



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 216

March 2018

Falzon v. Malta - 45791/13

Judgment 20.3.2018 [Section IV]

Article 10

Article 10-1

Freedom of expression

Conviction for defamation on account of journalistic statements presented in a question format and treated as statements of fact by domestic courts: *violation*

Facts – The deputy leader of the Malta Labour Party (hereinafter - the MLP), Mr M.F., delivered a speech in which he informed the public that he had received an anonymous email and threatening letters, in respect of which he had complained directly to the Commissioner of Police asking him to investigate the issue. The applicant published an opinion in the newspaper *Maltatoday*, commenting on this speech and querying the manner in which the two main political parties perceived the police force. The article contained a series of questions:

"Has not MLP Deputy Leader (...) [Mr M.F.] successfully used the Police Force to control the freedom of an innocent, law-abiding private citizen whom he suspected could be a political enemy? And has not somebody in the police force abused of his powers by condescending to do this for the advantage of the faction led by (...) [Mr M.F.] in the MLP's internal squabbles? Why should the police force interfere in Labour's internal politics where, it is obvious, there are too many cooks spoiling the broth?"

"So what is the Government doing about this? Does the MLP Deputy Leader (...), carry more weight and influence with the Commissioner of Police than the Deputy Prime Minister who is politically responsible for the Police Force?"

In response, the deputy leader instituted libel proceedings against the applicant. The domestic court found the applicant guilty of defamation and ordered him to pay damages (EUR 2,500). The applicant's appeals were dismissed.

In the constitutional redress proceedings, the applicant claimed that the domestic courts had imputed to him insinuations or allegations which he had neither made nor implied in his article, such as the statements to the effect that Mr M.F. had "manipulated" the Commissioner of Police, that the latter had been subjected to pressure which had "impeded the exercise of his function" and that Mr M.F. "was a *deus ex machina* pulling the strings of the Police Force". As regards a series of questions in his article, the applicant argued that they were for the reader to answer.

The Constitutional Court considered the impugned questions as allegations of fact and endorsed the lower courts' conclusions that the applicant had failed to corroborate his factual allegation of an illegitimate and abusive pressure on the police by the MLP deputy leader.

Law – Article 10: The outcome of the libel proceedings constituted an interference with the applicant's right to freedom of expression. The interference was prescribed by law and pursued a legitimate aim, namely, the protection of the reputation or rights of others.

The statements set out in question format appeared to have been the main reason for the applicant's conviction. The domestic courts had attributed to them meanings which had not been explicitly set out and in consequence considered that they were untrue factual assertions. The Court disagreed with that conclusion of the domestic courts, recalling its broad and liberal interpretation of "value judgments" in relation to journalistic freedom on matters of public interest, particularly concerning politicians. By using a provocative style, it was plausible that the applicant was raising awareness as to the possibility of any abuse being perpetrated by the deputy leader of an opposition party, and was thus expressing his concerns on a matter of public interest. Thus the questions posed by the applicant were legitimate questions having a sufficient factual basis: Mr M.F.'s own speech.

Furthermore, the Court was not convinced that the impugned statements could be considered as an attack reaching the requisite threshold of seriousness and capable of causing prejudice to Mr M.F.'s personal enjoyment of private life. Therefore, the award of damages in his favour could have had a chilling effect.

In sum, the domestic courts had not appropriately performed a balancing exercise between the need to protect the plaintiff's reputation and the applicant's freedom of expression.

Conclusion – violation (unanimously).

Article 41: EUR 4,000 in respect of non-pecuniary damage; EUR 2,500 in respect of pecuniary damage.

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