fact that it had been filmed in a public place - an element which, in the Court's view, weakens the legitimacy of any expectation of privacy A.C. might have had when he entered the gambling arcade. However, with regard to the second and third videos, the Court considered that it was clear under Greek criminal law that A.C. had been entitled to an expectation of privacy as he had entered private spaces with a view to discussing the recorded incidents and for his conversations not to be recorded without his explicit consent. Lastly, the Court examined the severity of the sanctions, and the Court held that the sanctions imposed were relatively lenient, though not insignificant, and that a number of factors were taken into account when imposing them, such as the applicant company's past behaviour in relation to similar incidents. The Court also considers that the sanctions imposed cannot be said to have had a deterrent effect on the press reporting on matters of public interest. In conclusion, the Court held that the reasons given by the Greek authorities were "relevant" and "sufficient" to justify the interference in respect of the second and third videos. However, the Court held that in so far as the first video is concerned, the domestic authorities failed to take into account the circumstances under which it was obtained. The Court attached great importance to the fact that it was not recorded in private premises and that the interference with A.C.'s rights under Article 8 was therefore significantly less serious. The Court is thus of the opinion that the domestic authorities should have included in their assessment the fact that A.C., by entering a gambling arcade, could legitimately have expected his conduct to have been closely monitored and even recorded on camera, especially in view of the fact that he was a public figure. Thus, there has been a violation of Article 10 of the ECHR in respect of the first video (the Court also found a violation of Article 6 of the ECHR over the length of the proceedings).The Court awarded the applicant EUR 33,000 in pecuniary damage (finding the applicant had paid only EUR 100,000 of the fine imposed in relation to all three videos), and awarded EUR 7,000 in compensation for non-pecuniary damage.

Judgment by the European Court of Human Rights, First Section, case of Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece, Application no. 72562/10, 22 February 2018

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