


Developments from the European Court of Human Rights: freedom of expression by the media in Europe

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The European Court of Human Rights (ECHR) on April 26, 2007 in its Chamber judgment in the case of *Colaço Mestre and SIC—Sociedade Independente de Comunicação S.A. v Portugal*, held that there had been a violation of Art.10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regarding freedom of expression, by the Portuguese State.

The applicants are a journalist and *Sociedade Independente de Comunicação* (SIC), a private Portuguese television broadcaster, having its registered office in Oeiras, Portugal.

On November 22, 1996, as part of a Portuguese television programme entitled "*Os Donos da Bola*" (Masters of the Ball), SIC broadcast an interview conducted by the journalist with the General Secretary of UEFA.

The interview, which took place in Amsterdam, focused on allegations concerning bribery of referees in Portugal and the actions of the President of the Portuguese Professional Football League and Chairman of the football club FC Porto. The journalist described the President of the Portuguese Professional Football League as "the referees' boss", accused him of insulting two referees and seemed to be eliciting comments from his interviewee about the concurrent functions exercised by the Chairman of FC Porto at the time.

The Chairman of FC Porto lodged before Portuguese authorities a criminal complaint against the applicants, among others, accusing them of libel through the medium of the press,

and sought leave to intervene in the proceedings as an assistant of the prosecuting authority. Oporto Criminal Court sentenced the journalist to a fine or an alternative 86-day term of imprisonment, and ordered the journalist and the television channel jointly and severally to pay the claimant damages of approximately €3,990. On October 2, 2002 the Oporto Court of Appeal dismissed an appeal lodged by the applicants and upheld their conviction.

The journalist and SIC lodged two applications with the ECHR on March 28 and 31, 2003, respectively. After joining the applications, the Court declared them admissible on October 18, 2005.²

The applicants considered that their conviction of defamation had constituted interference with their right to freedom of expression. They relied on Art.10 of the Convention. In the Chamber judgement, the ECHR reiterated that the press played an essential role in a democratic society. Although it could not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty was nevertheless to impart—in a manner consistent with its obligations and responsibilities—information and ideas on all matters of public interest. Not only did it have the task of imparting such information and ideas: the public also had a right to receive them.

In the present case, it was not in dispute that the applicants' conviction constituted an interference with their right to freedom of expression. The interference was prescribed by Portuguese law and pursued the legitimate aim of protecting the reputation or rights of others.

The question for the Court to address was whether that interference was necessary in a democratic society. In this connection, the Court noted that the Chairman of FC Porto was well known to the general public and played a major role in Portuguese public life. Moreover, the interview had not concerned his private life but solely his public activities as Chairman of a leading football club and President of the Portuguese football League. The debate concerning bribery in football is clearly a question of public interest. As to the expressions used during the interview, the Court considered that there had been no breach of journalistic ethics.

In any event, and in view of the context, namely the heated debate at the time about bribery of Portuguese referees, the journalist could not be reproached for having addressed in this manner an issue of great concern to the general public. Moreover, the interview had been broadcast in a Portuguese football programme intended for an audience with a particular interest in and knowledge of the subject-matter. The Court further considered that the fact that the journalist had not been speaking in his mother tongue, when he conducted the interview in Amsterdam, might have had an impact on the wording of his questions.

The Court also found that the punishment of a journalist by sentencing him to pay a fine, together with an award of damages

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2. According to Art.35(1) of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of 6 months from the date on which the final decision was taken.

against him and the television channel employing him, might seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. However, that was not the case here.

In those circumstances the Court considered that, whilst the reasons advanced by the Portuguese courts to justify the applicants' conviction might be regarded as relevant, they were not, however, sufficient and, accordingly, did not serve to meet a pressing social need. The European Court held, therefore, that there had been a violation of Art.10 of the Convention by the Portuguese State.

The Court, unanimously, also considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the journalist and awarded him €2,104.72 for pecuniary damage. In addition, it awarded the applicant company SIC €678.37 for pecuniary damage and €10,000 to the applicants jointly for costs and expenses.