



## Conviction for statements about MEP and his law firm concerning Oporto hospital dispute disproportionate

In today's **Chamber judgment**<sup>1</sup> in the case of [Almeida Arroja v. Portugal](#) (application no. 47238/19) 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 Mr Almeida Arroja's criminal conviction for aggravated defamation and causing offence to a legal entity. He had implied, during a broadcast on the television channel Porto Canal, that a legal opinion provided to a public hospital by a law firm, whose director happened to be a well-known politician and member of the European Parliament, had been motivated by political interests.

The Court found in particular that the statements had been part of a broad critique on links between politics and public administration and as such had not been statements of facts. As a result both the conviction and the penalties imposed, which would have had a "chilling effect" on freedom of expression, had been manifestly disproportionate.

### Principal facts

The applicant, José Pedro Almeida Arroja, is a Portuguese national who was born in 1954 and lives in Oporto. He is an economist and university professor and was a weekly political commentator on a daily news programme broadcast by the private television channel Porto Canal.

On the evening of 25 May 2015 Mr Almeida Arroja took part in a discussion on Porto Canal concerning the halting of construction of a paediatric wing at São João Hospital in Oporto (Mr Almeida Arroja was at the time chair of an association which was raising funds to the wing). He stated, among other things, the following:

"Politics got in the way ... Through a law firm, [C.], directed by [P.R.] ... [produced] a document ... that led the hospital to halting of the construction work ... when civil society starts doing construction projects like this one ... (construction work that should have been done by the State, and therefore by the politicians), they feel that this makes them look bad ... and therefore [P.R.] and his law firm produced a document that halted the construction work ... the children there are crammed into a shack and P.R. wants to contribute to their staying stuck in a shack instead of having a proper five-floor facility that we – the Portuguese community – have got together to offer to the hospital.

"[P.R.] is the perfect example [of close connections between politics, business and professionals] – after all he is a politician and at the same time he is in charge of a big law firm. It takes a lot! Moreover, he is a politician, a member of the European parliament, he spends a lot of time abroad, what does this mean? As a politician, he is certainly soliciting customers for his law firm, customers mostly from the State sector: São João Hospital, city halls, Ministries of this and that ... it is a political document to reward the hand that feeds them."

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](http://www.coe.int/t/dghl/monitoring/execution).

The document referred to was a Memorandum of Understanding (MoU) drafted by the law firm C. for the hospital, which had been rejected by Mr Almeida Arroja's association. P.R., who was a lawyer and a well-known member of the European Parliament, and the law firm, of which the former was a director, lodged criminal complaints, alleging aggravated defamation and causing offence to a legal entity. Charges were brought against Mr Almeida Arroja.

In June 2018 the Matosinhos Criminal Court convicted Mr Almeida Arroja of causing offence to a legal entity (the law firm C.), finding that the statements concerning the MoU at issue and its political nature had constituted factual allegations which had been untrue and had affected the prestige of the firm. It fined him and ordered him to pay compensation for non-pecuniary damage. However, it acquitted Mr Almeida Arroja of aggravated defamation of P.R., considering that the impugned statements had been a combination of facts and value judgments but mostly opinions, which could not be true or false, concerning a matter of public interest. The scope of freedom of expression was wider regarding criticism of politicians.

Both P.R. and Mr Almeida Arroja appealed. In March 2019 the Oporto Court of Appeal upheld the conviction for causing offence to a legal entity, but additionally convicted Mr Almeida Arroja of aggravated defamation of P.R. It considered that the statements – characterising the drafting of a legal document that prevented the construction of a paediatric wing for a public hospital when sick children were being accommodated in shacks as a deliberate political act by P.R. – which had led to conviction for defaming the law firm should also have led to conviction for defaming P.R.

The court fined Mr Almeida Arroja and ordered damages in respect of both P.R. and the law firm C.

Applications by Mr Almeida Arroja for a plea of nullity and leave to appeal to the Supreme Court were separately rejected in October 2019.

The paediatric wing of the hospital was ultimately opened in 2021.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained that his conviction had been in breach of his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 2 September 2019.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,  
 Tim **Eicke** (the United Kingdom),  
 Branko **Lubarda** (Serbia),  
 Anja **Seibert-Fohr** (Germany),  
 Ana Maria **Guerra Martins** (Portugal),  
 Anne Louise **Bormann** (Denmark),  
 Sebastian **Rădulețu** (Romania),

and also Andrea **Tamietti**, *Section Registrar*.

## Decision of the Court

The Court was satisfied that the restrictions on Mr Almeida Arroja's freedom of expression had had the legitimate aim of protecting "the reputation or rights of others" (the law firm C. and P.R.) within the meaning of Article 10 § 2 of the Convention. The Court observed that the right to reputation of a legal entity was debatable, but it was nevertheless prepared to allow that it had been a legitimate aim of the authorities in this case.

Concerning the necessity of those restrictions in a democratic society, the Court held that the debate around the building work at the hospital had been of public interest. It noted that P.R. was very well known, and that C. was a renowned law firm. It reiterated that the statements concerned the halting of work at São João Hospital and the implication that this had been the result of politically motivated legal advice given to the hospital by C.

The Court ruled that the statements at issue had been value judgments when looked at within the overall context of Mr Almeida Arroja's broad critique of the links between politics and public administration. In particular, it reiterated that an assumption as to the reasons and possible intentions of others was a value judgment, not a statement of fact. It noted that the statements in question had not been widely disseminated, as they had not been widely viewed, and the city of Oporto was relatively small.

In this case the mere conviction of Mr Almeida Arroja had been manifestly disproportionate. Furthermore the damages in the case (5,000 euros (EUR) to law firm C. and EUR 10,000 to P.R.) had also been manifestly disproportionate, as the Court could not accept that the damage to reputation had warranted such sizeable awards. Such court verdicts were liable to have a "chilling effect" on freedom of expression.

Overall, the national courts did not balance the rights at stake in accordance with the European Court's case-law. The interference with Mr Almeida Arroja's rights was not supported by relevant and sufficient reasons, and disproportionate weight had been given to the reputation of P.R. and the law firm C. The national courts had therefore exceeded their discretion ("margin of appreciation"), in violation of Article 10 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Portugal was to pay Mr Almeida Arroja 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

*The judgment is available only in English.*

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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.