European Court of Human Rights: Tariq Ramadan v. France

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The European Court of Human Rights (ECtHR) has decided that a criminal conviction in France of the Swiss public intellectual and Islamologist Tariq Ramadan was not a violation of his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). Ramadan was convicted for having disseminated information about the identity of the alleged victim of a rape (X) for which he was facing trial in France. Ramadan had revealed X's identity in a press release, during a TV interview and in a book. The ECtHR dismissed his complaint under Article 10 ECHR as manifestly ill-founded and therefore inadmissible.

In 2019, X, who was also a civil party in the proceedings against Ramadan, brought a criminal complaint against Ramadan for publication of her identity, since French law punishes the publication of information about the identity of victims of sexual aggression without the written consent of the victim (Article 39 quinquies of the Freedom of the Press Act of 29 July 1881). During his defence in court, Ramadan pointed out that X's surname and first name had already been disclosed some months earlier on the Internet site *LeMuslimPost* and in various media sources in France, Belgium, Switzerland and Luxembourg. He also added that X had created a blog under the pseudonym "Christelle" and that she had disclosed a photograph of her face on her Twitter account and her Facebook page, associating it with her pseudonym. Ramadan's conviction by the Paris *tribunal judiciare* for breach of Article 39 quinquies of the French Press Law was confirmed in 2022 by the Paris Court of Appeal. The Court sentenced him to a moderate fine and a reduced amount of damages; although Ramadan had knowingly chosen to disseminate X's identity without having obtained her written consent, her identity had not been revealed by him, since X's identity had been disclosed or disseminated previously by numerous media sources and X herself had contributed to her own identification. Ramadan was sentenced to a fine of EUR 1 000 and EUR 1 500 for damages, also taking into account that X had failed to produce supporting documents enabling the court to assess the impact of the events on her personal life and health. On 7 February 2023, the Court of Cassation dismissed Ramadan's appeal on points of law. Ramadan lodged an application with the ECtHR in June 2023, complaining that his conviction under Article 39 quinquies of the Freedom of the Press Act amounted to a violation of Article 10 ECHR.

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The ECtHR had no problem accepting that Ramadan's conviction was provided by law. Article 39 quinquies of the Freedom of the Press Act provides indeed that "the dissemination, by any means and in any medium whatsoever, of information on the identity of the victim of sexual assault or abuse, or of an identifiable likeness of that victim" is punishable by a fine of EUR 15 000, while this provision does notapply in circumstances "where the victim had given her written consent". Ramadan had undoubtedly been in a position to foresee that by mentioning X's name in a press release, an interview and a book, he would thereby be "disseminating" her identity within the meaning of Article 39 quinquies of the Freedom of the Press Act. Nor could he have been unaware that the condition for such dissemination had not been fulfilled since he had not been in possession of any written authorisation from X to that effect. The ECtHR also agreed with the French court's finding that X was indeed to be regarded as a victim within the meaning of Article 39 quinquies of the Freedom of the Press Act. The ECtHR also accepted that the conviction was an interference with Ramadan's freedom of expression for "the protection of the reputation or rights of others", as the legitimate aim pursued was to protect the dignity and private life of the victim of a sexual offence and avoid pressure on him or her. Next, the ECtHR observed that in disseminating X's identity, Ramadan had not intended to take part in a debate on an issue of public interest, but had wished to defend himself publicly against accusations that he had committed sexual offences. Therefore the French authorities enjoyed a wide margin of appreciation in relation to the interference at issue with Ramadan's right to freedom of expression.

Finally, the ECtHR came to the conclusion that Ramadan's conviction had constituted a proportionate means of achieving the aim of protecting X's rights and reputation. It referred to the French court's finding that the dissemination of X's name had not been necessary for the exercise of Ramadan's defence rights or for securing his right to a fair trial, and that he had been at liberty to express his views on the acts of which he had been accused, provided he refrained from disseminating the name of X. The ECtHR took into account that the Court of Appeal had taken the approach that the interference with Ramadan's freedom of expression was acceptable only if the choice of penalty took into account the circumstances in which the dissemination had taken place, together with the victim's own conduct. The ECtHR found that the French courts in this case struck a fair balance between Ramadan's rights under Article 10 and X's rights under Article 8 ECHR. Indeed, a person's reputation forms part of his or her personal identity and psychological integrity and therefore falls within the scope of his or her private life within the meaning of Article 8 ECHR. On the other hand, the publication complained of and the information about the identity of X had not contributed to a debate in the public interest. The ECtHR saw no reason to question the assessment of the domestic courts, which had weighed Ramadan's rights and those of X in the balance and had relied on relevant and sufficient grounds. It also noted the moderate nature of the sums which Ramadan had been sentenced to pay in fines and damages, and which had been decreased on

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appeal, in particular to take account of the fact that X had played a part in her own identification. Having regard to the respondent State's wide margin of appreciation, the ECtHR concluded, unanimously, that Ramadan's complaint under Article 10 ECHR was manifestly ill-founded, and therefore inadmissible.

Decision by the European Court of Human Rights, Fifth section, in the case Tariq Ramadan v. France, Application No. 23443/23, 7 January 2024

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