



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

Information Note on the Court's case-law 69

November 2004

Selistö v. Finland - 56767/00

Judgment 16.11.2004 [Section IV]

Article 10

Article 10-1

Freedom of expression

Defamation of surgeon by journalist: *violation*

Facts: In 1996 the applicant, a journalist, published two articles describing the allegedly unprofessional conduct of an unnamed surgeon, which had supposedly resulted in the death of a patient during surgery in 1992. The widower had lodged a criminal complaint but the National Medico-Legal Board ("the Board") had not found it possible to establish a causal link and the public prosecutor had decided in 1994 not to press charges. The pre-trial investigation record contained a number of statements concerning the possible consumption of alcohol by the surgeon. The applicant's first article contained an interview with the widower, who questioned how it was possible for a surgeon to be allowed to operate with alcohol in his blood. A second article, which made no reference to the surgeon or the particular incident, discussed the need for surgeons and pilots to be sober, while a third, which referred to the first, cited statements taken during the pre-trial investigation, including references to the surgeon's alcohol-related problems. The applicant was convicted by the District Court of defamation committed "despite better knowledge" (i.e. imputing a criminal offence to the surgeon while knowing he had not committed one), on the basis of the third article, and a fine was imposed. The court considered that the applicant had given the impression that the surgeon had been drunk or suffering from a hangover while operating and that the article had rendered him identifiable in the area where he worked. It also found that the applicant had failed to verify the facts appropriately. The Court of Appeal, which considered that the articles had to be taken together, also found the applicant guilty and increased the fine. The Supreme Court refused leave to appeal. The Deputy Parliamentary Ombudsman subsequently found that it would have been preferable for charges to have been brought so that the matter could have been examined by a court.

Law: Article 10 – The principal issue was whether the interference with the applicant's freedom of expression was "necessary in a democratic society". The impugned articles concerned an important aspect of health care and therefore raised serious issues affecting the public interest, and the fact that the first and third articles dealt with a particular case did not alter that conclusion, it being natural in journalism that an individual case is chosen to illustrate a wider issue. Article 10 does not guarantee unrestricted freedom of expression even in respect of press coverage of matters of legitimate public concern; the "duties and responsibilities" mentioned in Article 10 § 2 apply also to the press and the safeguard afforded to journalists in relation to their reporting on issues of general interest is subject to them acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. As the issues in the present case concerned factual statements rather than value

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

judgments, it was of great importance that these duties and responsibilities were respected. In order to assess the “necessity” of the restriction, the Court had to examine the issue essentially from the standpoint of the reasoning adopted by the domestic courts. To a large degree, they had not found the facts presented in the articles erroneous as such; the applicant’s conviction was based more on what was not mentioned (the decision not to press charges and the findings of the Board) and certain assertions, and the overall impression conveyed. The Court attached considerable weight to the fact that it had not been claimed that the actual facts presented were erroneous and it was also of importance that the events and quotations in the third article had been derived from a public document. It considered that there was no general duty for reporters to verify the veracity of statements contained in such documents. As to domestic courts’ finding that the factual statements were selective, the applicant had referred to the Board’s conclusions and thus acknowledged that no breaches of official duties had been substantiated. The failure to mention the decision not to press charges was problematic but the finding of the Deputy Parliamentary Ombudsman lent support to the approach taken by the applicant or, at the very least, suggested that the content had not been erroneous or that she had not failed to verify the facts. The Court concluded that the reporting was based on accurate and reliable facts and that a certain selectiveness could not be regarded as a sufficient and relevant reason justifying the applicant’s conviction, bearing in mind that journalists must be allowed a degree of exaggeration or even provocation. The Court also attached considerable weight to the fact that there had never been any mention of the surgeon’s name, age or sex and while it accepted the domestic courts’ finding that he could have been identified, his identity was never expressly communicated to the public. The Court was furthermore satisfied that the surgeon had been provided with an opportunity to have a reply published and although it was understandable that he had been reluctant to risk identification by doing so, that could not prevent publication of a matter of general interest. Finally, the Court did not accept that the limited nature of the fine was decisive; it was of greater importance that the applicant had been convicted. In conclusion, the reasons given by the domestic courts, although relevant, were not sufficient to show that the interference was necessary in a democratic society.

Conclusion: violation (6 votes to 1).

Article 41 – The Court awarded the applicant 3,500 euros in respect of pecuniary damage and 5,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

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