

European Court of Human Rights: *De Carvalho Marques and Others v. Portugal*

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Emma de Vries
Leiden University

Introduction

Referees are crucial in sport as they help to protect its integrity and fairness. Referees' work can legitimately be criticised, but there may be situations in which "criticism" crosses over into plain insult or conspiracy theories, in which case disciplinary action may be taken to protect the good name and reputation of both people and clubs. In *De Carvalho Marques and Others v. Portugal*, the European Court of Human Rights (ECtHR) grapples with the question of when such disciplinary action is in conformity with the freedom of expression.

The judgment joins six cases, filed by three different applicants. All three applicants were involved with F.C. Porto, two individuals and one company. The majority of shares in the applicant company are owned by F.C. Porto. Among other things, the company publishes *Dragões Diário*, a (widely read and cited) newsletter containing the latest news about F.C. Porto. The two individual applicants held positions within the applicant company, acting as its communications director (first applicant, Mr. De Carvalho Marques) and the president of its board of directors (second applicant, Mr. Pinto da Costa).

All of the six joint cases concern the expression of opinions on the position and alleged partiality of referees in Portugal's primary national football league, in particular in connection to football club Benfica. The first and second applicant were fined and suspended from their duties on the basis of the applicable disciplinary regulations in the sector. The applicant company was also fined, for "offending the honour and reputation of sporting bodies and their members" (paragraph 24).

The crux of the case: balancing Article 8 and Article 10 European Convention on Human Rights (ECHR)

The disciplinary bodies that undertook action against the applicants alleged that the applicants did not provide a sufficient factual basis for their statements, even if construed as value judgements, while the effects of the impugned statements were damaging to the reputation and rights of the referees and bodies with whom

the statements were concerned. The reputation and rights of the referees and sporting bodies concerned are protected by Article 8 ECHR, while the statements of the applicants are protected by Article 10 ECHR. The fines imposed and the suspensions of the first and second applicant qualify as interferences with the freedom of expression. The Court thus had to assess whether a sufficient balance had been struck between the rights enshrined in Articles 8 and 10 ECHR. The Court mainly dealt with the question of necessity (in a democratic society).

When balancing Articles 8 and 10 against one another, the Court makes use of a list of criteria that was famously laid out in its *Axel Springer* judgment (see also *Bédat v. Switzerland*). The Court focused on three criteria in particular in the present case (it did not check for all criteria included in *Axel Springer*): 1) whether the applicants' statements contributed to a debate of public interest, 2) the notoriety of the persons concerned, and 3) the content, form and consequences of the expression. Not in question was whether the statements were of public concern – they were.

The applicants argued that referees and sporting bodies are "public figures", and should therefore bear a higher degree of scrutiny of their actions. The Court agreed and held that when referees are acting in their professional capacity, given their central role in, in this case, high-ranking football competitions, "they may be subject to wider limits of acceptable criticism than ordinary citizens" (paragraph 118). Crucially, the statements made by the applicants concerned the performance of the referees concerned, and their professional role. For example, the applicant company had stated that: "... he turned a blind eye to two throws in the Benfica area, one of which was a clear foot stomp ... There can be no doubt that B.P. seems to have an issue with impartiality ..." (Application No. 47902/20).

Regarding the content, form and consequences of the statements made by the applicants, the Court took note of the distinction made by the national disciplinary bodies between fair criticism of referees' performance, and "instilling in the community, through conspiracy theories, the general idea of bias" (paragraph 124). It was alleged that the first two applicants had done the latter. The first applicant, for example, stated in football newspaper *A Bola* that:

"What we do say is that there has been an abnormal number of mistakes to the detriment of F.C. Porto ... And there should be no doubt about there being a backdrop to this, a [puppet master] which goes by the name Benfica" (Application No. 29978/19).

The Court agreed with the parties that the impugned statements should be seen as value judgements, in part given their hyperbolic and speculative language. The factual basis remains crucial, however. The additional question the Court answered, therefore, was whether the statements were sufficiently serious (in

light of their consequences) to require a factual basis, and whether that basis was provided. If a sufficient factual basis is provided, the balancing scale may tip towards Article 10. The Court distinguished between the statements of the first two applicants, and the applicant company.

The Court's conclusion

The allegations made by the first and second applicant were very serious indeed, given that they implied criminal offences had been committed, and were specific to the people and entities concerned. The Court did not accept that the applicants provided a sufficient factual backing for their statements. Both applicants were instead held to have engaged in spreading conspiracy theories, and did not remain within the limits of acceptable criticism. The sanctions imposed can therefore not be considered disproportionate, even more so considering that the applicants had voluntarily subjected themselves to the disciplinary regulations on the basis of which they were sanctioned. The Court ruled that there had been no violation of Article 10 ECHR with respect to the first and second applicant.

The applicant company, however, only “raised the issue of the lack of impartiality” and did not step outside the bounds of acceptable criticism (paragraphs 128-131). The sanctions imposed upon the applicant company were disproportionate and could not be taken as “necessary in a democratic society”. The Court thus found a violation of the rights enshrined in Article 10 ECHR in the case concerning the applicant company (Application No. 47902/20).

ECtHR, 7 July 2026, Application Nos. 29703/19 and five others, De Carvalho Marques and Others v. Portugal

<https://hudoc.echr.coe.int/?i=001-251022>

ECtHR, Axel Springer AG v. Germany, Application No. 39954/08, 7 February 2012

<https://hudoc.echr.coe.int/eng?i=001-109034>

ECtHR, Bédat v. Switzerland, Application No. 56925/08, 29 March 2016

<https://hudoc.echr.coe.int/eng?i=001-161898>

