



Unjustified award of damages against *Público* newspaper for harming the reputation of Sporting Clube de Portugal

In today's Chamber judgment in the case of [Público - Comunicação Social, S.A. and Others v. Portugal](#) (application no. 39324/07), which is not final,¹ 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.

The case concerned a judgment ordering the newspaper *Público* and four of its staff to pay 75,000 euros to Sporting Clube de Portugal for defamation following the publication of an article claiming that the football club owed substantial sums in social-security contributions.

Principal facts

The first applicant, Público – Comunicação Social S.A., is a company based in Maia (Portugal) and is the owner of *Público*, a large-circulation national daily newspaper. The other applicants are four Portuguese nationals: José Manuel Fernandes (publication director of *Público* at the relevant time), and João Ramos de Almeida, João Mateus and António Arnaldo Mesquita (all journalists with *Público* at the relevant time).

On 22 February 2001 *Público* published an article (which subsequently received widespread coverage through other media outlets), together with a front-page headline, claiming that Sporting Clube de Portugal owed approximately 2.3 million euros (EUR) in social-security contributions.² Sporting Clube de Portugal, recognised as a public-interest association, is one of Portugal's leading football clubs. The article in question included a denial by "club representatives" that any such debt existed, together with the position of the Ministry of Finance, which simply noted that the relevant information was confidential under tax law. The following day, *Público* reported that a further formal denial had been issued by the club in relation to the disputed information.

Alleging that the relevant article had damaged its honour, Sporting Clube de Portugal sued the applicants for damages. The Lisbon Court of First Instance, in a judgment of 15 April 2005 upheld by the Lisbon Court of Appeal in a judgment of 19 September 2006, found against it, holding that the applicants had simply exercised their right to freedom of expression. The courts found it established that João Ramos de

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Explaining the background to the article, the Court noted that several years previously there had been frequent instances of Portuguese professional football clubs failing to pay their social-security contributions, but that an agreement reached between the tax authorities and the Professional Football League in 1997 (and signed by Sporting Clube de Portugal in 1999) had been expected to put an end to that state of affairs.

Almeida had had access to a Ministry of Finance document substantiating the allegations made in the article, and noted that he also claimed to have received confirmation of the relevant information from an undisclosed source. In a judgment of 8 March 2007 the Supreme Court quashed the Court of Appeal's judgment and ordered the applicants to pay EUR 75,000 to Sporting Clube de Portugal for defamation. A constitutional appeal by the applicants was dismissed by the Constitutional Court in a judgment of 29 May 2008. The first applicant paid the sum awarded.

Complaints, procedure and composition of the Court

The applicants complained that the judgment ordering them to pay damages to Sporting Clube de Portugal breached their right to freedom of expression (Article 10).

The application was lodged with the European Court of Human Rights on 31 August 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Danutė **Jočienė** (Lithuania), *President*,
Ireneu **Cabral Barreto** (Portugal),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 10

It was not disputed that the award of damages against the applicants had had a legal basis in Portuguese law and had pursued the legitimate aim of protecting the reputation or rights of others. However, the Court had to determine whether the award had also been "necessary in a democratic society".

In making its assessment, it first noted that the article in question had clearly been in the public interest (the subject under discussion, namely the possibility that certain taxpayers had failed to discharge their tax liabilities, being a matter on which the press had to be able to impart information).

The Court then examined whether the applicants had fulfilled the "duties and responsibilities" inherent in the exercise of freedom of expression, and in particular whether they had acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. On that point, it noted among other things that the domestic courts' findings of fact indicated that one of the applicants had had access to a Ministry of Finance document showing that Sporting Clube de Portugal owed money to the Treasury, and that that information had, moreover, been confirmed by a source which the journalist, exercising a right guaranteed by Article 10, had not disclosed. The Court further observed that before publishing their article, the applicants had obtained the views of representatives of the football club concerned and the tax authorities, and that they had also reported the following day on the formal denial issued by Sporting Clube de Portugal in response to the information in question. In the Court's view, the article published by the applicants had therefore had a sufficient

factual basis, and there was nothing to suggest that they had failed to fulfil their “duties and responsibilities” or had not acted in accordance with the ethics of journalism.

The Court further reiterated that the nature and severity of the penalties imposed were also factors to be taken into account when assessing the proportionality of an interference. It considered that the award of EUR 75,000 in damages was disproportionate to the harm caused to the claimant’s reputation. Such an award would inevitably be likely to deter journalists from contributing to public discussion of issues affecting the life of the community and was liable to hamper the media in performing their task as a purveyor of information and public watchdog.

The Court thus concluded unanimously that the judgment against the applicants had not been “necessary in a democratic society” and had accordingly breached Article 10.

Article 41

By way of just satisfaction, the Court held that Portugal was to reimburse the first applicant the damages and legal costs it had paid, amounting to a total of EUR 83,619.75, in respect of pecuniary damage. Portugal was also ordered to pay the company EUR 6,000 in respect of costs and expenses.

Separate opinion

Judge Sajó expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.