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La Corte EDU sulla divulgazione di notizie coperte dal segreto investigativo
(CEDU IV sez., sent. 30 aprile 2024, ric. n. 25282/18)

Il caso definito dalla Corte EDU ha ad oggetto il ricorso presentato da una giornalista di un quotidiano portoghese, condannata per aver divulgato informazioni coperte dal segreto investigativo e relative ad un'indagine penale su corruzione, accesso illegale e abuso di potere riguardanti *ex* alti funzionari dei servizi segreti nonché importanti personalità politiche. La ricorrente ha invocato l'articolo 10 della Convenzione, ritenendo violato il suo diritto alla libertà di espressione.

La Corte ha ritenuto l'oggetto dell'articolo impugnato di notevole interesse pubblico tanto che l'esistenza dell'indagine penale in questione, i principali sospettati e la natura delle operazioni illecite avevano avuto già una forte risonanza mediatica e, quindi, erano già in parte di dominio pubblico. Altresì, essa ha rilevato che le autorità nazionali non hanno dimostrato come, nelle circostanze del caso di specie, la divulgazione da parte del ricorrente delle informazioni controverse avesse influito negativamente sull'indagine giudiziaria. In ragione di ciò, ha ritenuto che la tutela delle informazioni in ragione della loro segretezza non implica *ex se* un'ingerenza imperativa e che, in questo caso, la condanna inflitta alla giornalista è stata sproporzionata rispetto al diritto di libertà di espressione *ex* art- 10 della Convenzione.

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

FOURTH SECTION

CASE OF *OMISSIS* v. PORTUGAL
(Application no. 25282/18)

JUDGMENT
STRASBOURG
30 April 2024

This judgment is final but it may be subject to editorial revision.

In the case *omissis* v. Portugal,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:
Tim Eicke, *President*,
Armen Harutyunyan,

Ana Maria Guerra Martins, *judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,
Having regard to:
the application (no. 25282/18) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 May 2018 by a Portuguese national, Ms *Omissis* ("the applicant"), who was born in 1957, lives in Lisbon and was represented by Mr F. Teixeira da Mota, a lawyer practising in Lisbon;
the decision to give notice of the application to the Portuguese Government ("the Government"), represented by their Agent, Mr Omissis, Public Prosecutor;
the parties' observations;
Having deliberated in private on 9 April 2024,
Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The applicant is a journalist working for a national daily newspaper, *O Público*.
2. On 4 February 2012 a news article written by the applicant and entitled "Two more former spies targeted by the Public Prosecutor's Office" was published in the above-mentioned newspaper. It reported on the search and seizure of the computers of the two suspects in a criminal investigation into high-level corruption, illegal access and abuse of power, in which former senior officials of the intelligence services, as well as high-ranking political figures, were allegedly involved in illegal operations to take control of a major Portuguese media group. The news item, which had already received media coverage, identified two former intelligence officials who had been hired as information technology experts by a media company whose operations were being investigated.
3. The above-mentioned judicial investigation was under investigative secrecy as per a decision of the investigating judge during the period between 4 August 2011 and 7 May 2012.
4. By judgment of the Lisbon District Court of 9 March 2017, upheld by the Lisbon Court of Appeal on 14 December 2017, the applicant was sentenced to a 100-day fine, corresponding to the amount of 1,000 euros ("EUR") for disclosing information covered by investigative secrecy in the news article at issue.
5. Relying on Article 10 of the Convention, the applicant alleged that her criminal conviction had violated her right to freedom of expression.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

6. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

A. Existence of an interference "prescribed by law" and pursuing a "legitimate aim"

7. There was no disagreement between the parties as to the fact that the applicant's conviction had constituted an interference within the meaning of Article 10 § 2 of the Convention with the exercise of her right to freedom of expression as secured under Article 10 § 1 of the Convention. Nor was it disputed that the interference had been prescribed by law, namely Article 371 of the Criminal Code and Article 31 of the Law no. 2/99 of 13 January 1999 ("Media Law"). The Court sees no reason to hold otherwise.

8. The Court notes that the domestic courts based their decisions on a breach of the secrecy of the judicial investigation. Accordingly, it accepts that the impugned measure aimed at ensuring the good administration of justice, by preventing any external influence on the investigation, in order to maintain "the authority and impartiality of the judiciary", a legitimate aim foreseen by Article 10 § 2 of the Convention (compare *Pinto Coelho v. Portugal*, no. 28439/08, § 30, 28 June 2011). The issue is, therefore, whether the interference was "necessary in a democratic society".

B. Necessity of the interference in a democratic society

9. The general principles of the Court's case-law for assessing the necessity of an interference with the exercise of freedom of expression in the interest of the "protection of the reputation or rights of others" have been summarised in *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, § 93, ECHR 2015 (extracts)); *Bédat v. Switzerland* ([GC], no. 56925/08, §§ 48-54, 29 March 2016); *Pinto Coelho* (cited above, § 36); *Pinto Coelho v. Portugal* (no. 2) (no. 48718/11, §§ 41-42, 22 March 2016); and *SIC – Sociedade Independente de Comunicação v. Portugal* (no. 29856/13, §§ 54-62, 27 July 2021).
10. In the present case, the Court observes that the subject of the impugned article was a matter of considerable public interest, since it concerned a judicial investigation into corruption, illegal access and abuse of power involving senior officials of the intelligence services and high-ranking political figures (compare *Pinto Coelho*, cited above, § 35; and *Campos Dâmaso v. Portugal*, no. 17107/05, § 33, 24 April 2008).
11. The domestic authorities considered that the applicant, by reporting on the search and seizure of the computers of two suspects, had breached the duty of secrecy to which she was subject, since the disclosed information was covered by the secrecy of the judicial investigation. They also considered that the applicant, as an experienced journalist, could not have been unaware that the information in question was protected by the secrecy of judicial investigations. They took the view that the applicant should have respected the duty of secrecy instead of succumbing to the pressure to be the first to publish the news.
12. In this connection, the Court observes that, in the circumstances of the present case, the existence of the criminal investigation in question, the main suspects and the nature of the unlawful operations concerned had already been reported in the media at the time of the publication of the news article. It is therefore questionable whether, given the media coverage of the case, the facts under investigation and their political relevance, it was still necessary to prevent the disclosure of information which was, at least in part, already in the public domain. Also, the Court notes that the national authorities have not shown how, in the circumstances of the case, the applicant's disclosure of the information at issue, namely the search and seizure of the computers of two suspects, adversely affected the judicial investigation (compare *Campos Dâmaso*, cited above, § 36). Instead, the domestic authorities appear to have relied on a formal and automatic application of the offence of breach of judicial secrecy and failed to take into account the particular circumstances of the publication and its subject, as well as its impact on the investigation. In these circumstances, the protection of the information by virtue of its secrecy cannot constitute an overriding requirement.
13. Furthermore, as regards the penalties imposed, the Court notes that the applicant was convicted to a 100-day fine, corresponding to the amount of EUR 1,000 (see paragraph 4 above). While the amount of the fine could arguably be considered rather moderate, the Court notes that the applicant had never been convicted of a similar offence. It further notes that such an interference with freedom of expression might have a chilling effect on the exercise of that freedom – an effect that even the relatively moderate nature of a fine would not suffice to negate (compare *Pinto Coelho*, cited above, § 53).

14. In view of the foregoing, the Court considers that the conviction of the applicant constituted a disproportionate interference with her right to freedom of expression and that it was therefore not necessary in a democratic society. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed the sum of EUR 1,000 in respect of pecuniary damage corresponding to the fine imposed on her and EUR 510 in respect of legal costs and expenses, for the proceedings at domestic level. She did not claim any amount for the non-pecuniary damage sustained by her, taking the view that a declaration of the violation of her right to freedom of expression would be sufficient.
16. The Government contested the amounts claimed by the applicant, reiterating their position as to the inadmissibility of the applicant's complaint.
17. The Court notes that there is a causal link between the domestic court ruling and the amount claimed in respect of pecuniary damage. Having regard to the documents in its possession and the above findings, the Court considers it reasonable to award the applicant the sum of EUR 1,000 for pecuniary damage corresponding to the fine imposed on the applicant, and EUR 510 in respect of legal costs and expenses incurred for the proceedings at domestic level, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts**:**
(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 510 (five hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

Done in English, and notified in writing on 30 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Crina Kaufman	Tim Eicke
Acting Deputy Registrar	President