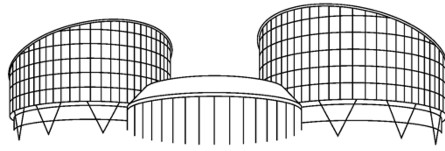


FOURTH SECTION

# CASE OF SIC - SOCIEDADE INDEPENDENTE DE COMUNICAÇÃO v. PORTUGAL

*(Application no. 29856/13)*

JUDGMENT

Art 10 • Freedom of expression • Disproportionate civil defamation judgment against media firm in respect of television reports on network of child sexual abusers wrongly alluding to the involvement of well-known politician • Applicant company's failure to act in accordance with the tenets of responsible journalism • Compelling reasons to impose sanction in circumstances • Excessive award vis-à-vis level of injury to reputation suffered • "Chilling effect" on freedom of expression and of the press

STRASBOURG

27 July 2021

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

**In the case of SIC - Sociedade Independente de Comunicação v. Portugal,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 29856/13) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Portuguese company, SIC – Sociedade Independente de Comunicação (“the applicant company”), on 30 April 2013;

the decision to give notice to the Portuguese Government (“the Government”) of the complaint concerning Article 10 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 15 June and 6 July 2021,

Delivers the following judgment, which was adopted on that last-mentioned date:

# INTRODUCTION

1. The case concerns a judgment given against the applicant company in defamation proceedings, in relation to a news report about a paedophile network. The applicant company complained of a breach of its right to freedom of expression under Article 10 of the Convention.

# THE FACTS

2. The applicant company is a media firm whose registered office is in Oeiras (Portugal). It was represented by Mr R. Correia Afonso, a lawyer practising in Lisbon.

3. The Government were represented by their Agent, Ms M.F. da Graça Carvalho, Deputy Attorney General.

## I. BACKGROUND TO THE CASE

4. On 6 and 7 December 2003 SIC and SIC Notícias, two major television channels in Portugal, opened their news broadcasts with a report on the "paedophilia in the Azores" case, likening it to the Casa Pia case that was under investigation in mainland Portugal[1].

5. The source of the news was a report produced jointly by the applicant company and *Expresso*, a leading weekly newspaper in Portugal, following an investigation on São Miguel Island.

6. In the news broadcast at 8 p.m. on 6 December 2003, the applicant company reported as follows:

> "notable [*notáveis*] people from the Azores have been implicated in the scandal ...
>
> Last week a team of reporters from SIC and *Expresso* heard various accounts on São Miguel Island. The majority of young people mentioned the same names as those who are being investigated by the police. Among the list of suspects are politicians known throughout the country, and also teachers, a priest, a magistrate, two doctors, an architect, a lawyer and several businessmen."

7. Following this introduction, a journalist, D.S., was shown interviewing some of the alleged victims. Referring to a certain M., she reported as follows:

> "At 13 years old, M. could already recognise all the men who came looking for him. It was at the old fishing port in Calheta, where he lived, that he met a lawyer who was to become a member of the Government of the Azores."

8. In the same news segment a reporter, E.C., then stated, standing in front of the building of the Regional Government of the Azores:

> "the SIC/*Expresso* investigation has collected and registered several references to the involvement of renowned figures of society, including at an institutional level in the region, and these references point to the involvement of a member of the current regional government: a politician who is currently serving and in power... We have been informed by the Socialist Party and the Regional Government that there will be no comments for the time being. There is no official response, but it is obvious that in homes across the Azores people are not talking about anything else."

9. On 7 December 2003, during the primetime news broadcast on both the SIC and SIC Notícias channels, the alleged paedophile ring in the Azores was once again the topic of the opening report. Within the news report, the reporter E.C. stated:

> "... there is silence in the government offices. There is no official reaction to the alleged involvement of political figures in the case. ... Some of the accused individuals spent the long weekend far away from the Azores, and there were no new developments on the judicial front."

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[1] As to the "Casa Pia" case, see *Fernandes Pedroso v. Portugal*, no. 59133/11, §§ 7-8, 12 June 2018, and *Pereira Cruz and Others v. Portugal*, nos. 56396/12 and 3 others, §§ 7-9, 26 June 2018.

10. On 8 December 2003 R.R. resigned from his position of Regional Secretary of Agriculture and Fisheries in the Regional Government of the Azores, making the following statement:

> "I have nothing to do with proceedings that have come to the public's attention, mentioned on some media platforms, relating to any case of sexual abuse of minors. I cannot, however, ignore the existence of rumours, insults directed at me, connected with the proceedings in question."

11. The caption at the bottom of the screen for the news report read:

> "Paedophilia scandal in the Azores brings down a member of the Regional Government of the Azores"

12. R.R.'s resignation was the subject of the opening segment of the news broadcast by the applicant company at 7 p.m. on 8 December 2003. In reply to a question from the newsreader, the journalist reporting from the Azores, E.C., stated:

> "This is a declaration of innocence, but at the same time, in political terms, it is absolutely extraordinary, in that we have a government member who has decided to quit on the basis of rumours."

13. R.R.'s resignation was again the subject of the opening segment of the 8 p.m. news broadcast by the applicant company that same day. In a voice-over, the news report mentioned:

> "[R.R.] says he has nothing to do with the cases reported on in the last few days regarding the sexual abuse of minors in the Azores. He admits, however, that he cannot ignore the onslaught of rumours, harmful statements and references implicating him as Regional Secretary of Agriculture and Fisheries. Therefore, he explains that even though he considers this to be unfair and disgraceful, his personal honour has been damaged, as have his authority as a government member and the image of the Regional Government of the Azores. For this reason, and even though he is not under investigation by law enforcement, he has taken the decision to quit so that the Regional Government and President C.C. would not be adversely affected by this false news.
>
> ...
>
> The scandal broke out last Friday, when the SIC/*Expresso* investigation was published, and soon after the release from prison of J.P., [who] is suspected of having gathered children from the poor neighbourhoods of the island. He was arrested last month for pimping and sexual abuse of minors. Most young people spoken to by SIC and *Expresso* mention the same names that are now on the list held by police. Among the suspects listed are politicians known in the region, teachers, a priest, a magistrate, two doctors, an architect, a lawyer and several businessmen."

14. This news was shared by various communication outlets, both written and spoken, in the Azores and in mainland Portugal, in newspapers, on the radio and on television, for several successive days.

15. It was also shared by the international television channel SIC International in the United States of America and in Canada, where

thousands of emigrants from the Azores reside, in particular from São Miguel Island.

16. In the 10 a.m. news broadcast on SIC Notícias on 9 January 2004, SIC reported that twelve suspects had been questioned by the police until 2 a.m. of that day. The report added:

> "Of the twelve suspected of sexual abuse of minors, eight will remain in pre-trial detention ... Of the twelve suspects arrested and questioned yesterday by the police, only four were not held in pre-trial detention. This was the case of the Regional Secretary of Agriculture, who resigned from government [and] who had already left the court at about 3 a.m. (2 a.m. Azores time)."

17. Later that day, in the news broadcasts of 12 noon and 1 p.m. on SIC Notícias, the applicant company rectified its statement, explaining that R.R. had not been present in court that day, and neither had he been detained or indicted.

## II. CIVIL PROCEEDINGS AGAINST THE APPLICANT COMPANY

18. On 6 November 2006 R.R. instituted civil liability proceedings in the Ponta Delgada District Court (Azores), against SIC Notícias and the journalist E.C. for damaging his reputation and honour. He sought 65,758.97 euros (EUR) in compensation for pecuniary damage and EUR 400,000 for non-pecuniary damage, including interest applicable from 3 April 2007, the date on which the summons was served on the applicant company.

19. On an unknown date the case was referred to the Oeiras District Court.

### A. Judgment of the Oeiras District Court of 20 August 2010

20. By a judgment of 20 August 2010, the Oeiras District Court considered the following facts established:

> "...
>
> C.D. The reporters from SIC and SIC Notícias knew that it was false that the claimant was involved in the proceedings in question, that he was a defendant or that he had been questioned.
>
> C.E. This is because on the day and on the evening when the questioning took place (8 January), at least two reporters were present in the vicinity of the Ponta Delgada District Court, one of them being [E.C.].
>
> ...
>
> C.H. The claimant was known in the whole country, for various social and civic initiatives that he had developed. He is the best known Regional Secretary, both regionally and nationally.
>
> C.I. He was the only lawyer from São Miguel Island who served as a member of the Regional Government of the Azores.

C.J. He was the only government member who, at the time, was far away from the region: in Mauritius, in the Indian Ocean.

C.K. Several people identified him through those statements and personal traits.

C.L. It was widely discussed among the public that the politician – or the lawyer – was the claimant.

...

C.Q. Considering the context of the news and his identification by people who had seen the reports, the claimant called the regional president of the Azores to inform him that he had decided to resign from his position as Regional Secretary.

C.R. The president also considered that the reports aired by SIC and SIC Notícias on 6 and 7 December had alluded to [the claimant].

...

C.T. The claimant felt that his honour, his good name and his personal dignity were being harmed ...

D.S. Only after the public charges in the criminal proceedings in the paedophilia case had been formulated did the claimant sense some relief, because it became apparent within public opinion that he was not part of the proceedings

...

D.W. Even though it was made clear that [R.R.] was not linked to the facts being investigated in the proceedings, to this day there are still references to his involvement in the case, in online blogs and in the regional social media.

...

E.P. News of the present case came about as a result of a journalistic investigation, quite separate from the police investigation as regards the means employed and the aims pursued.

E.Q. The journalistic reports in issue were limited to sharing facts considered to be truthful by those who produced them.

E.R. Before their dissemination, they were subject to journalistic investigation.

E.S. [This took place] through contact with different sources.

E.T. The facts disseminated had already been studied by journalists and published in the 6 December edition of the *Expresso* newspaper.

E.U. This also influenced the behaviour of E.C., who believed that their dissemination was appropriate.

...

F.H. The reference to the claimant as one of the 'suspected detainees' who was questioned between the night of 8 January and the early hours of 9 January 2004 was a mistake [*lapso*].

F.I. This mistake was rectified through a correction broadcast on the 12 noon and 1 p.m. editions of the news by the defendant SIC Notícias on 9 January 2004.

F.J. [R.R.] is a member of parliament in mainland Portugal.

..."

21. On 20 August 2010 the Oeiras District Court found partially for R.R., ordering the applicant company and E.C. to pay him compensation of EUR 145,758.97, made up of EUR 80,000 in respect of non-pecuniary damage and EUR 65,758.97 in respect of pecuniary damage. The court apportioned liability between the applicant company at 60% and the defendant E.C. at 40%. Lastly, the applicant company was ordered to provide R.R. with airtime at a peak viewing time, to allow him to reply to the accusations.

22. On an unknown date the applicant company and E.C. appealed against that judgment to the Lisbon Court of Appeal.

### B. Judgment of the Lisbon Court of Appeal of 10 January 2012

23. By a judgment of 10 January 2012, the Lisbon Court of Appeal varied the previous decision. It dismissed the journalist E.C. from the case and ordered the applicant company to pay R.R. EUR 10,000 in compensation for non-pecuniary damage, alongside interest with effect from the date of the judgment. The Lisbon Court of Appeal also rejected the claim in respect of pecuniary damage on the grounds of the lack of a causal link between R.R.'s voluntary decision to resign from his government role and the applicant company's actions, owing to the voluntary nature of his resignation. The court based its decision solely on the news report broadcast on 9 January 2004.

24. The Court of Appeal explained that the various facts in the case could not be interpreted as a whole, in contrast to the first-instance court's decision. Instead, it considered that it was analysing a "dynamic reality", and split the sequence of events into three distinct moments, as follows:

> "[T]he first [moment] took place on 6 and 7 December 2003, concerning the SIC/*Expresso* investigation about paedophilia in the Azores; the second moment on 8 December 2003 related to [R.R.]'s letter of resignation ... and lastly the third moment occurred on 9 January 2004."

25. The Court of Appeal clarified that the first moment referred to the "F." criminal case, which was already under police investigation. The news report itself had been broader than that case, resulting as it did from the work of investigative journalism. Furthermore, the Court of Appeal concluded as follows:

> "as concerns words, sentences, references, or even comments made before or during the report that may still be classified within the framework of investigative journalism, it cannot be concluded, nor has it been alleged, that the author was expressly identified, or that any defamatory statements concerning him were made.
>
> ...
>
> It was stressed in the decision being appealed against that the various references to the claimant's personal characteristics allowed for his identification, in the context of the insinuations heard, alluding to the fact that he was a lawyer – the sole member of

the government exercising that professional activity – and was absent from the Azores at the time of the reporting, and if indeed it was established that several people identified the claimant through those statements, it cannot be concluded that any possible associations or rumours that may have occurred should be imputed as defamatory information, such as to justify the obligation to award compensation ...”

26. The Court of Appeal identified the second moment as R.R.’s resignation from his government position, when he himself had linked his resignation to the previous reports. On this point the judgment read as follows:

“It is understandable that the event should be on the news, with reference to the previous news reports, and also that, since it concerned a relevant political matter, it should be subject to scrutiny by the media, and specifically news commentators ...

While it is not in dispute that after the claimant had tendered his resignation, he did not receive the same income as previously while the holder of a political office, it is clear that, even if the news reports – referred to as the first dynamic moment of the facts in question – may have prompted him to resign, there was nothing unlawful, for we cannot ignore that this was an act of free will, and the appeal is to be determined accordingly; nor, therefore, does there exist a causal link justifying the award of pecuniary damage.”

27. The Court of Appeal described the third moment as the news report broadcast at 10 a.m. on 9 January 2004, in which it had been falsely stated by the television reporter that R.R. was one of the suspects who had been arrested and questioned by the police. In that case, despite the rectification of that fact in the news broadcast of 12 noon and 1 p.m. that same day, the Court of Appeal considered that there had been a grave violation, caused by a lack of diligence.

28. On an unknown date the applicant company and R.R. lodged an appeal against that decision with the Supreme Court.

### C. Judgment of the Supreme Court of 23 October 2012

29. On 23 October 2012 the Supreme Court found in favour of R.R. and varied the decision of the Lisbon Court of Appeal. It held that, regardless of the applicant company’s rectification of the false information about R.R.’s arrest and questioning which had been broadcast on 9 January 2003, the applicant company was nevertheless liable under Articles 70 and 484 of the Civil Code. The Supreme Court pointed out that when reporting on R.R.’s arrest, the reporters from SIC and SIC Notícias had been aware that the information they were providing was false.

30. As to the analysis of the merits of the case, the relevant parts of the judgment read as follows:

“In the light of these established facts, and the entirety of the remaining facts that undeniably point in the same direction, there is no doubt that the claimant’s right to honour and a good name was undermined by the (illicit) conduct of the reporters of SIC Notícias (namely the third reporter), who, without mentioning the claimant by

> name, but providing a series of characteristics that would allow him to be easily identified, ascribed to him, in the reports produced and broadcast by the television channel on 6 and 7 December, facts that objectively caused serious harm to his fundamental rights to a good name and to honour, without, as they should have done in accordance with ethics and professional conduct, having taken care beforehand to investigate whether those facts were true or not, and maintaining and reiterating the dissemination of such news even after they knew that it was not true that the claimant was (judicially) involved in the proceedings in question ... [such] illegality ... therefore stems from negligent behaviour (breach of the duty of care) in broadcasting facts that were not shown to be true, and whose veracity was not carefully verified, and in not protecting, in any event, the identity of the claimant ...
>
> [N]ot only, as the previous judgment found, the report mentioning the claimant as being one of the 'suspected detainees' questioned between the night of 8 January and the early hours of 9 January (later rectified on the 12 noon and 1 p.m. news broadcasts on SIC Notícias on 9 January 2004), but also the dissemination of the attribution of the facts to the claimant in the form in which it took place on 6 and 7 December 2003 (at this point not yet referring directly to the name, but making identification possible through the reference to individual and identifiable elements and characteristics), cannot be considered anything other than serious violations by the journalists in the service of SIC, on account of the lack of diligence and failure to comply with the duties that govern the profession of a journalist, namely the duty to provide truthful information, having in this way affected the claimant through implications that, by being broadcast on SIC's television channel, damaged his honour and good name; accordingly, ... the defendant SIC has an obligation to pay compensation."

31. The Supreme Court further clarified that the amount of compensation should not be merely symbolic but should also ensure proper compensation for the damage caused, holding as follows:

> "To any person with an average notion of sensibility, reasonableness and common sense, it is clear that the (unfounded) imputation, made publicly and repeatedly, through a media outlet (in the present case, a television channel), to a citizen – in the present case a citizen with a proven and acknowledged record of engagement at civic, public and political levels – of involvement in paedophile activities and the sexual abuse of minors, even though this information was later rectified, constitutes, as a whole, much more than minor inconveniences of no legal relevance, amounting instead to severe damage to essential elements of fundamental personality rights, damage that by its severity, by the way in which it affects the personality rights of a person, significantly undermining his honour and dignity, is worthy of legal protection."

32. The Supreme Court considered that the grave offence to R.R.'s good name, which had caused suffering both to him and to his direct family, justified an award of compensation of EUR 50,000 in respect of non-pecuniary damage.

33. With regard to pecuniary damage, the Supreme Court considered that R.R.'s resignation was connected to "unlawful facts harmful to his honour and his good name, which are SIC's responsibility". It thus ordered the payment of EUR 65,758 in respect of pecuniary damage to R.R., with interest of 4% per year, with effect from the date when the summons had

been served on the applicant company, namely 3 April 2007 (see paragraph 18 above). On that point, the judgment read as follows:

> “Even though the claimant’s resignation and the consequent loss of income are not a direct and immediate consequence of the facts damaging his honour, the truth is that these consequences would not have occurred without those facts; the damaging facts gave rise to proceedings that undoubtedly led to damage; there is therefore sufficient causality between the facts and the pecuniary damage suffered by the claimant, which was correctly quantified by the first-instance court in the amount of EUR 65,788 (corresponding to EUR 71,041.86 for the amount that he would have received in the position he had held, less EUR 5,282.89 for what he in fact received by practising as a lawyer after his resignation).”

34. The applicant company appealed against that judgment to a bench of three judges (*Conferência*) of the Supreme Court, arguing that the decision had been null and void in various respects – insufficient grounds, exceeding the scope of the case (*excesso de pronúncia*) and contradictory reasoning – and that there had been irregularities in the allocation of the case within the Supreme Court, through the existence of a situation violating the principle of the natural judge.

35. On 16 April 2013 the bench of three judges of the Supreme Court allowed the applicant company’s appeal in part, but only with regard to the lack of reasoning of the decision regarding the interest from the date of the summons, rectifying that defect.

36. Between May and October 2013 the applicant company paid R.R., in six monthly instalments, the compensation he had been awarded plus interest of EUR 30,230.28, amounting to a total of EUR 145,988.28.

### III. SUBSEQUENT DEVELOPMENTS

37. Between 10 March 2005 and 4 November 2013 R.R served as a member of the national parliament, representing the Azores. He was elected mayor of Vila Franca do Campo in September 2013, and was re-elected in October 2017.

## RELEVANT LEGAL FRAMEWORK

### I. THE CONSTITUTION

38. The relevant provisions of the Constitution provide as follows:

**Article 26 § 1**

> “Everyone shall possess the right to a personal identity, to the development of his or her personality, to civil capacity, to citizenship, to a good name and reputation, to his or her own image, to speak out, to protect the privacy of his or her personal and family life, and to legal protection against any form of discrimination.”

**Article 38**

"1. Freedom of the press is guaranteed.

2. Freedom of the press implies:

(a) freedom of expression and creativity on the part of journalists and other staff, as well as journalists' freedom to take part in deciding the editorial policy of their media entity, save when the latter is doctrinal or religious in nature;

(b) that journalists have the right, as laid down by law, of access to sources of information and to the protection of professional independence and secrecy, as well as the right to elect editorial boards;

(c) the right to found newspapers and any other publications without the need for any prior administrative authorisation, bond or qualification ..."

## II. THE CIVIL CODE

39. The relevant provisions of the Civil Code read as follows:

**Article 70**

"The law shall protect individuals against any unlawful interference or threat of harm to their person or character."

**Article 484**

"Anyone who states or spreads [knowledge of] a fact that is capable of harming the reputation of another natural or legal person shall be liable for damages."

**Article 496**

"1. When determining the amount of compensation, regard shall be paid to non-pecuniary damage that, by its seriousness, deserves the protection of the law ...

4. The amount of compensation shall be determined fairly by the court ..."

## III. THE CODE OF CIVIL PROCEDURE

40. The relevant provisions of the Code of Civil Procedure read as follows:

Article 696

"A decision that has become *res judicata* may be the subject of an application to reopen proceedings [*recurso de revisão*] only where

...

(f) it is incompatible with a final decision given by an international appeal body and by which Portugal is bound."

### IV. THE PRESS ACT

41. Section 3 of the Press Act, enacted through Law no. 2/99 of 13 January 1999, provides as follows:

> "Freedom of the press has as its only limits those that derive from the Constitution and the law, in order to safeguard the accuracy and objectivity of information, to guarantee the rights relating to a person's reputation, private life, image and words and to defend the public interest and democracy."

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicant company complained that the judgments given against it had been in breach of its right to freedom of expression. It invoked Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

#### A. Admissibility

43. The Court notes that the applicant company's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### B. Merits

##### *1. The parties' submissions*

###### (a) The applicant company

44. The applicant company recognised that the interference with its right to freedom of expression had been prescribed by law, but argued that it had not been necessary in a democratic society.

45. It contended that the various news reports broadcast by its television channel could not be interpreted as a whole. It admitted that R.R.'s honour

and reputation had been damaged only with regard to the news report broadcast at 10 a.m. on 9 January 2004 mentioning that R.R. had been arrested and questioned by the police. It argued that the previous reports had not directly identified R.R., and that the rumours emerging as a result of those reports could not be imputed to the applicant company, whose journalists had simply summarised the information they had collected through their investigation. In terms of the reference to R.R.'s resignation, the applicant company stressed that the resignation of a politician was always newsworthy and, as a political issue of relevance, it would be subject to comment and discussion by journalists.

46. The applicant company affirmed that the piece of news in question had been of relevant public interest, as had been acknowledged by both the first-instance court and the Lisbon Court of Appeal.

47. Lastly, the applicant company contended that the amount of compensation awarded had been excessive and disproportionate, observing that it was the highest amount anyone had ever been ordered to pay for damaging a person's reputation and honour. It had had a chilling effect on the exercise of the freedom of expression.

#### (b) The Government

48. The Government did not contest the fact that there had been an interference with the applicant company's exercise of its right to freedom of expression, but submitted that the interference had been "prescribed by law" and had pursued a "legitimate aim". As to the necessity of the interference in a democratic society, they maintained that the protection of the right to respect for personal honour and reputation was also a duty of the State, since the applicant company had reported false information, without adequately verifying the veracity of the statements, thus violating the duties of ethics, professional conduct and care which journalists were obliged to abide by.

49. The Government affirmed that a false news story of that nature would naturally cause great damage both to the person who was the subject of the news and to society as a whole, destroying trust in the media.

50. The Government further submitted that in the present case the journalists had not observed the duties and responsibilities of their profession to provide information with rigour, objectivity and truth, but had instead acted negligently. They referred, in particular, to the news report claiming that R.R. had been arrested and questioned by the police at the Ponta Delgada District Court. In their submission, even though this news had later been rectified, it had revealed a manifest breach of the duty of care.

51. The Government concluded by submitting that the interference with the applicant company's exercise of its right to freedom of expression had been "necessary in a democratic society" to ensure the protection of the

honour and rights of another, as provided for in Article 10 § 2 of the Convention.

### 2. *The Court's assessment*

#### (a) Whether there was an interference

52. The parties did not dispute that the judgment of the Supreme Court ordering the applicant company to pay R.R. EUR 50,000 for non-pecuniary damage and EUR 65,758 for pecuniary damage for infringing his right to reputation amounted to an "interference" with the exercise of the applicant company's freedom of expression. The Court sees no reason to hold otherwise.

#### (b) Whether the interference was prescribed by law and pursued a legitimate aim

53. The parties also agreed that the interference had a legal basis. The Court likewise finds that the interference complained of was prescribed by law, namely Articles 70 and 484 of the Civil Code (see paragraph 39 above). It also notes that the interference complained of pursued a legitimate aim referred to in Article 10 § 2 of the Convention, namely "the protection of the reputation or rights of others" – in the instant case, those of R.R. It remains to be established whether it was "necessary in a democratic society".

#### (c) Whether the interference was necessary in a democratic society

##### *(i) The general principles*

54. The fundamental principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention are well established in the Court's case-law. They have been summarised, *inter alia*, in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) and *Magyar Jeti Zrt v. Hungary* (no. 11257/16, §§ 63-68, 4 December 2018).

55. The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, as well as the need to prevent the disclosure of information received in confidence, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *Bédat*, cited above, § 50, and the cases referred to therein).

56. Indeed, the protection afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. The concept of responsible journalism, as a professional activity which enjoys the

protection of Article 10 of the Convention, is not confined to the contents of information which is collected and/or disseminated by journalistic means. That concept also embraces the lawfulness of the conduct of a journalist, and the fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015, and *Bédat*, cited above, § 50, and the references cited therein).

57. These considerations play a particularly important role nowadays, given the influence wielded by the media in contemporary society: not only do they inform, they can also suggest by the way in which they present the information how it is to be assessed. In a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance (see *Stoll v. Switzerland* [GC], no. 69698/01, § 104, ECHR 2007-V). Where the "duties and responsibilities" of journalists are concerned, the potential impact of the medium of expression involved is an important factor in assessing the proportionality of the interference. In this context, the Court has acknowledged that account must be taken of the fact that the audio-visual media have a more immediate and powerful effect than the print media (see *Radio France and Others v. France*, no. 53984/00, § 39, ECHR 2004). The former have means of conveying through images meanings which the print media are not able to impart (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). The function of television and radio as familiar sources of entertainment in the intimacy of the listener's or viewer's home further reinforces their impact (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 119, ECHR 2013 (extracts)).

58. In particular, where judicial cases or criminal investigations are concerned, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or among the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. However, consideration must be given to everyone's right to a fair hearing as secured under Article 6 § 1 of the Convention, which, in criminal matters, includes the right to an impartial tribunal and the right to the presumption of innocence (see *Bédat*, cited above, § 51, and *Tourancheau and July v. France*, no. 53886/00, § 66, 24 November 2005). As the Court has already emphasised on several occasions, this must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the

courts in the administration of criminal justice (see *Worm v. Austria*, 29 August 1997, § 50, *Reports of Judgments and Decisions* 1997-V; *Campos Dâmaso v. Portugal*, no. 17107/05, § 31, 24 April 2008; *Pinto Coelho v. Portugal*, no. 28439/08, § 33, 28 June 2011; and *Ageyevy v. Russia*, no. 7075/10, § 225, 18 April 2013).

59. When it is called upon to adjudicate on a conflict between two rights which enjoy equal protection under the Convention, the Court must weigh up the competing interests. The outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the offending article or under Article 10 of the Convention by the author of that article, because these two rights deserve, in principle, equal respect (see, amongst many other authorities, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 91, ECHR 2015). Accordingly, the margin of appreciation should in theory be the same in both cases (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 87, 7 February 2012, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 106, ECHR 2012, and the cases cited therein).

60. In that connection the Court emphasises that for Article 8 to come into play, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, amongst many other authorities, *Axel Springer*, cited above, § 83, and *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018).

61. It also reiterates that where the national authorities have weighed up the interests at stake in compliance with the criteria laid down in the Court's case-law, weighty reasons are required if it is to substitute its view for that of the domestic courts (see *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 57, ECHR 2011; and *Haldimann and Others v. Switzerland*, no. 21830/09, §§ 54-55, ECHR 2015). Analogous reasoning must apply in weighing up the rights secured under Article 10 and Article 6 § 1 respectively (see *Bédat*, cited above, § 53).

62. Furthermore, the Court has found that the most careful scrutiny on its part is called for when, as in the present case, the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III).

*(ii) Application of these principles to the present case*

(1) Whether the news reports contributed to a debate of public interest and whether R.R. was a public figure

63. The Court observes that the impugned statements comprised several opening reports on the primetime evening and midday news about the ongoing investigations into a network implicated in the sexual abuse of minors in the Azores (see paragraphs 4-16, and **Error! Reference source not found.** above). There is no doubt that the impugned news reports conveyed information of public interest (compare *Bergens Tidende and Others v. Norway*, no. 26132/95, § 51, ECHR 2000-IV; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, nos. 11182/03 and 11319/03, § 27, 26 April 2007; and *Haldimann and Others*, cited above, § 56).

64. As regards R.R., the Court notes that he is a public figure both in his own region in the Azores and in the entire country (see paragraph **Error! Reference source not found.** above) and that, at the time the reports were broadcast, he held a high-level political appointment as Regional Secretary of Agriculture and Fisheries (see paragraphs 10 and **Error! Reference source not found.** above).

(2) The method of obtaining information, and the content, form and consequences of the impugned statements

65. The Court notes that it was considered established that the news reports of 6 and 7 December 2003 stemmed from different sources, collected through an investigative report compiled by both the applicant company and the leading weekly newspaper *Expresso*. It also observes that the facts disseminated at this point had already been published in the 6 December 2003 edition of *Expresso* (see paragraph **Error! Reference source not found.** above). As to the news report of 9 January 2004, it was considered established that the source of the information were the reporters working for the applicant company, one of whom was E.C. who was present in the vicinity of the Ponta Delgada District Court on the evening that the questioning took place (see paragraph **Error! Reference source not found.** above).

66. The Court acknowledges that taking into account the content of the reports and the particular stigma attached to offences of a sexual nature involving children, allegations of involvement in this type of offence have the capacity to cause prejudice to the personal enjoyment of the right to respect for private life.

67. With regard to the statements in issue, the Court observes that as far as the news reports of 6 and 7 December 2003 are concerned, although R.R.was not directly identified, he was still easily identifiable (see paragraphs **Error! Reference source not found.-Error! Reference source**

**not found.**, **Error! Reference source not found.** and **Error! Reference source not found.** above). Therefore, although the news reports were the result of a journalistic investigation conducted by the applicant company and *Expresso*, both of whom were widely regarded by the public as reliable news media outlets, they were able to cause prejudice to him.

68. As to the news report of 9 January 2004, in spite of the rectification made hours later, the applicant company accepted that the false reference to R.R.'s arrest and questioning by the police on this particular news report had infringed R.R.'s right to reputation and honour (see paragraph **Error! Reference source not found.** above). The Court also finds that, when the applicant company stated that R.R. had been arrested and was being questioned by the police, it did not act in a responsible way, particularly as it knew that the news was widely disseminated via media outlets both domestically and internationally (see paragraphs 14 and 15 above). Accordingly, there were compelling reasons to impose a sanction on the applicant company for the false information. However, the Court notes that the applicant company rectified this mistake a few hours after the news broke (see paragraph 17 above), which therefore limited the harm to R.R.'s reputation both in scope and in time (compare *Falter Zeitschriften GmbH v. Austria*, no. 26606/04, § 25, 22 February 2007). Furthermore, it observes that, although it was considered established by the domestic courts that it was still possible to find references to his potential involvement in such a crime on different online platforms (see paragraph **Error! Reference source not found.** above), R.R. resumed his role in politics shortly after the applicant company's news report. Indeed, he served as a member of the national parliament between 2005 and 2013 and he remains, to this day, a well-established and active politician (see paragraph **Error! Reference source not found.** above). It therefore remains to be established whether the amount the applicant company was ordered to pay to R.R. in damages was proportionate to the damage caused to him.

(3) Severity of the sanction

69. The Court notes that the Supreme Court ordered the applicant company to pay R.R. EUR 50,000 in respect of non-pecuniary damage and EUR 65,758 in respect of pecuniary damage. With the addition of legal interests, the total amount that the applicant company had to pay was EUR 145,988.28 (paragraph 36 above). While it is not possible to conclude that there was no harm at all to R.R.'s right to a reputation and honour, the Court finds it difficult to accept that the injury to R.R's reputation in the present case was of such a level of seriousness as to justify an award of that size. Such an amount of compensation, which was high when compared with previous cases concerning Portugal that the Court has examined (compare *Público - Comunicação Social, S.A. and Others v. Portugal*, no. 39324/07, § 55, 7 December 2010), is also capable of discouraging the

participation of the press in debates over matters of legitimate public concern and has a chilling effect on the freedom of expression and of the press (compare *Bozhkov v. Bulgaria*, no. 3316/04, § 55, 19 April 2011; *Medipress-Sociedade Jornalística, Lda v. Portugal*, no. 55442/12, § 45, 30 August 2016; and *Público - Comunicação Social, S.A. and Others*, cited above, § 55; see also, *mutatis mutandis*, *Pais Pires de Lima v. Portugal*, no. 70465/12, § 67, 12 February 2019). The Court therefore considers it excessive in the circumstances of the present case.

(4) Conclusion

70. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant company's right to freedom of expression was disproportionate and not "necessary in a democratic society" within the meaning of Article 10 of the Convention.

71. Accordingly, there has been a violation of Article 10 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

73. The applicant company claimed 145,988.28 euros (EUR) in respect of pecuniary damage, representing the amount it had been ordered to pay R.R. at domestic level in respect of pecuniary and non-pecuniary damage combined. The applicant company did not claim an award in respect of non-pecuniary damage.

74. The Government contested the claim. In their view, the finding of a violation would enable the applicant company to lodge an application for the review of the judgment in its case before the domestic courts. Thus, the payment of compensation for any damage sustained by the applicant company would be premature.

75. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI, and *Stojanović v. Croatia*, no. 23160/09, § 80,

19 September 2013). In this connection the Court notes that under Article 696 (f) of the Code of Civil Procedure, an applicant may seek the reopening of the civil proceedings in respect of which the Court has found a violation of the Convention (see paragraph **Error! Reference source not found.** above; see also *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 222, 6 November 2018). Having regard to the violation it has found and its reasons for that finding (see paragraphs **Error! Reference source not found.-Error! Reference source not found.** above), the Court considers that in the present case the most appropriate way of repairing the consequences of that violation is to reopen, at the request of the applicant company, the proceedings complained of. Since the domestic law allows such reparation to be made, the Court considers that there is no call to award the applicant company any sum in respect of pecuniary damage.

76. As the applicant company made no claim in respect of non-pecuniary damage, the Court is not called upon to make any award in that regard.

### B. Costs and expenses

77. The applicant company claimed EUR 32,550.80 for its lawyer's fees, representing 342.64 hours of legal work at a rate of EUR 95 per hour, and EUR 4,090.40 for other costs and expenses incurred before the domestic courts, of which EUR 306 resulted from procedural fines. It also claimed EUR 4,283.57 for costs and expenses incurred before the Court. The applicant company submitted the relevant invoices in support of its claims.

78. The Government commented that the amount claimed for the lawyer's fees was excessive in the light of the criteria normally applied by the Court. It also observes that a fine of EUR 306 included in the claim for costs and expenses should not be taken into consideration in view of the fact that it was paid owing to delays imputable to the applicant company during the proceedings.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis*, cited above, § 54). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,283.57 for costs and expenses incurred in the proceedings before it, plus any tax that may be chargeable to the applicant company. As regards the costs and expenses incurred in the domestic proceedings, the Court is of the opinion that the claim in that regard must be rejected, given that the applicant company will be able to have (the relevant part of) those costs reimbursed in the proceedings following its request for reopening under Article 696 (f) of the

Code of Civil Procedure (see paragraph **Error! Reference source not found.** above; see also, *mutatis mutandis*, *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 65, 1 December 2009).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,283.57 (four thousand two-hundred and eighty-three euros and fifty-seven cents), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's company claim for just satisfaction.

Done in English, and notified in writing on 27 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. {signature_p_2}

Andrea Tamietti
Registrar

Yonko Grozev
President