European Court of Human Rights: *Allée v. France*

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In a judgment of 18 January 2024 the European Court of Human Rights (ECtHR) found a violation of the right of a victim of sexual harassment to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns the applicant's criminal conviction for public defamation following her allegations of harassment and sexual assault against a senior executive of the association where she worked. The ECtHR in particular stressed the need to provide appropriate protection to individuals alleging that they have been subjected to mental or sexual harassment.

On 7 June 2016 the applicant in this case, Ms Vanessa Allée, had sent an email with the subject line "Sexual assault, sexual and mental harassment" to six persons, including the managing director of the association where she was employed as a secretary. A copy of the email was also sent to the State Labour Inspector, as well as to Mr A., the then executive vice-chair of the association, whom she accused of sexual harassment towards her. About a year earlier, Ms. Allée had asked for a transfer in her job environment, arguing that she was experiencing sexual harassment by Mr A. Also, Ms Allée's husband had sent SMS messages to the association's managing director, alleging that Mr A. had harassed and sexually assaulted his wife, with a request to the management to intervene. In response, the managing director suggested that Ms Allée should take sick leave, until such time as her contract could be terminated by mutual consent or a new position could be found for her. In reply to Ms Allée's email of 7 June 2016 the managing director repeated his earlier suggestion. A few weeks later Ms Allée's husband posted a message on the Facebook wall of one of his acquaintances, reiterating his wife's allegations and describing the situation as a "sex scandal". The message named Mr A. and the association, which gave rise to a number of strongly worded comments. Mr A. brought private proceedings against Ms Allée and her husband before the Paris Criminal Court, alleging that they had committed public defamation. Both were found guilty of public defamation of a private individual. Ms Allée was ordered to pay a suspended fine of EUR 1 000, and to pay Mr A. the symbolic sum of one euro in addition to the sum of EUR 2 000 in respect of litigation costs, to be paid jointly with her husband. Ms Allée appealed against the judgment. The Paris Court of Appeal upheld the conviction but reduced the fine imposed by half. It held that the allegations against Mr A. had been damaging to his honour and reputation. And while there were elements corroborating that mental and even sexual harassment as perceived by Ms Allée

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had occurred, there was no evidence that sexual assault by Mr A. had taken place. Subsequently Ms Allée invoked whistle-blower protection on the basis of specific provisions in French labour law and she appealed before the Court of Cassation, complaining in particular of a violation of her right to freedom of expression. The Court of Cassation dismissed the appeal and ordered that EUR 2 500 were to be paid in respect of costs incurred in the proceedings before it.

Relying on Article 10 ECHR, Ms Allée complained that her criminal conviction for defamation had violated her right to freedom of expression. In its judgment of 18 January 2024 the ECtHR clarified that the application had to be evaluated from a balancing perspective between the right to freedom of expression of Ms Allée and the right to privacy and reputation of Mr A. Therefore, a set of relevant factors needed to be examined, such as the context and nature of the allegations, the situation and intent of Ms Allée, the number and qualifications of the persons to whom the mail was sent, the nature of the allegations damaging the reputation of Mr A., as well as the impact of the sanction imposed on Ms Allée.

The ECtHR drew attention to the fact that the email for which Ms Allée was criminally convicted had been sent in a tense situation in which her work and private life were intermingled. It noted that the email had been sent to a limited number of people, all but one in a position entitling them to receive reports of harassment. The email had not been intended for public dissemination: its sole purpose had been to alert the recipients of Ms Allée's situation, so that a means of ending it could be found. By considering the public nature of the email in issue, within the meaning of the Freedom of the Press Act of 29 July 1881, the approach by the French courts appeared to neglect the requirements for compliance with Article 10 ECHR. With regard to the nature of the impugned statements, the ECtHR was of the opinion that Ms Allée had acted in her capacity as the alleged victim of the acts she was reporting and that the email contained statements of fact. Furthermore, Ms Allée should not be criticised, given the situation she was experiencing, for expressing herself in a heated manner, while there had been elements corroborating her claims that mental and even sexual harassment had occurred. However, the domestic courts had considered that Ms Allée could not rely on the defence of good faith, as her claims of sexual assault had lacked a sufficient factual basis. The ECtHR reiterated that private documents disseminated to a restricted number of people had to have a factual basis and that, the more serious the allegation, the stronger that factual basis needed to be. It noted, however, that the actions complained of had been committed in the absence of witnesses, and that Ms Allée's failure to report such acts to the prosecuting authorities could not be used to establish her bad faith. Stressing the need, under Article 10 ECHR, to provide appropriate protection to individuals alleging they had been subjected to acts of mental or sexual harassment, the ECtHR considered that the domestic courts' refusal to adapt the concept of sufficient factual basis and the criteria for assessing good faith to the circumstances of the case had placed an excessive burden of proof on Ms Allée, by requiring that she provide evidence

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of the acts she wished to report. The ECtHR also took into consideration that it was not so much the impugned email itself, but the Facebook message posted by Ms Allée's husband that had generated heated discussions and brought the matter to public attention. Finally, the ECtHR found that although the financial penalty imposed could not be described as particularly severe, Ms Allée had nonetheless been convicted of a criminal offence. By its nature, such a conviction had a chilling effect, which could discourage people from reporting such serious actions as those amounting, in their view, to mental or sexual harassment, or even sexual assault. Therefore, the ECtHR found unanimously that there had been no reasonable relationship of proportionality between the interference with Ms Allée's right to freedom of expression and the protection of Mr A.’s reputation. There had therefore been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'Homme, cinquième section, rendu le 18 janvier 2024 dans affaire Allée c. France, requête n° 20725/20

Judgment by the European Court of Human Rights, Fifth section, in the case of Allée v. France, Application no. 20725/20, 18 January 2024

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