



Lawyer's disproportionate criminal conviction for written statements criticising a judge

In today's **Chamber** judgment¹ in the case of **Rodriguez Ravelo v. Spain** (application no. 48074/10) the European Court of Human Rights held, by a majority, that there had been:

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

The case concerned expressions used by a lawyer in a written application containing value judgments regarding a judge and attributing blameworthy conduct to her.

The Court found that, although serious and discourteous, the terms used by Mr Rodriguez Ravelo had been expressed in writing and only the judge and the parties had been aware of them. The statements had concerned the manner in which the judge had conducted the case and had been submitted in the context of defending his client's interests.

The Court held that Mr Rodriguez Ravelo's criminal conviction was capable of having a chilling effect on lawyers called upon to defend their clients. The Spanish criminal courts had therefore failed to strike a fair balance between the need to maintain the authority of the judiciary and the need to protect freedom of expression. The sentence imposed on the lawyer had therefore not been proportionate to the legitimate aim pursued and accordingly had not been necessary in a democratic society.

Principal facts

The applicant, Fernando Rodriguez Ravelo, is a Spanish national who was born in 1970 and lives in Puerto Del Rosario (Spain).

Mr Rodriguez Ravelo, who is a lawyer, represented D., a company, in proceedings between Mrs F. and D. to determine ownership of some rural property. In that context he submitted a civil application to have a decision ordering registration of Mrs F.'s title to the land in question overturned, arguing that the D. company was the rightful owner of the land. In that application Mr Rodriguez Ravelo indicated, among other things, that the facts as set out by the district judge in her decision did not reflect the reality. He also disputed the judge's decision to award title to the land in question to Mrs F. without having informed the company D. in good time. In his written application Mr Rodriguez Ravelo attributed blameworthy conduct to the district judge, such as wilfully deciding to distort reality, unhesitatingly lying or, further, issuing an untruthful report containing false and malicious information.

Criminal proceedings were instituted against Mr Rodriguez Ravelo for the suspected offence of libel. He was sentenced to a daily fine of 30 euros for nine months and a custodial penalty in the event of default. The judgment indicated that the expressions used by Mr Rodriguez Ravelo seriously impaired the honour of the district judge and went well beyond the legitimate right of defence, with Mr Rodriguez Ravelo choosing to resort to insult and libel. Mr Rodriguez Ravelo lodged a number of unsuccessful appeals against that decision.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained about his conviction and sentence on the grounds that these were a disproportionate interference in the exercise of his right to express himself freely in the context of his professional duties.

The application was lodged with the European Court of Human Rights on 12 August 2010.

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

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
George Nicolaou (Cyprus),
Helen Keller (Switzerland),
Johannes Silvis (the Netherlands),
Branko Lubarda (Serbia),
Pere Pastor Vilanova (Andorra),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court found that Mr Rodriguez Ravelo's conviction by the domestic courts for the offence of libelling the district judge amounted to an interference in the exercise of his right to freedom of expression. Mr Rodriguez Ravelo's conviction and sentence had been prescribed by law, however, and the interference had pursued the legitimate aim of protecting the reputation and rights of the district judge and maintaining the authority and impartiality of the judiciary.

The Court considered that Mr Rodriguez Ravelo's conduct showed a lack of respect towards the district judge and, indirectly, the justice system. He had made value judgments regarding the judge and had also attributed blameworthy conduct to her. In a case such as this it was perfectly acceptable to punish conduct of that kind coming from a lawyer.

Nevertheless, the Court considered that, although serious and discourteous, the terms used by Mr Rodriguez Ravelo had not been uttered in the courtroom as such since they had been expressed in writing and only the judge and the parties had been aware of them. The statements had mainly concerned the manner in which the judge concerned had conducted the case and, although aggressive, they had been submitted in the context of defending his client's interests.

The Court held that the fact of being convicted in criminal proceedings, coupled with the severity of the penalty imposed on Mr Rodriguez Ravelo, was capable of having a chilling effect on lawyers in situations where they were called upon to defend their clients.

The criminal courts examining the case had therefore failed to strike a fair balance between the need to maintain the authority of the judiciary and the need to protect Mr Rodriguez Ravelo's freedom of expression. The fact that the applicant had paid the fine imposed on him, and accordingly had not served the custodial sentence, did not in any way alter that conclusion.

In those circumstances the Court found that Mr Rodriguez Ravelo's sentence, which even carried a risk of imprisonment, had not been proportionate to the legitimate aim pursued and had accordingly not been necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 8,100 euros (EUR) in respect of pecuniary damage and that the finding of a violation of Article 10 of the Convention was in itself sufficient just satisfaction for any non-pecuniary damage that might have been sustained by Mr Rodriguez Ravelo.

Separate opinion

Judges Nicolaou and Silvis expressed separate opinions, which are annexed 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.