European Court of Human Rights: Jorge López v. Spain

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The European Court of Human Rights (ECtHR) has found inadmissible the complaint of a Spanish rapper who had been convicted and sentenced to prison because some of his songs justified or publicly praised terrorism. The ECtHR agreed with the findings of the Spanish courts that the songs and videos available on YouTube and Facebook justified and glorified terrorism, and incited hatred and enmity on various grounds. Therefore, the ECtHR found the rapper's complaint regarding the alleged violation of his right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights (ECHR) to be inadmissible.

The applicant in the case was Jorge López, a rapper in the group “la Insurgencia” (“Insurgency”), also known as “Saúl Zaitsev” or “Shahid”. The group’s songs were performed at concerts and were freely available on its YouTube channel which had more than 1 900 followers and had garnered 400 000 views. The group also had a Facebook profile with their songs and videos. Some of the songs praised the actions and members of a Spanish terrorist group GRAPO (“Antifascist Resistance Groups October First”), responsible for bombings and shootings in the period 1975-2006 that killed 84 people including police and military personnel, judges and civilians. Some songs evoked ETA, the armed Basque nationalist and separatist organisation that, between 1968 and 2010, killed about 830 people and injured thousands. ETA was classified as a terrorist organisation by Spain and by some other states, as well as by the European Union. The songs at issue, all written and published between 2014 and 2016 called for action using armed struggle against politicians, judges, security forces, rich people and the royal family, and incited an attack on parliament.

In 2017, Mr. López was convicted of public praise or justification of terrorism under Article 578 of the Spanish Criminal Code and was sentenced to two years’ imprisonment and a fine of EUR 4 800. A Court of Appeal reduced the sentence to six months’ imprisonment and a fine of EUR 1 200. The Supreme Court dismissed a cassation appeal and the Constitutional Court declared Mr. López’ appeal inadmissible. The execution of the six-month prison sentence was, however, later suspended, before Mr. López was incarcerated. In October 2021, Mr. López complained to the ECtHR that his right to freedom of expression under Article 10 ECHR had been violated because the interference with that right had not been necessary. He highlighted that the essence of rap was to provoke public opinion

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and that his songs were to be situated in the tradition of “protest songs”.

The ECtHR agreed that the conviction at issue clearly constituted an interference with the rapper’s right to freedom of expression as guaranteed by Article 10 § 1 ECHR, and was satisfied that the interference was prescribed by law and pursued a legitimate aim, namely the prevention of disorder and crime, within the meaning of Article 10 § 2 ECHR. The main question was therefore whether the interference had been “necessary in a democratic society”. The ECtHR refered to some of its earlier case law regarding statements that might constitute a call to violence, in which it considered the following relevant factors: (i) whether the statements were made against a tense political or social background, (ii) whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance, and (iii) the manner in which the statements were made, and their capacity – direct or indirect – to lead to harmful consequences.

The ECtHR refered to the finding by the domestic courts that the songs had openly called for violent acts. The songs had communicated to the audience the idea that recourse to violence and terrorism was justified; they approved terrorist methods and acts, and praised attacks that had claimed many lives. The ECtHR observed that those songs were easily and freely available online and had been performed at concerts, and thus had the potential to reach a large number of people, including those of a young age. Although the most recent terrorist acts of GRAPO and ETA already dated back some years, one could not ignore that both had carried out terrorist activities in Spain for decades, causing numerous deaths and injuries. These traumatic events were therefore still fresh in the country’s collective mind, justifying an enhanced degree of regulation of statements relating to them. Answering the question of whether the songs could be seen as a direct or indirect call or justification for violence, hatred or intolerance, reference was made to the content of the songs inciting violent or terrorist methods, mentioning them in a positive connotation of the use of explosives and other weapons, beating up opponents, and causing material damage such as attacking ATMs or supermarkets. The lyrics directly suggested injuring or killing politicians, judges, security forces, rich people, the royal family and those perceived as ideological opponents. To sum up, the songs communicated to listeners the general idea that recourse to violence and terrorism was justified. The ECtHR agreed with the finding by the domestic courts that these statements went far beyond what could be perceived as “protest songs”, and the acceptable limits of criticism. The ECtHR also considered the impact of the songs, being especially targeted at young people, and reaching a wide audience through a YouTube channel, a Facebook profile and in concerts. The ECtHR also found reasonable the assessment of the domestic courts of the risk of accentuation of the verbal message by the aggressive videos and use of GRAPO’s insignia. The grounds on which the rappers had been convicted was based, namely combating public

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praise or justification of terrorism, therefore appeared to be both “relevant” and “sufficient” to justify the interference at issue, and in that sense met a pressing social need.

Lastly, an assessment of the nature and severity of the sanctions was carried out to ascertain whether the interference was proportionate. In the context of Article 10 ECHR, a criminal conviction constituted one of the most serious forms of interference with the right to freedom of expression. In the applicant's case, the execution of the prison sentence which had been initially imposed upon him had later been suspended and the fine reduced to EUR 1200, which meant that the sanction was at the lowest level. The ECtHR found that the criminal conviction could not be considered disproportionate to the legitimate aim pursued. In the light of the foregoing, the ECtHR considered, unanimously, that the complaint under Article 10 ECHR was manifestly ill-founded and therefore inadmissible.

Decision by the European Court of Human Rights, Third Section (sitting as a Committee), in the case of Jorge López v. Spain, Application no. 54140/21, 13 October 2022

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