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

FIRST SECTION

DECISION

Application no. 64746/14
Marco TRAVAGLIO
against Italy

The European Court of Human Rights (First Section), sitting on 24 January 2017 as a Chamber composed of:

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Guido Raimondi,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo,
Tim Eicke, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 24 September 2014,

Having deliberated, decides as follows:

THE FACTS

1. The applicant was born in 1964 and lives in Turin. He is represented before the Court by Ms Caterina Malavenda, a lawyer practising in Milan.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The publication of the article

3. The applicant is a journalist. On 3 October 2002, he published in the weekly magazine *L'Espresso* an article whose title was "Heinous agreement between the Mafia and Forza Italia" ("*Patto scellerato tra mafia e Forza Italia*").

4. The article in question stated that between 1993 and 1994 a secret agreement was supposedly reached between an Italian political party, *Forza*

Italia, and the Sicilian Mafia. The applicant reported that one of the most important political figures within the party, Mr D.U., was suspected of having promised the adoption of more lenient legislative measures favourable to individuals accused of membership of mafia-type criminal organisations, as well as the adoption of other measures beneficial to their economic interests, in exchange for votes from the areas under the Sicilian Mafia's control.

5. In the article in question, the applicant contended that the existence of such a secret and illegal agreement had been revealed to colonel R. of the *carabinieri* by Mr I., a prominent member of the Sicilian Mafia who had close connections with some of the most influential figures within the criminal organisation.

6. In his article the applicant alleged that colonel R. and Mr I. had met a number of times from 1993 onwards, and that the former persuaded the latter to become a *pentito* (a former *mafioso* who has decided to cooperate with the authorities). In March 1996, Mr I. finally became a *pentito* and entered the witness protection programme. In this connection, he met with a *carabinieri* general and the anti-Mafia prosecutors at the headquarters of the *Raggruppamento Operativo Speciale* (Special Operations Group) in Rome. Following that meeting, a first official interrogation was scheduled by the prosecutors. However Mr I. was assassinated before it could take place.

7. The article went on to report that colonel R. had been questioned by the prosecutors of the Florence District Court in December 1998, in a set of related proceedings. Colonel R. gave an account of the above events and his statements were officially recorded on 21 December 1998 in the context of the latter proceedings. The magazine article suggested that, in subsequent years, colonel R. had been questioned on other occasions by the Florence District Court prosecutors and that his statements had been recorded. In drafting the impugned article, the applicant had relied largely on these statements.

8. The applicant mentioned that criminal proceedings had been instituted against Mr D.U. for aiding and abetting a mafia-type organisation from the outside (*concorso esterno*), mostly in relation to the events described above.

9. The article continued by providing an account of a meeting that took place in March 2001 in the office of Mr T. (a lawyer and politician active within *Forza Italia*) involving Mr T., Mr D.U., colonel R., and a co-accused of Mr D.U. In the meeting, Mr D.U. allegedly sought to persuade colonel R. to modify his testimony in the above-mentioned trial (see above paragraph 8) and to withhold the fact that Mr I. had told colonel R. about the involvement of Mr D.U. in the negotiations between *Forza Italia* and the Mafia.

10. Quoting part of a sentence extracted from the recorded statements made by colonel R. to the Florence District Court prosecutors, the applicant concluded his article by suggesting that another prominent figure of *Forza*

Italia – Mr P. – had been physically present on the premises when the meeting occurred. The quotation in question reads as follows:

> "On that occasion, as on others, Mr P. was also present in the chambers of Mr T.".

2. Criminal proceedings against the applicant

11. On an unspecified date following publication of the article, Mr P. pressed charges against the applicant (as well as against the editor in chief of the magazine) for defamation through the press (*diffamazione a mezzo stampa*). He alleged that, by quoting the above-cited statement, the applicant had implied that Mr P. was actively involved in the meeting described (see paragraph 9 above). Mr P. further argued that such an allegation, which he claimed was false, had damaged his reputation, due to the illegal purpose of the meeting in question.

12. On 15 October 2008, the Rome District Court delivered its judgment. The court first noted that, by placing the sentence between quotation marks, the applicant generated in the reader the understanding that it was an accurate representation of colonel R.'s recorded statement. However, the District Court also noted that the statement had not been quoted in its entirety. The complete statement, as replicated by the District Court in its judgment, reads as follows:

> "On that occasion, as on others, Mr P. was also present in the chambers of Mr T. Mr P.'s presence was, however, due to other reasons, linked to their common political activity and he was not present when the position of Mr D.U. in his criminal proceedings was discussed."

13. The District Court found that, read in conjunction with the rest of the article, the incomplete quotation acquired a clearly defamatory character. The District Court further noted that this way of mentioning the fact that Mr P. was present on the premises was "unequivocally insinuating" ("*indubbiamente insinuante*"), thereby generating in the reader a suspicion as regards the role played by Mr P. and suggesting that he was involved in the above-mentioned meeting.

14. The District Court held that the applicant could not rely on his right to impart information (*diritto di cronaca*) as a justification for his conduct. The District Court reiterated that the application of such a right is dependent on the precondition that the imparted information is accurate. Based on the above arguments, the District Court found that the information conveyed was not correct and that it accordingly lacked the requirement of veracity.

15. The District Court further observed that the applicant's conduct had breached his duty, as a journalist, to disseminate accurate and fair information, and that he had done so despite being aware of the harm that he would cause to Mr P.

16. The District Court found the applicant guilty of defamation through the press and sentenced him to eight months' imprisonment (enforcement

suspended), payment of a fine of 100 euros (EUR), payment of 20,000 EUR in compensation (to be paid, jointly, with the magazine's editor in chief), and to bear Mr P.'s courts costs. The Court ordered that the conviction should not appear on his criminal record.

17. On an unspecified date, the applicant lodged an appeal against his conviction. He claimed that the impugned article had not been defamatory of Mr P., and that quoting the whole of colonel R.'s statement had been unnecessary. He further contested the penalty imposed.

18. In its judgment of 8 January 2010, the Rome Court of Appeal upheld the reasoning of the District Court. In particular it reaffirmed that the contested passage in the article had clearly been of a defamatory nature, and that the applicant's conduct had been deliberate. It added that the applicant should either have refrained from mentioning Mr P. at all or should have quoted colonel R.'s statement in its entirety in order to give an accurate account of the facts as related by the original source. The fact that the applicant chose to refer to Mr P.'s presence without quoting the statement in its entirety proved his malicious intent.

19. The Court of Appeal thus reaffirmed the applicant's criminal liability. However, it found the penalty imposed by the District Court excessive, as regards the suspended prison sentence, and therefore replaced it with payment of a fine of 1,000 EUR. In all other respects it upheld the sentence imposed by the District Court.

20. The applicant filed an appeal on points of law with the Court of Cassation, claiming that the Court of Appeal's judgment had lacked adequate and logical reasoning.

21. The Court of Cassation declared the appeal inadmissible in its judgment of 28 March 2014, finding that the reasons put forward by both the District Court and the Court of Appeal were sound and sufficient.

COMPLAINT

22. The applicant complained that his conviction for defamation constituted a breach of his freedom of expression protected by Article 10 of the Convention.

THE LAW

23. The applicant contended that his right to freedom of expression had been breached. He relied on Article 10 of the Convention, which, as far as relevant, provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (...)
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society (...) for the protection of the reputation or rights of others (...)."

24. The applicant claimed that there was a public interest in disseminating the information concerning Mr P.'s presence on the premises on the day when the meeting in question had been held. He also affirmed that, as a journalist, he was exercising his right to impart information, and that his professional conduct had always been irreproachable. The applicant further contended that the impact of the article on Mr P.'s reputation had in any event been limited, as at the time of publication he was already perceived by the public as a "a not entirely trustworthy individual" ("*un soggetto non certo limpido*").

25. The Court notes, at the outset, that the applicant's conviction constitutes an interference with his freedom of expression under Article 10 and that it was based on article 595 of the Criminal Code, and section 13 of the Press Act (Law no. 47 of 8 February 1948). It further notes that the aim of the conviction was to protect the "reputation or rights of others".

26. It remains to be determined whether the interference was "necessary in a democratic society". In this respect, the Court's task is to ascertain whether the domestic authorities struck a fair balance between the competing interests at stake, which in the present case were the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation and honour of Mr P., a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see, among many authorities, *Chauvy and Others v. France*, no. 64915/01, § 70, *in fine*, ECHR 2004-VI). In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009).

27. The Court has frequently reaffirmed the general principles concerning the necessity of any interference with freedom of expression in a democratic society (see, among many authorities, *Baka v. Hungary* [GC], no. 20261/12, § 158, ECHR 2016, and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016). The Court nevertheless finds it useful to restate some relevant principles.

28. The Court reiterates in particular that, as set forth in Article 10, freedom of expression is subject to exceptions which must be strictly construed, and that the need for any restrictions must be established convincingly. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with

European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court.

29. In exercising its supervisory powers, the Court's task is not to take the place of the competent national authorities, but rather to review the decisions they have delivered pursuant to their power of appreciation. In particular, the Court has to ascertain whether, in the light of the case as a whole, the interference complained of responded to a pressing social need, and more particularly whether it was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient. In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts.

30. The Court must also ascertain whether the domestic authorities struck a fair balance between the competing interests at stake, which in the present case were both rights protected by the Convention. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011).

31. In its case law, the Court has identified a number of relevant criteria where the right to freedom of expression is being balanced against the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-95, 7 February 2012, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 101-113, ECHR 2012).

32. Turning to the facts of the present case, the Court notes at the outset that the article in question concerned an alleged relationship between a major Italian political party and the Sicilian Mafia, the role played in such events by certain figures of relevance within the party, and the involvement of members of the *carabinieri*. It is undisputable that the article addressed a topic relevant to Italian politics and Italy's recent past and thus constituted information of public interest. The article consequently attracts a high level of protection under Article 10, with the authorities having a particularly narrow margin of appreciation (see, among many authorities, *Morice v. France* [GC], no. 29369/10, § 125, ECHR 2015). However, the nature of the allegation made concerning his possible involvement in the meeting described in the article clearly attained the requisite level of seriousness so as to cause prejudice to Mr P.'s rights under Article 8 of the Convention.

33. As to Mr P., the Court notes that he was a prominent politician, a member of parliament and a former senator of the Republic. The Court also notes that, at the time, he was under investigation in criminal proceedings for offences allegedly committed during his career as a lawyer. The Court therefore accepts that Mr P. constituted a "public figure" within the meaning

of the Court's case-law (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 117-123, ECHR 2015 (extracts)), and that he consequently had to display a greater degree of tolerance towards criticism and public scrutiny (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103).

34. However, the Court notes that the domestic courts found that, by quoting only a part of the statements of colonel R., the applicant had generated in the reader the impression that Mr P. was present and involved in the meeting described in the article (see paragraph 13 above). As ascertained by the domestic courts, such an allusion was essentially misleading and was disproved by the remainder of the statement, which was not included by the applicant in the article. The domestic courts also found that the applicant's conduct was deliberate (see paragraph 18 above) and that it had severely damaged Mr P.'s reputation and honour.

35. Consequently, the Court sees no reason to disagree with the findings of the domestic courts.

36. The Court emphasises that, while the press plays an essential role in a democratic society and its duty is to impart information and ideas on all matters of public interest (see, among many authorities, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III), journalists are nevertheless subject to duties and responsibilities. The protection afforded to journalists by Article 10 of the Convention is indeed subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the aforementioned tenets of responsible journalism, referring chiefly to content which is collected and/or disseminated by journalistic means (*Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015 and the cases cited therein).

37. As to the nature and severity of the penalty imposed, the Court notes that the applicant was sentenced by the Rome Court of Appeal to pay a fine of 1,000 EUR, the sum of 20,000 EUR in compensation to the injured party, jointly with the editor in chief of the magazine, and the court costs. The Court highlights that the suspended prison sentence at first imposed by the Rome District Court was subsequently found to be excessive by the Rome Court of Appeal and, thus, was not confirmed. Even though, as the Court has acknowledged on previous occasions (see, among other authorities, *Stoll v. Switzerland* [GC], no. 69698/01, § 160, ECHR 2007-V), any criminal sanction is capable of having a chilling effect on the person on whom it is imposed, in the present case the amount of the fine imposed by the Court of Appeal was moderate. The same finding may be reiterated as regards the compensation he was ordered to pay (see, *mutatis mutandis*, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, §§ 59-60, ECHR 2007-IV).

38. In conclusion, the Court finds that a fair balance was struck at the domestic level between the competing rights, and that the national courts

provided sufficient and relevant reasons in justifying the necessity of the interference in the applicant's freedom of expression.

39. It follows that the application is manifestly ill-founded and that it must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 February 2017.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President