



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

- Section:** Criminal Law Protection - Crimes - *Crimes of opinion and crimes against the honour*
- Title:** *The Right of Satire and the “necessary interference”*
- Author:** DANIELA FALCINELLI
- Judgment:** European Court of Human Rights, Fifth Section, Decision of the 2nd of October 2008, *Leroy vs. Francia* (Application n° 36109/03)
- Conventional Parameter:** Article 10
- Key Words:** Freedom of expression; lawful limitation to the expression of thought; balance in the concrete of the involved interests

In the judgment in comment, that reasons about the violation of the art. 10 CEDU (Right to the freedom of expression), it reaffirms itself the exegetic tradition of the balance of the different interests at stake through an evaluation of the circumstances of the single case, where estimating the compatibility between the provisions of the European Court of human rights and the specific criminal intervention on the ground of the concrete danger of the carried out behaviour.

Before herself the Court has the scenery of the terroristic attempt to the World Trade Center of the 11th of September 2001, and a sentence for apologia of terrorism relative to the publication on a Basque weekly magazine, on the 13th of September 2001, of a vignette representing the drama accompanied by the explanation: «all of us dreamt it ... Hamas did it». The argumentation of the claimant, that framed the vignette as an expression of an anti-american sentiment, set themselves against those of the French Government, which considered the apologia of terrorism as an activity turned to prejudice the rights and the liberties that the Convention itself proclaims.

The judge of Strasbourg recognized the importance of both perspectives: of one, considering the publication as a humorous representation of the breakdown of the American imperialism, which consequently remains abstractly covered by the spectrum of warranty of the art. 10; of the other, intending as lawful the restriction of the freedom of expression of thought descending by the criminal qualification of the fact in reason of the opposite interest dictated by the necessity to protect the public order, provided for the second paragraph of the art. 10 itself. According to the sentence of the European Court, the protection of the collectivity through efficacious means of contrast to terrorism therefore made necessary to intervene in that specific space - time contest: to repress the demonstration of a support to the violent struggle against the American imperialism meant to punish that which - two days after the tragic event of the Twin Towers - actually represented an instigation to the violence and the danger for the public order of the territory of the Basque French region.

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