



Infringement of the freedom of expression of two lawyers found liable for criticising two judges while acting in their capacity as representatives

In its Committee judgment in the case of **L.P. and Carvalho v. Portugal** (applications nos. 24845/13 and 49103/15) 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 findings of liability against two lawyers for defamation (L.P.) and for attacking a person's honour (Mr Carvalho) in respect of two judges, on account of documents drawn up by the lawyers in their capacity as representatives.

The Court found, in particular, that both applicants had been acting in the performance of their professional duties as lawyers. It further considered that the penalties had been apt to have a chilling effect on the profession of lawyer as a whole, especially with regard to lawyers' defence of their clients' interests. Consequently, the reasons given by the domestic courts to justify finding the applicants liable had been neither relevant nor sufficient and had not corresponded to a pressing social need. The interference had thus been disproportionate and had not been necessary in a democratic society.

The judgment is final.

Principal facts

The applicants, L.P. and Pedro Miguel Carvalho, are two Portuguese lawyers who were born in 1965 and 1971 respectively. They live in Lisbon and Guimarães (Portugal).

In 2008 **L.P.** sent a letter to the High Council of the Judiciary (HCJ) to complain about the conduct of Judge A.A. during a preliminary hearing and about certain procedural irregularities. In particular, he stated that he had noticed "an atmosphere of great familiarity between the judge and defence counsel". The HCJ decided to take no action on the complaint. Judge A.A. subsequently lodged a complaint for defamation against L.P., alleging an attack on her reputation and honour. In 2012 the Lisbon Court of Appeal ordered L.P. to pay 5,000 euros (EUR) to the judge, finding that the accusations made against her had overstepped the bounds of permissible criticism. L.P.'s appeals against that decision were unsuccessful.

In 2009 two persons of Roma origin, represented by **Mr Carvalho**, lodged complaints against Judge A.F. for defamation and racial discrimination on account of comments made by her in a judgment concerning them. After the case had been discontinued by the public prosecutor the same two persons, again represented by Mr Carvalho, brought a private prosecution for defamation, claiming EUR 10,000 from the judge. This complaint was declared manifestly unfounded by the Guimarães Court of Appeal. In 2011 the judge brought a civil action against Mr Carvalho, arguing that in his capacity as representative he had knowingly lodged an unfounded criminal complaint against her. Mr Carvalho was ordered to pay EUR 10,000 with default interest.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 1 April 2013 and 23 September 2015.

Relying on Article 10 (freedom of expression), the applicants complained of an infringement of their freedom of expression as lawyers.

Judgment was given by a Committee of three judges, composed as follows:

Helen Keller (Switzerland), *President*,
Paulo Pinto de Albuquerque (Portugal),
María Elósegui (Spain),

and also Stephen Phillips, *Deputy Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court noted that the decisions finding the applicants liable had constituted interference with the exercise of their freedom of expression. The interference had pursued two legitimate aims: (1) protecting the reputation and rights of others and protecting judges; and (2) maintaining the authority and impartiality of the judiciary.

Nevertheless, the Court considered that the reasons given by the domestic courts to justify finding the applicants liable had been neither relevant nor sufficient and had not corresponded to a pressing social need. The interference had thus been disproportionate and had not been necessary in a democratic society. In its reasoning, the Court made the following observations.

Both applicants had been acting in the performance of their professional duties as lawyers. L.P.'s complaint to the HCJ had described the conduct of a preliminary hearing attended by him in his capacity as a representative, and had drawn the HCJ's attention to situations he considered abnormal, with the aim of defending his client's interests. The criminal complaint and the private prosecution drawn up by Mr Carvalho had been aimed at prosecuting a judge for defamation and discrimination following allegations she had made against some of Mr Carvalho's clients in a judgment convicting them.

L.P.'s accusations had been criticisms of the kind that judges could expect to receive in the course of their duties, without their honour or reputation being damaged as a result. The accusations had not overstepped the bounds of permissible criticism; they had been sent to the HCJ alone and had not been made public. Hence, the alleged damage to the judge's reputation had been very limited.

The case against Mr Carvalho concerned the fact that he had taken instructions from clients seeking to prosecute a judge for defamation and discrimination, following criminal proceedings which had received widespread media coverage owing to a judgment given by the judge in question against Mr Carvalho's clients. However, the prosecution had not been successful. The Court considered that Mr Carvalho had simply defended his client's interests and did not see how he had failed to observe professional ethics. Furthermore, the Court took the view that seeking to compel a lawyer to refuse instructions was liable to infringe the right of each individual to have access to a court.

As to the severity of the penalties the Court found that, although the fine imposed on L.P. was small and his conviction did not give rise to a criminal record, the imposition of a criminal sanction in itself had a chilling effect on the exercise of freedom of expression. This was all the more unacceptable in the case of a lawyer who was required to ensure the effective defence of his clients. Furthermore, the applicants in both cases had been ordered to pay significant sums in damages to the judges concerned (EUR 5,000 in L.P.'s case and EUR 10,000 in the case of Mr Carvalho). Hence, the penalties imposed had not struck the requisite fair balance between the need to safeguard the judges' right to protection of their honour and the authority of the judiciary, on the one hand, and the applicants'

freedom of expression on the other. They had also been apt to have a chilling effect on the profession of lawyer as a whole, especially with regard to lawyers' defence of their clients' interests.

The Court therefore held that there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Portugal was to pay 5,300 euros (EUR) to L.P. and EUR 10,793.42 to Mr Carvalho in respect of pecuniary damage, and EUR 2,512 to L.P. and EUR 9,100 to Mr Carvalho in respect of costs and expenses.

It also held that the finding of a violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage.

The judgment is available only in French.

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Press contacts

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

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

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

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

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

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.