



A court judgment ordering a lawyer to pay an excessive amount in damages breached his freedom of expression

In today's Chamber judgment¹ in the case of [Pais Pires de Lima v. Portugal](#) (application no. 70465/12) 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 complaint alleging a breach of freedom of expression following a civil judgment ordering a lawyer to pay damages to a judge whose personal and professional honour and reputation he had attacked.

The Court found in particular that although the grounds given by the national courts for imposing civil liability appeared relevant and sufficient, given that the applicant had been unable to substantiate his factual statements by supporting evidence, the amount of compensation awarded had been disproportionate to the legitimate aim pursued.

Principal facts

The applicant, Joaquim Antonio Pais Pires de Lima, was a Portuguese national who was born in 1938 and died in 2017. He lived in Cascais, and was a lawyer practising in Lisbon.

On 1 March 2007 the applicant wrote to the High Council of the Judiciary (HCJ) to complain of a lack of impartiality on the part of a judge, denouncing a case of "corruption" and a "scam", in the wake of a case in which he had been a defence lawyer. The HCJ discontinued the case.

The judge then brought an action for damages, which the Lisbon Court partly allowed on 17 July 2008, ordering the applicant to pay 50,000 euros (EUR) in compensation. The applicant appealed against that judgment. The Lisbon Appeal Court set the judgment aside and referred the case back to the court of first instance. The Lisbon Court resumed the fact-finding process and held a fresh hearing. On 22 April 2010 it delivered a judgment ordering the applicant to pay the judge the same sum, EUR 50,000, in damages. The court dismissed the applicant's allegations of corruption and lack of impartiality in respect of Judge R.P.

Both parties appealed: the court dismissed the applicant's appeal and partly allowed that of the judge, increasing the damages to EUR 100,000. The applicant appealed on points of law and the Supreme Court reduced the amount of compensation to EUR 50,000.

On 14 April 2009 the Bar Association imposed a reprimand on the applicant on the grounds that he had failed to notify the judge that he would be lodging a complaint against him with the HCJ, as he should have done under the Bar Association's Statute.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained that the court order to pay damages for attacking a judge's reputation had amounted to an infringement of his freedom of expression.

The application was lodged with the European Court of Human Rights on 23 October 2012.

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

Ganna Yudkivska (Ukraine), *President*,
Paulo Pinto de Albuquerque (Portugal),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),
Carlo Ranzoni (Liechtenstein),
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

Article 10

Mr Pais Pires de Lima had been found liable in a civil action on account of the accusations he had made against Judge R.P. in a letter to the HCJ, in which he had called for the opening of a disciplinary investigation into that judge. Following an action brought by the judge, the domestic courts had unanimously held that the allegations of "a scam", of partiality and of corruption made by the applicant in his letter had been particularly serious and had called into question the judge's personal honour and his professional integrity as a representative of the judiciary.

The accusations were essentially statements of fact. Since the applicant had also accused the judge of accepting bribes, the Court considered it appropriate that the domestic courts had, in consequence, expected him to substantiate his accusations with relevant evidence. The civil courts which had examined the judge's action had held that the applicant's factual allegations were unfounded. In the Court's view, it was clear that the domestic courts' reasons for finding the applicant liable in the civil action had been "relevant" and "sufficient".

However, the Court considered that the amount of compensation that the applicant had been ordered to pay to Judge R.P. was excessive, especially as the accusations had not been made publicly but through a complaint in a letter sent to the HCJ. Although the statements in question had been discussed in judicial circles, the Court held that the applicant could not be held responsible for leaks from proceedings that were supposed to remain confidential.

The Court concluded that the interference with the applicant's freedom of expression had not been "necessary in a democratic society".

Just satisfaction (Article 41)

The Court rejected the applicant's claim for just satisfaction, holding that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage he had sustained.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.