European Court of Human Rights: *Almeida Arroja v. Portugal*

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The European Court of Human Rights (ECtHR) has once again found a violation of Article 10 of the European Convention on Human Rights (ECHR) in a criminal defamation case, related to an issue of public interest. The ECtHR in particular observed that the criminal conviction of the applicant appeared to be manifestly disproportionate, as the Portuguese Civil Code provided for a specific remedy in respect of damage to honour and reputation. The ECtHR also found the award of damages which the applicant was required to pay manifestly disproportionate, taking into consideration that the critical statements were formulated during an interview on a local TV channel with only a limited audience. The ECtHR found that a sanction of this nature and severity could be liable to deter individuals from discussing matters of legitimate public concern, having a "chilling effect" on freedom of expression.

The applicant in this case, Mr. Almeida Arroja, is an economist and university professor who at the material time provided political commentary on the Monday edition of a daily news programme broadcast by the private television channel Porto Canal. He was also the chair of an association raising funds and supporting the construction of a paediatric wing for the São João Hospital, in Porto. In 2015 he took part in a discussion on Porto Canal during which some of his comments alluded to political interests underlying legal advice provided by a law firm to the hospital at issue. He criticised more precisely P.R., a lawyer who at the material time was the director of the law firm C. and who was a well-known politician and a member of the European Parliament. In essence Almeida Arroja criticised P.R. and the law firm C. for having created the obstacles for the construction project at the São João hospital. P.R. and the law firm C. filed a criminal complaint against Almeida Arroja with the public prosecutor's office for aggravated defamation and causing offence to a legal person. According to the criminal court's judgment Almeida Arroja had uttered a false accusation, as it was the hospital administration which was putting obstacles in the way of the project and not the law firm C. or P.R. The false allegation had affected the prestige of the law firm C. and had humiliated P.R. and damaged his honour, and his political reputation and professional pride as a lawyer. Almeida Arroja was required to pay a fine of EUR 7 000 for causing offence and defamation and he was ordered to pay EUR 5 000 damages to the law firm and EUR 10a000 to P.R.

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Relying on Article 10 ECHR and after having exhausted all national remedies, Almeida Arroja lodged an application with the ECtHR, complaining of a breach of his right to freedom of expression. After the ECtHR agreed that the interference with the applicant's right in this case had the legitimate aim of protecting the reputation or rights of others, and more specifically the prestige, reputation and honour of P.R., as enshrined in Article 8 ECHR, it focussed on the issue whether the interference was necessary in a democratic society. The ECtHR referred to the balancing test in the event of conflicting rights between Articles 8 and 10 ECHR, and to the relevant criteria in the context of balancing these competing rights, such as a contribution to a debate of public interest, how well known the person affected was, the subject of the news report, the prior conduct of the person concerned, the content and method of obtaining the information and its veracity, the form and consequences of the publication, and the gravity of the penalty imposed. The ECtHR found that P.R. was certainly a public person and that the statements of Almeida Arroja formed part of a broader critique regarding undue links between politicians and the public administration, which is a subject of public interest. The disputed statements amounted to a combination of facts and value judgements but they were mostly opinions, which cannot be true or false. As to the impact of the statements at issue the ECtHR observed that they were made on a daily news programme broadcast by the private television channel Porto Canal, reaching an audience of more than 9 500 television viewers. The interview had remained available online and has had more than 2 000 views; it has also been reproduced in blogs. However, in view of the size of the city of Porto, the ECtHR found that the reach of the statements was not significant. As to the nature and severity of the sanctions complained of the ECtHR reiterated that the mere fact of a criminal sanction is by itself capable of having a dissuasive effect, even if the sum involved is moderate and the person is easily able to pay. The ECtHR was of the opinion that the mere conviction of Almeida Arroja appeared to be manifestly disproportionate, especially because the Portuguese Civil Code provided for a specific remedy in respect of damage to honour and reputation. In addition, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered while the amounts of the damages Almeida Arroja was ordered to pay to the law firm C. and P.R. appeared manifestly disproportionate to the damage caused to the reputation of the two parties concerned, and taking into account that the statements were broadcast by a private television channel with a limited audience. The Court found it difficult to accept that the injury to P.R.'s reputation in the present case was so serious as to justify an award of that size, also considering that it has not been found that the activities of the law firm C. or the career of P.R. as a politician or as a lawyer were affected by the disputed statements. Hence, a sanction of this nature and severity may be liable to deter individuals from discussing matters of legitimate public concern, having a "chilling effect" on freedom of expression.

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The ECtHR concluded that the balancing exercise performed by the domestic courts was not undertaken in conformity with the criteria laid down in the Court's case-law. In particular, it found that the domestic courts gave disproportionate weight to the rights to reputation and honour of the law firm C. and P.R., in contrast to Almeida Arroja's right to freedom of expression in relation to a debate of public interest. Accordingly, there had been a violation of Article 10 ECHR.

European Court of Human Rights, Fourth Section, in the case Almeida Arroja v. Portugal, Application No. 47238/19, 19 March 2024

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