



TV show presenter's suspended prison sentence handed down by Italian courts, for disclosing confidential images of public TV station, was disproportionate

In today's Chamber judgment in the case of [Ricci v. Italy](#) (application no. 30210/06), which is not final¹, the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the conviction and sentencing of the presenter/producer of a satirical television programme for disclosing confidential images that had been recorded for the internal use of a public television station (the RAI).

The Court took the view that, taking into account in particular the applicant's failure to observe the ethics of journalism, his conviction did not itself entail a violation of his right to freedom of expression. However, the nature and severity of the penalty imposed on him, in particular the suspended prison sentence, constituted a disproportionate interference with the legitimate aims of the protection of the reputation of others and the prohibition on disclosing information received in confidence.

Principal facts

The applicant, Antonio Ricci, is an Italian national who was born in 1950 and lives in Albenga (Italy). Mr Ricci, as the producer and presenter of a satirical television programme, intercepted images of a row between a writer and Gianni Vattimo, a philosopher, during the recording of a programme to be broadcast on the RAI channel. The presenter of that programme could later be seen complaining that she could not use the footage because Mr Vattimo had not signed a document allowing it to be broadcast and acknowledging that the individuals concerned had been invited for the sole purpose of provoking an argument that would attract a large number of viewers.

In 1996 Mr Ricci broadcasted the images in order to denounce the real nature of television, which was organised, in his view, with the sole aim of creating entertainment rather than informing the public. In 1997 the RAI lodged a criminal complaint with an application to join the proceedings as a civil party for fraudulent interception and disclosure of confidential communications. Mr Vattimo also joined the proceedings as a civil party.

In 2002 Mr Ricci was ordered to pay the RAI and Mr Vattimo damages, of which the amount was to be fixed in separate civil proceedings, and was given a suspended prison sentence of four months and five days, for the public disclosure of recordings in the RAI's internal data-transmission system. In addition, Mr Ricci was required to pay immediately, by way of an advance, 10,000 euros to each of the civil parties. After the Court of Appeal dismissed his appeal in 2004 he appealed on points of law. In 2005 the Court of Cassation declared the offence time-barred and quashed the Court of

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Appeal's judgment without remitting it. However, it upheld the order that Mr Ricci was to compensate the civil parties and ordered him to pay the RAI's legal costs. Following a claim by Mr Vattimo in 2006, the civil courts ordered the applicant to pay him 30,000 euros.

Complaints, procedure and composition of the Court

The applicant complained that his conviction and sentence for disclosing confidential images recorded for the internal use of the RAI television station constituted a violation of Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 18 July 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Danutė **Jočienė** (Lithuania), *President*,
Guido **Raimondi** (Italy),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 10

The Court took the view that Mr Ricci wished to impart information or ideas and that his conviction and sentence had thus constituted an interference with his right to freedom of expression. However, that interference was prescribed by law and had the legitimate aims of protecting the reputation of others – namely, that of Mr Vattimo – and of preventing the disclosure of information received in confidence.

As to the necessity of the interference in a democratic society, the Court rejected, however, the argument of the District Court of Milan and the Court of Cassation that the protection of communications based on a computer or data-transmission system precluded in principle any possibility of balancing against the exercise of freedom of expression. Even where such information was broadcast, there were a number of separate aspects to be examined, namely the interests at stake, the review by the domestic courts, the applicant's conduct and the proportionality of the sanction.

As regards the interests at stake, the Court was prepared to accept Mr Ricci's argument that the broadcast footage concerned a subject of general interest, namely the denunciation of the "real nature" of television in modern society. However, the Court pointed out that Mr Ricci was seeking above all to stigmatise and ridicule individual conduct. If he had intended to start a discussion on a subject of paramount interest for society, such as the role of television, other means were available to him without involving any breach of the confidentiality of communications.

As to the review exercised by the domestic courts, only the Court of Appeal of Milan had raised the question of the conflict between the right to the confidentiality of recordings and freedom of expression. In finding that the information thus broadcast could not be regarded as of paramount interest, it had not carried out an arbitrary analysis but had relied on the criteria established by the Court's case-law.

As regards Mr Ricci's conduct, he could not have been unaware, as a media professional, that the impugned recording had been made on a channel reserved for the internal use of the RAI, or that, consequently, the fact of broadcasting it would breach the confidentiality of that TV station's communications. Accordingly, Mr Ricci had not acted in accordance with the ethics of journalism.

In view of the foregoing, his conviction had thus not constituted, in itself, a violation of Article 10.

However, when it came to the proportionality of the interference, the Court observed that the nature and severity of the sanctions imposed also had to be taken into consideration. In the present case, in addition to compensation for damage, Mr Ricci had been sentenced to four months and five days in prison. Even though it had been a suspended sentence and the Court of Cassation had found the offence to be time-barred, the fact that a prison sentence had been handed down must have had a significant chilling effect. In addition, the case in question, which concerned the broadcasting of a video whose content was not likely to cause significant damage, was not marked by any exceptional circumstance justifying recourse to such a harsh sanction. Consequently, on account of the nature and quantum of the sentence imposed on Mr Ricci, the interference with his right to freedom of expression had not remained proportionate to the legitimate aims pursued.

The Court thus found that there had been a violation of Article 10.

[Just satisfaction \(Article 41\)](#)

The court held, by six votes to one, that the finding of a violation was in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Ricci. It dismissed, unanimously, the remainder of his just satisfaction claim.

[Separate opinion](#)

Judge Karakaş expressed a dissenting opinion. The text of her separate opinion is appended to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.