



The applicant's criminal conviction for public defamation following claims of mental and sexual harassment breached Article 10 of the Convention

In today's **Chamber judgment**¹ in the case of **Allée v. France** (application no. 20725/20) 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 the applicant's criminal conviction for public defamation following her allegations of harassment and sexual assault against a senior executive of the non-profit association where she worked. The claims had been sent by email to six people from both inside and outside the association.

The Court stressed the need, under Article 10, to provide appropriate protection to individuals alleging that they had been subjected to mental or sexual harassment. In the present case, the Court considered that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on the applicant, by requiring that she provide evidence of the acts she wished to report. The Court also noted that the email, sent by the applicant to six people of whom only one had been an external party, had had only a minor impact on her alleged harasser's reputation.

Lastly, although the financial penalty imposed on the applicant could not be described as particularly severe, she had nonetheless been convicted of a criminal offence. By its nature, such a conviction had a chilling effect, which could discourage people from reporting such serious actions as those amounting, in their view, to mental or sexual harassment, or even sexual assault.

The Court concluded that there had been no reasonable relationship of proportionality between the restriction on the applicant's right to freedom of expression and the legitimate aim pursued, and held that there had therefore been a violation of Article 10 of the Convention.

Principal facts

The applicant, Vanessa Allée, is a French national who was born in 1978 and lives in Courbevoie (France).

At the relevant time, Ms Allée was employed as a secretary in a faith-based educational association in Paris; in the course of her responsibilities, she worked with A., the then executive vice-chair. In July 2015 Ms Allée asked Ar., A.'s son and the association's spiritual director, for a transfer to another position, on account of A.'s behaviour, which she was experiencing as harassment.

On 1 and 2 June 2016 B., the applicant's husband, sent SMS messages to Ar. and to the association's managing director, alleging that A. had harassed and sexually assaulted his wife and asking them to intervene. In response the managing director suggested to the applicant that she take sick leave until such time as her contract could be terminated by mutual consent or a new position could be found for her.

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.

On 7 June 2016 Ms Allée sent an email with the subject line “Sexual assault, sexual and mental harassment” to the association’s managing director, with copies to the State Labour Inspector, B., Ar., A. and another of A.’s sons. In response the managing director repeated his initial suggestion.

On 24 June 2016 B. posted a message on the Facebook wall of one of his acquaintances, reiterating his wife’s allegations and describing the situation as a “sex scandal”. The message named the A. family and the association and gave rise to a number of strongly worded comments.

On 1 August 2016 A. brought private proceedings against the applicant and B. before the Paris Criminal Court, alleging that they had committed public defamation.

On 16 January 2018 the Paris Criminal Court found the applicant and B. guilty of public defamation of a private individual.

The court ordered Ms Allée to pay a suspended fine of 1,000 euros (EUR), and to pay A. the symbolic sum of one euro – which was all he had sought – in addition to the sum of EUR 2,000 in respect of litigation costs, to be paid jointly and severally with her husband. Ms Allée appealed against the judgment.

On 21 November 2018 the Paris Court of Appeal partly upheld the judgment, finding that the allegations against A. had been damaging to honour and reputation and had been sufficiently precise for their truthfulness to be contested. In particular, the Court of Appeal held that, while there were elements corroborating that mental and even sexual harassment as perceived by the applicant had occurred, there was no evidence that sexual assault had taken place. The court reduced the fine imposed on the applicant by half.

Ms Allée appealed on points of law, complaining in particular of a violation of Article 10 of the Convention and of the “whistle-blowing right” granted to employees under the Labour Code.

In a judgment of 26 November 2019, the Court of Cassation dismissed the appeal. It found that the Court of Appeal had provided reasons for its decision, in so far as it had considered the acts complained of to be sufficiently precise for their truthfulness to be contested and that sexual assault had not been proved. The Court of Cassation ordered that EUR 2,500 be paid in respect of costs incurred in the proceedings before it.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained that her criminal conviction for defamation had violated her right to freedom of expression.

The application was lodged with the European Court of Human Rights on 19 May 2020.

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

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court drew attention to the fact that the email with regard to which the applicant was criminally convicted had been sent in a tense situation in which her work and private life were intermingled.

First, the Court noted that there had been six recipients of the impugned email: the alleged harasser (the association's executive vice-chair at the relevant time), his two sons (one of whom was also the association's spiritual director and was already aware of the allegations), the association's managing director, the State Labour Inspector and the applicant's husband (who was also aware of the allegations). Of those six people, only A.'s second son had been an external party; all the others either had been involved or had been in a position entitling them to receive reports of harassment. The email had therefore been sent to a limited number of people and had not been intended for public dissemination. Its sole purpose had been to alert the recipients to the applicant's situation, so that a means of ending it could be found.

However, by adopting a strict interpretation of the conditions prescribed by law for exempting an employee from criminal liability, the domestic courts had accepted the public nature of the email in issue, within the meaning of the Freedom of the Press Act of 29 July 1881. In the circumstances of the present case, such an approach appeared to be excessively restrictive in view of the requirements for compliance with Article 10.

Second, with regard to the nature of the impugned statements, the Court noted that the applicant had acted in her capacity as the alleged victim of the acts she was complaining of and that the content of the email had been statements of fact. The Court of Appeal had found – and the Court of Cassation had agreed – that the applicant could not be criticised, given the situation she was experiencing, for expressing herself in a heated manner, and that there had been elements corroborating the claims that mental and even sexual harassment as perceived by the applicant had occurred.

However, the domestic courts had considered that the applicant could not rely on the defence of good faith, as her claims of sexual assault had lacked a sufficient factual basis.

The Court reiterated that private documents disseminated to a restricted number of people had to have a factual basis and that, the more serious the allegation, the stronger that factual basis needed to be. The Court nevertheless noted, as the applicant had argued, that the actions complained of had been committed in the absence of witnesses, and that the applicant's failure to report such acts to the prosecuting authorities could not be used to establish her bad faith.

Stressing the need, under Article 10, to provide appropriate protection to individuals alleging they had been subjected to acts of mental or sexual harassment, the Court considered – as the Advocate-General had submitted – that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on the applicant, by requiring that she provide evidence of the acts she wished to report.

Third, with regard to the impact of the applicant's statements on A.'s reputation, the Court noted that it was not so much the impugned email itself, but the Facebook message posted by the applicant's husband, that had generated heated discussions and brought the matter to public attention. Accordingly, it considered that the email sent by the applicant to six people, of whom only one had been an external party, had had in itself only a minor impact on the alleged harasser's reputation.

Lastly, although the financial penalty imposed could not be described as particularly severe, the applicant had nonetheless been convicted of a criminal offence. By its nature, such a conviction had

a chilling effect, which could discourage people from reporting such serious actions as those amounting, in their view, to mental or sexual harassment, or even sexual assault.

The Court found that there had been no reasonable relationship of proportionality between the restriction on the applicant's right to freedom of expression and the legitimate aim pursued. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant EUR 8,500 in respect of pecuniary and non-pecuniary damage and EUR 4,250 in respect of costs and expenses.

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.