

THOMA v. LUXEMBOURG

Freedom of expression – violation

Article 10

The press plays a vital role of “public watchdog” and journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation. Problems of general interest are a sphere in which restrictions on freedom of expression are to be strictly construed. Punishing a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.

In a judgment delivered on 29 March 2001 in the case of *Thoma v. Luxembourg*, the European Court of Human Rights held unanimously that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court held, by six votes to one, that a finding of a violation of Article 10 constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and awarded 741,440 Luxembourg francs (LUF) for pecuniary damage and LUF 600,000 for costs and expenses.

This judgment is not final. Pursuant to Article 43, Section 1 of the Convention, within three months from the date of the judgment of a Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

1. Principal facts

The applicant, Marc Thoma, was born in 1946 and lives in Luxembourg. He is a journalist.

The case concerned civil proceedings brought against the applicant by 63 Forestry Commission officials, who alleged that he had made defamatory remarks about them in a radio programme (“*Oekomagazin*”) he presented on 6 November 1991 concerning reforestation work carried out after devastating storms in 1990. Mr Thoma submitted that he had merely quoted an extract from an article by a fellow journalist, Josy Braun, published in a daily newspaper, “*Tageblatt*”.

The Luxembourg courts ordered him to pay one LUF in nominal damages to

each claimant and the costs of the proceedings, on the ground that, by failing to distance himself from the statements quoted, he had endorsed the views put forward, leading the public to believe, without proof or without in any way qualifying the remarks, that all but one of the Forestry Commission officials were corruptible. In thus failing to discharge his obligation to inform the public honestly he had committed a tort that rendered him liable under Articles 1382 and 1383 of the Civil Code to make reparation for the damage he had caused.

2. Procedure of the Court

The application was lodged with the European Commission of Human Rights on 9 September 1997. It was transmitted to the Court on 1 November 1998 and assigned to the Second Section. The application was declared partly admissible on 25 May 2000. A public hearing was held on 30 November 2000.

3. Summary of the judgment

Complaints

The applicant complained that the Luxembourg courts had infringed his right to freedom of expression, guaranteed by Article 10 of the European Convention on Human Rights.

Decision of the Court

Article 10 of the Convention

The Court reiterated that freedom of expression constituted one of the essential foundations of a democratic society and was applicable not only to “information” or “ideas” that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed. Such were the demands of that pluralism, tolerance and broadmindedness without which there was no “democratic society”. Furthermore, the press played a vital role of “public watchdog” and journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation.

The Court noted at the outset that there was a special feature to be taken into account in view of the size of the country and the limited number of Water and Forestry Commission officials in Luxembourg: even though the applicant’s remarks in the programme had been made without mentioning anyone by name, the officials concerned had been easily identifiable to listeners.

The Court found that some of the remarks made during the programme of 6

November 1991 by the applicant about the officials concerned were serious. In addition to the quotation from Josy Braun's article, the applicant had referred among other things to the "the temptation for Forestry Commission people to take advantage when an opportunity presented itself". He had also alluded to the serious offence of "intermeddling" by Water and Forestry Commission staff in private forestry trade, whereas civil servants had to have the confidence of the general public in order to discharge their duties.

The Court noted, however, that the topic raised in the programme had been widely debated in the Luxembourg media and concerned a problem of general interest, a sphere in which restrictions on freedom of expression were to be strictly construed.

The overriding question was whether the national authorities had correctly exercised their discretion when they convicted the applicant for being in breach of his obligation to provide bona fide information to the public.

On that subject, the Court noted that it was not unreasonable to take the view, as the Government had, that, having regard to his comments during the programme taken as a whole, the applicant had adopted – at least in part – the content of the quotation in issue.

However, in order to assess whether the "necessity" of the restriction on the exercise of the freedom of expression had been established convincingly, the Court had to examine the issue essentially from the standpoint of the reasoning adopted by the Luxembourg courts. The Court noted that the appellate court had only taken into account the applicant's quotation from the passage of his fellow journalist and, on that basis alone, found that he had adopted the allegation contained in the quoted text since he had failed formally to distance himself from it.

The Court reiterated that punishing a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so.

In the case before the Court, the Luxembourg appellate court had explained that a journalist who merely quoted from an article that had already been published would only escape liability if he formally distanced himself from the article and its content and had further noted that, as the applicant had quoted Josy Braun's article unreservedly, he had not acted "without malice".

The Court considered that those could not be regarded as "particularly cogent reasons" capable of justifying the imposition of a penalty on the journalist. A general requirement for journalists to distance themselves systematically and formally from the content of a quotation that might insult or provoke a third party or damage his

or her reputation was not reconcilable with the press's role of providing information on current events, opinions and ideas. In the case before the Court, the résumé of the programme showed that in any event the applicant had consistently taken the precaution of mentioning that he was beginning a quotation and of citing the author, and that in addition he had described the entire article by his fellow journalist as "strongly worded" when commenting on it. He had also asked a third party, a woodlands owner, whether he thought that what Josy Braun had written in his article was true.

Article 41 of the Convention

By a vote of six to one, the Court considered that the finding of a violation constituted in itself sufficient compensation for any non-pecuniary damage suffered by the applicant. It awarded LUF 741,440 Luxembourg francs (LUF) for pecuniary damage and LUF 600,000 for costs and expenses.

Judgment was given by a Chamber of 7 judges, composed as follows:

Christos Rozakis (Greek), President, Benedetto Conforti (Italian), Giovanni Bonello (Maltese), Françoise Tulkens (Belgian), Viera Strážnická (Slovakian), Peer Lorenzen (Danish), and Margarita Tsatsa-Nikolovska (FYR Macedonian), Judges.

Judge Bonello expressed a partly dissenting opinion.