

**RIOLO v. ITALY****Freedom of expression – violation****Article 10**

Newspaper article criticising local politician who was also serving as defence lawyer in case concerning murder of anti-Mafia judge Giovanni Falcone.

In a judgment delivered on 17 July 2008 in the case of *Riolo v. Italy*, 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 on account of the applicant’s conviction for defamation of a local politician in Palermo.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 60,000 in respect of pecuniary damage and EUR 12,000 for costs and expenses.

This judgment became final on 17 October 2008 in accordance with Article 44, Section 2(b) of the Convention, on the expiry of the three-month time limit for requesting referral to the Grand Chamber.

**1. Principal facts**

The applicant, Claudio Riolo, is an Italian national who was born in 1951. He is a researcher in political science at the University of Palermo.

The case concerned the applicant’s conviction for defamation following the publication of an article entitled “Mafia and law. Palermo: the province versus itself in the Falcone trial. The strange case of Mr Musotto and Mr Hyde”.

The article was published in November 1994 in the newspaper *Narcomafie*. In it, the applicant criticised the supposedly ambiguous conduct of Mr Musotto, a lawyer at the Palermo Bar and President of the Province of Palermo. Mr Musotto was representing one of the accused in the criminal proceedings concerning the murder of Giovanni Falcone – a judge engaged in the fight against the Mafia – while the question whether the Province of Palermo should join the proceedings as a civil party was under discussion.

In April 1995 Mr Musotto brought a civil action for damages against the applicant, alleging defamation. In May of that year the article was re-published in *Narcomafie* and in the national daily newspaper *Il Manifesto*. It was signed by

the applicant and 28 other persons, including politicians, representatives of non-governmental organisations, lawyers and journalists.

In March 2000 the Palermo District Court ordered the applicant to pay Mr Musotto approximately EUR 36,151 in respect of non-pecuniary damage, plus interest at the statutory rate, to pay compensation of approximately EUR 5,164 and to reimburse legal costs to the tune of EUR 3,300. The District Court considered, in particular, that the applicant had launched a personal attack on Mr Musotto, and that the “average reader” would conclude after reading the impugned article that Mr Musotto championed Mafia interests and was influenced by them in his political and professional activities.

In November 2002 the Palermo Court of Appeal dismissed an appeal lodged by Mr Riolo and ordered him to pay the defendant’s legal costs, amounting to EUR 3,700. The court emphasised, among other things, that some of the expressions used had exceeded the limits of acceptable criticism of Mr Musotto’s situation. Referring in particular to the article’s heading and to a passage in which the applicant had described Mr Musotto as a “clumsy imitator [of Silvio Berlusconi]”, the Court of Appeal took the view that the article damaged the lawyer’s reputation and contained serious insinuations which lacked any objective factual basis. Finally, in that court’s view, the article’s subsequent publication in a national newspaper had caused even greater damage to the complainant.

The applicant lodged an unsuccessful appeal with the Court of Cassation.

## **2. Procedure of the Court**

The application was lodged with the European Court of Human Rights on 14 September 2007.

## **3. Summary of the Judgment**

### **Complaints**

Relying on Article 10 (freedom of expression) of the Convention, the applicant complained of his conviction for defamation.

### **Decision of the Court**

#### *Article 10 of the Convention*

The Court observed that the article in question had been based on the situation in which Mr Musotto found himself at the relevant time. It was not for the Court to examine a possible incompatibility between the roles occupied by Mr Musotto;