

Portugal, Évora Court of Appeal, 08th November 2022

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 Évora

Deciding Court English translation

Évora Court of Appeal

Registration N

26/19.0T9STC.E2

Date Decision

8 November 2022

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Pires de Lima v. Portugal, process 70465/12 of 12/02/2019;
Freitas Rangel v. Portugal, process 78873/13 of 08/10/2019.

Subject Matter

Freedom of expression of lawyers

Legal issue(s)

Whether the use of certain expressions by a lawyer in court, that may be considered insulting, can be understood as an exercise of the lawyer's freedom of expression or a defamation.

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., a lawyer, was appointed attorney in a case involving B. During a particular court case, A., speaking of B.'s father, referred to him as a "good person", although, in her opinion, he could be a better person "if he didn't drink".

B. felt that these words were offensive, so she brought an action against A. for defamation, claiming that there was no question of A. exercising her freedom of expression. The court, however, did not agree, so B. appealed the decision to the Court of Appeal.

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

The Court of Appeal agreed with the lower court's decision, dismissing B.'s appeal. Specifically, it held that the words spoken by A. were vague, very broad and ambiguous, so that their use could not be considered unlawful. For the Court of Appeal, no aggressive, offensive, or vulgar expressions were used, so there could be no question of an imputation of facts that were offensive to honour.

Finally, the Court of Appeal also attached importance to the context in which the words were uttered - that is, by a lawyer in court.

Making use of Opinions approved by the Portuguese Bar Association, which attach great importance to the freedom of expression that lawyers must have in court, the Court of Appeal states that if a lawyer were deprived of the freedom to express his thoughts, to appreciate, discuss and criticise everything that he deems appropriate for the proper performance of his mandate and to the extent that it seems necessary to him, then the right of defence would be emptied of its content and the concept of effective judicial protection would lose all meaning, so that justice

would not be possible.

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)

In support of its decision, the Court of Appeal makes use of two ECtHR decisions on Article 10 of the ECHR, stating based on these decisions that a possible conviction of the lawyer would be tantamount to a violation of Article 10 of the ECHR.

At the same time, the Court also pointed out, in the light of the data available to it, that Portugal had already been convicted 13 times for violating Article 10 of the ECHR, and that the vast majority of these convictions were precisely because the national judge had given precedence to honour and good name over freedom of expression.

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/jtre.nsf/134973db04f39bf2802579bf005f080b/c7e3b0224481e7a180258904004c8577>

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