

Portugal, Guimarães Court of Appeal, 16th September 2019

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 Guimarães

Deciding Court English translation

Guimarães Court of Appeal

Registration N

3298/16.9T9VCT.G1

Date Decision

16 September 2019

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

Subject Matter

Freedom of expression of lawyers

Legal issue(s)

To know whether expressions in an application submitted by a lawyer and aimed at the court judge, even if these expressions constitute a disciplinary offence against the lawyer, and are discourteous and unethical, can still be understood as an exercise of the lawyer's freedom of expression.

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

M. was a lawyer in a certain case. On a certain date, the judge issues an order ending the case in which M. was a lawyer.

Unsatisfied, M. presents a petition arguing that the order issued by the judge was null and void. In this same request, M. accuses the order made by the judge of being "partial" and "not very dignified", as he would be "conniving" with the other party in the process.

After becoming aware of the petition, the judge files a lawsuit against the lawyer, stating that he, with that petition, aimed to attack his credibility, "undermining his honour and professional considerations". The court where the action was filed agrees with the judge, condemning M. for the crime of defamation. Unsatisfied, M. appeals this decision to the Court of Appeal.

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

The Court of Appeal rejects the decision that was made by the lower court and agrees with the lawyer.

The Court recalled that the expressions were written within the scope of a judicial proceeding, in which M. is a lawyer, and that the expressions in question were not directly addressed to the judge, but to his work, and were not made with the exclusive purpose of degrade and humiliate.

In view of the above, M.'s appeal is upheld and the Court acquits him of committing the crime of insult and defamation.

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 a number of 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)

Despite not specifically mentioning ECtHR decisions, the Court of Appeal makes use of other national decisions, namely the Supreme Court of Justice, where the ECtHR jurisprudence was mentioned in relation to article 10 of the ECHR.

From there, the Court of Appeal concludes that it cannot be forgotten that, under the terms of the ECHR, the right to broad criticism applies to the activity of judges, with the court being recognized as a very wide space for freedom of expression for lawyers when they exercise their functions.

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

The Court of Appeal sought to interpret national legislation in accordance with the understanding given to Article 10 of the ECHR.

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/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/e65f5c8cf980dba48025848100474820>

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