

Portugal, Lisbon Court of Appeal, 07th March 2024

Member State

 Portugal

Topic

Judicial Dialogue and Freedom of Expression of Lawyers

Sector

Freedom of Expression of Lawyers

Deciding Court Original Language

Tribunal da Relação de Lisboa

Deciding Court English translation

Lisbon Court of Appeal

Registration N

2301/21.5T9LSB.L1-9

Date Decision

7 March 2024

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Dickson v. the United Kingdom, No. 44362/04, of 4/12/2007

Codarcea v. Romania, No. 31675/04, of 2/06/2009

Von Hannover v. Germany (no. 2) (GC), Nos. 40660/08 e 60641/08, of 7/12/2012

Axel Springer AG v. Germany, No. 39954/08, of 7/02/2012

Couderc and Hachette Filipacchi Associés v. France (GC), No. 40454/07, of 10/11/2015

Perinçek v. Switzerland (GC), No. 27510/08, of 15/10/2015.

Subject Matter

Freedom of expression of lawyers

Legal issue(s)

To know whether certain words, considered insulting, spoken against a lawyer while he is carrying out his activity can be subsumed under freedom of expression, or whether, on the contrary, they constitute an insult to honour.

Request for expedited/PPU procedures

NO

Interim Relief

N/A

National Law Sources

Decree-Law 48/95, of 15 March («Portuguese Criminal Code»)

Facts of the case

A. was a lawyer who accompanied his client on a visit he wanted to make to his sister.

This visit was made, but, when leaving the place, two people approached. A. identified himself with one of them, B. From the moment she realized that A. was a lawyer, she immediately mentioned that he, being a lawyer, was "a pimp" and "a thief".

Understanding that his honour was questioned, A. filed a lawsuit in court for libel and defamation. Despite B. understanding that what she said was covered by her freedom of expression, the court ruled in favour of A. and convicted B. of the crime of defamation. Dissatisfied, B. appealed this decision to the Court of Appeal.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court of Appeal agrees with the lawyer.

It begins by mentioning that the right to honour does not have an absolute profile, as there are other rights, potentially with the same dignity, with which we have to live and in the face of which, depending on the specificities of each case, you may have in some measure that yields, as is the case with freedom of expression, protected by article 37 of the Constitution of the Portuguese Republic and article 10 of the ECHR.

It also states that freedom of expression is one of the essential foundations of any democratic society, marked by the ideas of pluralism, tolerance, and a spirit of openness, with its protection being particularly extended when it comes to the performance of those who observe and monitor public affairs or participate in any debate of broad interest.

It states that the right to honour and freedom of expression, by their very nature, have a special vocation to confront each other in the general dynamics of life in society, and it cannot be said in the abstract that one of them must necessarily prevail over the other.

In view of the above, the Court states, however, that the words that B. is alleged to have addressed to A. have no associated basis of fact and are not part of any debate of positions that can be considered in a plural and tolerant environment of ideas. Instead, the words are a pure value judgment which is unnecessarily offensive.

Thus, the Court concludes that the conduct of B. was not an exercise of her freedom of expression.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

Horizontal and vertical.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

To support its decision, the Court of Appeal uses some other rulings from other national courts - both lower courts and higher courts.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Court mentions ECtHR jurisprudence, particularly regarding the meaning of article 10 of the ECHR, but does so to consolidate the decision to convict B. of the crime of defamation.

Despite recognizing that "there is today an international tendency to refuse custodial measures regarding crimes of this nature", the truth is that the Court concludes that the protection that B. could have under the ECHR is "very vulnerable", so that it does not participate in the reason for the protection enjoyed by freedom of expression under the ECHR.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The interpretation that the Court makes is not an interpretation with the aim of making national legislation in accordance with the ECHR. On the contrary, and as mentioned, the Court rejects the ECtHR's interpretation of Article 10 of the ECHR, prioritizing honour over freedom of expression.

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

(Link to) full text

<https://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/a8a46062e7ca111680258ade003f0085?>

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