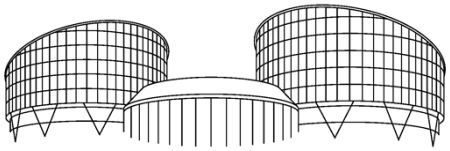

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ALMEIDA ARROJA v. PORTUGAL

(Application no. 47238/19)

JUDGMENT

Art 10 • Freedom of expression • Applicant's criminal conviction for aggravated defamation and causing offence to a legal person for comments made about a law firm and its director on a daily news programme broadcast by a private television channel • Balancing exercise performed by the domestic courts not in conformity with criteria laid down in the Court's case-law • Absence of relevant and sufficient reasons • Conviction and award of damages manifestly disproportionate • Nature and severity of sanctions capable of having a "chilling effect" • Narrow margin of appreciation exceeded • No reasonable relationship of proportionality between the restriction of the applicant's right to freedom of expression and the legitimate aim pursued

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 March 2024

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

In the case of Almeida Arroja v. Portugal,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 47238/19) 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 national, Mr José Pedro Almeida Arroja ("the applicant"), on 2 September 2019;

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 20 February 2024,

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

INTRODUCTION

1. The case concerns a judgment given against the applicant in proceedings for defamation and causing offence to a legal person, in relation to his comments alluding to political interests underlying legal advice provided by a law firm to a public hospital. Relying on Article 10 of the Convention, the applicant complained of a breach of his right to freedom of expression.

THE FACTS

2. The applicant was born in 1954 and lives in Porto. He was represented by Mr J.J. Ferreira Alves, a lawyer practising in Matosinhos.

3. The Government were represented by their Agent, Ms M.F. da Graça Carvalho, Deputy Attorney General, and, after 1 September 2022, Mr Ricardo Bragança de Matos, Public Prosecutor.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant 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.

6. P.R. is a lawyer who at the material time was the director of the law firm C. He is also a well-known politician and a member of the European Parliament.

7. The applicant is the chair of the J. association, which was created to raise funds and support the construction of a paediatric wing for the São João Hospital, in Porto. Meetings were held in 2014 between the applicant and representatives of the hospital to discuss the project and the responsibilities of the stakeholders. The hospital sought legal advice from the law firm C. Accordingly, a tripartite Memorandum of Understanding ("MoU") (*Protocolo Tripartido*) was drafted by F.M., a lawyer at that law firm, establishing the rights and duties of the J. association, the construction companies and the hospital. Following the rejection by the J. association of a first draft of the agreement, a second draft was sent to the applicant on 16 April 2015.

8. On 25 May 2015, at 8.28 p.m., during the daily news programme on Porto Canal (see paragraph 5 above), the applicant took part in the following discussion:

> "Interviewer: Professor, let's talk about today's subject, which is a complicated one, the construction of a paediatric wing for the São João Hospital by the J. association, of which you are president, that began and then halted. What happened?
>
> Applicant: It began and then halted, ... politics got in the way. These construction works are a gift from all the Portuguese community who belong to the association of which I am president ... to São João Hospital. But politics got in the way.
>
> Interviewer: In what way?
>
> Applicant: Through a law firm, C., directed by P.R., a politician and member of the European Parliament. Basically, it was a document produced by the law firm C., of which P.R. is the director, that led the hospital to halt the construction work, fearing the consequences, especially one of the administrators who was really worried. The president of the hospital is very enthusiastic about this construction project, but one thing that P.R.'s law firm, C., caused was a division inside São João Hospital's administration concerning the construction work.
>
> Interviewer: But why?
>
> Applicant: Exactly, why??? P.R is a politician. A politician from a political party. And political parties are made to break, to divide people. And they have already started to create divisions. And to destroy ... from the beginning I feared what is now happening, there are some politicians who call on civil society, but when civil society starts doing construction projects like this one, making a gift of it to the hospital, something that costs twenty million euros (construction work that should have been done by the State, and therefore by the politicians), they feel that this makes them look bad. They feel that this construction work (because after all the politicians, including P.R., who actually belongs to the political party in government ...) and therefore P.R. and his law firm

produced a document that halted the construction work. This document, under the appearance of a legal draft, is in fact a legal joke. Firstly I would like to invite P.R. – if Porto Canal allows me to – ... (moreover, considering that it is World Children's Day and the children there are crammed into a shack and P.R. wants to contribute to their staying stuck in a shack instead of having a proper five-floor facility that we – the Portuguese community – have got together to offer to the hospital), ... to discuss this legal joke with me, here, [next] Monday. I do not want to go into detail about what the document says, just to state that the document has halted the construction work (for four weeks now).

Interviewer: But what's the goal, Professor?

Applicant: ...This comes from the close connections between politics and business or professionals, in the present case, lawyers (some of them, not all of them, obviously!). What does this mean? P.R. is the perfect example – after all he is a politician and at the same time he is in charge of a big law firm. It takes a lot! Moreover, he is a politician, a member of the European parliament, he spends a lot of time abroad, what does this mean? As a politician, he is certainly soliciting customers for his law firm, customers mostly from the State sector: São João Hospital, city halls, Ministries of this and that. When they produce a legal document, the question is: is this a professional document, drafted by a lawyer or, on the contrary, is it a political document to reward the hand that feeds them? Anything can happen! And in the present case of this joke, it is a political document to reward the hand that feeds them. Because in fact, there are politicians (and I know what I'm talking about) who look at this construction project that we are generously giving to São João Hospital (with which they could join in) as something that makes them look bad. That's why they oppose it. This is certainly the case with P.R. But there's also another dimension... Some days before the charity gala dinner I got a phone call saying 'look, unfortunately the Porto Commercial Association will not be there' ... I felt so penalised that yesterday – it's true, I felt this – I checked on the internet wondering who could have taken such a decision? Who are the board members of the Porto Commercial Association? ... And who is there too? ... P.R. and another lawyer from the same law firm! At that moment, last night, I decided what the subject of my comments today would be.

Interviewer: What is the justification for obstructing the construction work, Professor?

Applicant: They made up some jokes (*palhaçadas*). The justification is a joke ... the law firm C., its lawyers and P.R. say that 'the association cannot make a gift of the construction work to the hospital'. 'Cannot make a gift?'... So they conceived a scheme, and this is when the joke begins ... ultimately, São João Hospital reserves the right to sue the association! Look ..., São João Hospital, through this legal joke by the law firm C. and P.R., reserves the right to sue the association and the construction companies ... after all this effort, some guys like these show up, some, some second-class politicians and put a stop to construction works that were good! That were for the children!

Interviewer: But can you see any hidden interest?

Applicant: Political goals. Not to let the association carry out the construction work so that one day ... so that the citizens don't say 'look, the politicians don't do anything', it is the association, in the sense that it is the Portuguese community. I want to say something to P.R. and all the P.R.s who might turn up to prevent this construction work. I will get everyone together, and this is how engaged with them I am, I will make this construction works happen! Only over my dead body will I refrain from doing it. You would ask, is that a figure of speech, would you be willing to give your life for this construction work? I would! That's what I feel! That's what I feel! What I am about to say is not universal and you may even think it is nonsense. But I feel that at this stage

> of my life this construction work was a mission given to me by God. And I promised God that I would accomplish this mission. And I will! No second-rate politician or grubby lawyers are going to stop me! ... If you want your children to be hospitalised in a shack ... next elections, vote for P.R. and the political party he belongs to."

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Judgment of the Matosinhos Criminal Court of 12 June 2018

9. P.R. and the law firm C. filed a criminal complaint against the applicant with the Matosinhos public prosecutor's office for aggravated defamation and causing offence to a legal person as provided in Articles 180, 183, 184 and 187 of the Criminal Code (see paragraph 30 below).

10. Criminal proceedings were therefore initiated against the applicant, in which the plaintiffs intervened as auxiliary prosecutors (*assistentes*). In addition, acting as civil parties and relying on Article 129 of the Criminal Code (see paragraph 30 below) and Articles 483 and 484 of the Civil Code (see paragraph 33 below), they sought damages for non-pecuniary harm amounting to 50,000 euros (EUR) each.

11. On 9 December 2016 the Matosinhos public prosecutor's office brought charges against the applicant for aggravated defamation and causing offence to a legal person. The case was then sent for trial in the Matosinhos Criminal Court.

12. By a judgment of 12 June 2018, the Matosinhos Criminal Court found that the disputed statements had been made.

13. The Matosinhos Criminal Court also found that the applicant had disagreed with the terms of the MoU (see paragraph 7 above), to which he had referred during the interview at issue (see paragraph 8 above). In that connection, it referred to the evidence heard during the trial and also to an email sent by the applicant to a certain M.C. on 29 April 2015 in which he had stated that the MoU had safeguarded the hospital's interests and overburdened the J. association without making any reference to the law firm C. or P.R. The Matosinhos Criminal Court considered that the applicant knew that it was the hospital administration which was putting obstacles in the way of the project and not the law firm C., whose role was only to safeguard the interests of its client. It thus concluded that he had lied in the interview when he alleged that the MoU had not been signed because of political influence, namely that of P.R. who appeared not to have been the person responsible for the MoU at issue, which had instead been drafted by F.M. (see paragraph 7 above).

14. Regarding the law firm C., the Matosinhos Criminal Court held it to be a very renowned law firm known for the quality and professional expertise of its lawyers and also for their sobriety, honesty and probity, and that the applicant knew that he would damage its credibility, prestige and trust, which he had indeed done, knowing that the statements made were false.

15. Moreover, the court established that the disputed statements had reached an audience of over 9,500 viewers of the television programme and anyone who had listened to subsequent comments or conversations: the interview was still available online with more than 2,000 views and had been reproduced in blogs.

16. As to the applicant's financial status, the Criminal Court found that besides earning a salary of EUR 2,500 per month, he was a director of certain well-known asset management companies, namely Pedro Arroja – SGPS, S.A., which had a paid-up share capital of EUR 3,945,000, and Pedro Arroja – asset management, which had a paid-up share capital of EUR 5,000,000, both of which had their headquarters in one of Porto's most famous locations, Montevideu Avenue, in an iconic and valuable building.

17. The Matosinhos Criminal Court convicted the applicant of causing offence to a legal person, namely to the law firm C., provided for in Article 187 of the Criminal Code (see paragraph 30 below) finding that the statements concerning the MoU at issue and its political nature constituted factual allegations which were untrue and affected the prestige of the law firm C. It thus sentenced him to a fine of EUR 4,000 and ordered him to pay the law firm C. EUR 5,000 in compensation for non-pecuniary damage.

18. Regarding P.R., it found that the applicant had acted knowingly and with the intention of humiliating him and damaging his honour, reputation and political character, knowing that he would also harm, indirectly, P.R.'s professional pride as a lawyer.

19. Furthermore, the Matosinhos Criminal Court established facts concerning P.R.'s professional life, in particular that he was a highly regarded university professor, lawyer, researcher and essayist, a member of the board of Porto's Commercial Association and of the board of the Robert Schumann Foundation and Deputy State Secretary for Justice. It also referred to various awards he had won throughout his career.

20. Regarding the consequences of the disputed statements, the court found that P.R. had been confronted with the applicant's comments by others on various occasions and in various places and circumstances during the weeks that followed the interview, and that the statements had indeed offended P.R. and harmed his image.

21. Nevertheless, it acquitted the applicant of the offence of aggravated defamation against P.R. as provided for in Articles 180 § 1, 183 § 2 and 184 of the Criminal Code (see paragraph 30 below). Analysing the disputed statements regarding P.R. as a whole, the Criminal Court considered that the applicant had stated a combination of facts and value judgments but mostly opinions, which could not be true or false, concerning a matter of public interest. It took the view that the scope of freedom of expression was wider regarding political attacks against politicians than where a private individual was concerned since the right of politicians to honour and reputation was reduced.

22. On 12 July 2018 and 3 September 2018 respectively the applicant and P.R. appealed against that judgment to the Porto Court of Appeal.

B. Judgment of the Porto Court of Appeal of 27 March 2019

23. On 27 March 2019 the Porto Court of Appeal partly varied the previous decision. It upheld the applicant's conviction for causing offence to a legal person, namely the law firm C., and in addition it convicted him of aggravated defamation of P.R. under Articles 180 § 1, 183 § 2 and 184 of the Criminal Code. It sentenced the applicant to an aggregate fine of EUR 7,000 and ordered him to pay EUR 5,000 to the law firm C. and EUR 10,000 to P.R. for non-pecuniary damage. One of the three judges of the Court of Appeal's bench gave a dissenting opinion, holding that the applicant's conduct did not amount to defamation.

24. Regarding the conviction of the law firm C., the Court of Appeal, having regard to the facts as established (see in particular paragraphs 13 and 17 above), held as follows:

> "The defendant knew that the draft of the agreement had not had the consensus of the three parties, and that that had caused the halting of the construction work. The law firm C., which was representing the hospital, had drafted the agreement for signature by the hospital, the association and the construction companies. Because of the way the proposal had protected the hospital's interests, agreement was not reached, and therefore the construction work had stopped. In his statements, the defendant, although he was aware of what had caused the disagreement, distorted the situation, claiming that it was the hospital that was concerned about the consequences, when he knew that the hospital was the party which was particularly protected by the document the lawyers had drafted and that the reason why the construction work had stopped was not the document itself but rather the disagreement between the association and the construction companies about the terms of the document drafted by the law firm C., which benefited the hospital. Therefore, by distorting the facts, the defendant published untrue statements in the media, aiming to harm the reputation of C."

25. As for P.R., the Court of Appeal agreed with the Matosinhos Criminal Court that some of the disputed statements about him were value judgments (see paragraph 21 above). Nevertheless it considered that other assertions constituted relevant statements of fact, which was what had led to the applicant's conviction for defaming the law firm C. and should also have led to his conviction for defaming P.R. (see paragraph 17 above) and that there was a contradiction in considering the same statements to have been statements of fact in relation to the law firm C. and at the same time value judgments in relation to P.R. The Court of Appeal clarified which statements were to be considered statements of fact, as follows:

> "Those facts were the drafting of a legal document that prevented the construction of a paediatric wing for a public hospital when sick children were being accommodated in shacks, a fact that had not resulted from the protection of the interests of the hospital, a client of C. (of which P.R. was the director), but by a deliberate political act of P.R.

(because if such meritorious construction work was to be carried out on the initiative of civil society, politicians would be viewed in a negative way by the people)."

26. The Court of Appeal held as follows:

"What is at issue is P.R.'s conduct as a lawyer (who is said to have prioritised his political activities over his ethical duties as a lawyer). But even if one were to consider that what was at issue was his conduct as a politician (who is said to have placed the political image and recognition gained from the construction of a hospital wing above the pursuit of the well-being of sick children), that would not deprive him of the protection of his honour. It is not understandable why the law firm C. should be protected while its director is not, just because he is a politician.

We are faced with the imputation of external facts (the drafting of a legal document that caused the halting of the construction of a hospital wing that would benefit sick children) and internal facts (the intention underlying that decision: P.R.'s pursuit of his political activities instead of ensuring the interests of the hospital, which was a client of the law firm he directed).

One could confuse the imputation of internal facts, or intentions, with the formulation of opinions. But to be precise, when someone imputes an intention to another person, as in the present case, this is an attribution of internal facts. The imputation of internal facts can be based on unequivocal evidence (which is difficult to do) or on serious grounds (relying on a sufficient external factual basis) ... In political debate, the attribution of malevolent intentions to political opponents is common. This is legitimate if it is based on serious grounds (wide and free political debate may even demand some flexibility when ascertaining the strength of those grounds).

However, in the present case, there is no serious ground for the imputation in issue. We are in the presence of factual allegations about matters of public interest that are known to be false. It was clear to the first-instance court that the allegations were untrue, and that has not even been disputed before this court. And that applies not only in relation to the law firm C. but also in relation to P.R., and not only concerning external facts (the applicant knew that the halting of the construction work was not brought about by the legal document produced by the law firm C., which had not even been drafted by P.R.), but also concerning internal facts (the applicant knew that neither the drafting of the legal document nor the halting of the construction work had been caused by P.R.'s political activities). ...

We are in the presence of assertive affirmations and not mere speculation or interrogation.

It is not credible that the defendant thought that he could make those allegations just because P.R. was a politician, while he could not have made the same allegations against the law firm C., of which P.R. was director."

27. The dissenting opinion (see paragraph 23 *in fine* above) stated, *inter alia*, as follows:

"It seems reasonable to consider ... that although he knew that he was not being intellectually honest – bearing in mind that the discussion was about a matter of public interest, that is, the paediatric wing of a public hospital to which he was deeply involved – the defendant was convinced that the matter could and should be discussed in public and that his statements were not serious enough to amount to an offence, that is, that he could make those statements, even if they were unfair, in order to debate the matter with P.R., whom he had invited to be on the television programme. ...

On the other hand, the defendant ..., as an informed and educated citizen with a successful academic career, would probably know the European Court of Human Rights' case-law regarding freedom of speech, which has been widely reported by the media, and therefore his lack of awareness of the unlawfulness of his conduct can be explained ...

The defendant aimed to debate a matter of public interest with P.R. To that end, he distorted the facts and expressed himself in a way that can be considered a breach of the reputation of P.R., who is a renowned and honest lawyer.

...

[Nevertheless]... the public interest required that freedom of expression should prevail over P.R.'s reputation, which in any event could have been restored had P.R. accepted the defendant's invitation for a debate.

..."

28. The applicant filed a plea of nullity. He also sought leave to appeal to the Supreme Court. Both applications were rejected on 9 and 16 October 2019 by the Porto Court of Appeal and the Supreme Court respectively.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

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

Article 26 § 1
Other personal rights

"Everyone has the right to a personal identity, to the development of his or her personality, to civil capacity, to citizenship, to his or her good name and reputation, to his or her own image, to speak freely, to the privacy of his or her personal and family life, and to legal protection against any form of discrimination."

Article 37
Freedom of expression and information

"1. Everyone has the right to freely express and divulge his or her thoughts in words, images or by any other means, as well as the right to inform others, inform himself or herself and be informed without hindrance or discrimination.

2. The exercise of these rights may not be hindered or limited by any type or form of censorship.

3. Offences committed in the exercise of these rights shall be subject to the general principles of criminal law or the law governing administrative offences, and courts of law or an independent administrative entity shall have power to adjudicate on them as laid down by law.

4. Every natural and legal person shall be equally and effectively ensured the right of reply and the right to make corrections, as well as the right to compensation for damage suffered."

Article 38
Freedom of the press and media

"1. Freedom of the press shall be guaranteed.

2. Freedom of the press implies:

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

(b) the right of journalists, as laid down by law, to have access to sources of information and to the protection of professional independence and secrecy, and 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 CRIMINAL CODE

30. The relevant provisions of the Criminal Code read as follows:

Article 129
Civil liability resulting from crime

"Compensation for loss and damage resulting from crime shall be governed by civil law."

Article 132

"...

2. Particular reprehensibility or perversity ... may be revealed if, *inter alia*, the perpetrator:

...

(l) commits the act against a ... member of the jury, a witness, a lawyer, a person performing duties within the scope of an out-of-court dispute resolution procedure ...;"

Article 180
Defamation

"1. Anyone who, addressing a third party, makes a factual imputation, even in the form of a suspicion, or expresses an opinion about a person, which offends that person's honour or reputation, or who reproduces such an allegation or opinion, shall be sentenced to imprisonment for not more than six months or to a day-fine of not more than 240 days.

2. Such conduct shall not be punishable when:

(a) the allegation is made to further legitimate interests; and

(b) the perpetrator proves the truth of the allegation or had serious grounds, in good faith, for believing it to be true.

3. ... the previous paragraph shall not be applicable where the factual allegation relates to the intimate sphere of private and family life.

4. The good faith referred to in sub-paragraph (b) of paragraph 2 shall be excluded where the perpetrator has not complied with the duty to provide information, as required by the circumstances of the case, about the truth of the allegation."

Article 183
Publicity and libel

"1. If in the cases specified in Articles 180, 181 and 182:

(a) the offence is committed through means or in circumstances which make its disclosure easier; or

(b) as concerns factual allegations, it is determined that the perpetrator knew that the allegation was false;

the sentences for defamation or insult shall be increased by one-third as to their minimum and maximum limits.

2. If the crime is committed through the media, the perpetrator shall be sentenced to a term of imprisonment of not more than two years, or a day-fine of not less than 120 days."

Article 184
Aggravation

"The sentences specified in Articles 180, 181 and 183 shall be increased by one-half as to their minimum and maximum limits if the victim is one of the persons referred to in sub-paragraph (l) of paragraph 2 of Article 132, [and the offence was committed against him or her] in the performance of his or her duties or because of them, or if the perpetrator is a public official and commits the act in serious abuse of his or her authority."

Article 186
Discharge without punishment

"1. The court shall release the perpetrator without punishment when the perpetrator gives the court clarification of or explanations for the offence with which he or she is charged, if the offended party, whoever represents that party or the person entitled to file a complaint or private prosecution on his or her behalf, accepts them as reasonable.

2. The court may also release the perpetrator without punishment if the offence has been caused by the unlawful or reprehensible conduct of the offended party.

3. If the offended party reciprocates, in the same act, with an offence in response to another offence, the court may release both parties or only one of them without punishment, depending on the circumstances."

Article 187
Offence to a body, service or a legal person

"1. Anyone who, without holding a reasonable belief in good faith, makes, affirms or divulges untruthful statements capable of offending the credibility, prestige or confidence which are due to a body or service exercising public authority, or a legal person, institution or corporation, shall be sentenced to a term of imprisonment of not more than six months or to a day-fine of not more than 240 days.

2. The following shall be correspondingly applicable:

(a) Article 183; and

(b) paragraphs 1 and 2 of Article 186."

III. THE CODE OF CRIMINAL PROCEDURE

31. Article 449 of the Code of Criminal Procedure, entitled "Grounds for an application for review" reads as follows:

"1. A judgment which has become final may be reviewed on the following grounds:

...

(g) the conviction is irreconcilable with a judgment binding on the Portuguese State that has been delivered by an international authority, or such a judgment casts serious doubt on the validity of the conviction in question."

IV. DOMESTIC PRACTICE

32. Domestic case-law has clarified that Article 187 of the Criminal Code (see paragraph 30 above) is only applicable to the dissemination of false facts and not to value judgments (see the domestic judgments cited in *Pinto Pinheiro Marques v. Portugal*, no. 26671/09, § 22, 22 January 2015; see also *Freitas Rangel v. Portugal*, no. 78873/13, § 37, 11 January 2022).

V. THE CIVIL CODE

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

Article 70
General protection of personality

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

Article 483
General principle

"1. Anyone who, whether intentionally or negligently, unlawfully violates the right of another person or any legal provision intended to protect the interests of others shall compensate the injured party for any damage resulting from the violation.

2. There shall be no obligation to make redress in the absence of fault save in the cases specified by law."

Article 484
Offence against reputation

"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
Non-pecuniary damage

"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 ..."

VI. INTERNATIONAL MATERIALS

A. United Nations Human Rights Committee

34. In its General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights, adopted at its 102nd session (11-29 July 2011), the United Nations Human Rights Committee stated as follows:

"47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others."

B. Parliamentary Assembly of the Council of Europe

35. In its Recommendation 1814 (2007) "Towards decriminalisation of defamation", the Parliamentary Assembly of the Council of Europe stated, *inter alia*, as follows:

"1. The Parliamentary Assembly, referring to its Resolution 1577 (2007) entitled 'Towards decriminalisation of defamation', calls on the Committee of Ministers to urge all member states to review their defamation laws and, where necessary, make amendments in order to bring them into line with the case law of the European Court of Human Rights, with a view to removing any risk of abuse or unjustified prosecutions;

2. The Assembly urges the Committee of Ministers to instruct the competent intergovernmental committee, the Steering Committee on the Media and New Communication Services (CDMC) to prepare, following its considerable amount of work on this question and in the light of the Court's case law, a draft recommendation

to member states laying down detailed rules on defamation with a view to eradicating abusive recourse to criminal proceedings."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

36. The applicant complained that his conviction had been in breach of his right to freedom of expression, as provided for in Article 10 of the Convention, which, in so far as relevant, 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. ...
>
> 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

37. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

38. The applicant submitted that his conviction had amounted to an interference with his right to freedom of expression that had been neither prescribed by law within the meaning of Article 10 of the Convention, nor necessary in a democratic society. In particular, he alleged that Articles 180 and 187 of the Criminal Code (see paragraph 30 above) did not constitute a sufficient legal basis for the interference, referring in that connection to the Court's case-law, in particular the judgment in *Pinto Pinheiro Marques v. Portugal* (no. 26671/09, 22 January 2015).

39. He argued that his statements had related to a matter of public interest and that they had been broadcast by a television channel in the exercise of the right to impart information. He observed that he could not have called his lawyer during the television show to obtain advice regarding the consequences of his statements.

40. Lastly, the applicant contended that both the aggregate penalty and the amount of compensation awarded had been excessive and disproportionate, adding that this had had a chilling effect on the exercise of freedom of expression.

(b) The Government

41. The Government acknowledged that there had been an interference with the applicant's exercise of his right to freedom of expression. They explained that the interference had been based on the provisions of the Criminal Code (see paragraph 30 above). In their view, the Court's findings in *Pinto Pinheiro Marques* (cited above), on which the applicant had relied (see paragraph 38 above), were not applicable in the present case. Therefore, they submitted that the interference had been "prescribed by law".

42. The Government further submitted that the interference had pursued the legitimate aim under Article 10 § 2 of the Convention of "the protection of the ... rights of others".

43. The Government asserted that the applicant had been convicted after making insulting factual allegations which had been proved false, and which he had been shown to have known were false. They conceded that the construction of the paediatric wing of São João Hospital was a matter of public interest. Nevertheless, in their view, the applicant had decided to breach his duties and responsibilities as a television commentator by making false statements. In addition, they took the view that even though politicians had to display a greater degree of tolerance, P.R. had not been acting in his capacity as a politician at the material time.

44. As to the proportionality of the sanctions imposed on the applicant, the Government submitted that they were not excessive given the applicant's malicious intent, the seriousness of the statements and the means of communication used for their dissemination, or in terms of producing a chilling effect.

45. The Government concluded that the interference with the applicant's exercise of his right to freedom of expression had been "necessary in a democratic society" to ensure the protection of the reputation 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

46. The parties did not dispute that the judgment of the Court of Appeal convicting the applicant of causing offence to a legal person, namely the law firm C., and aggravated defamation of P.R. and ordering him to pay an aggregate fine of EUR 7,000 and a total amount of EUR 15,000 for non-pecuniary damage for infringing their right to their reputation had amounted to an "interference" with the exercise of the applicant's freedom of

expression (see paragraphs 23, 38 and 41 above). The Court sees no reason to hold otherwise.

47. It remains to ascertain whether the interference was prescribed by law, pursued one or more of the legitimate aims referred to in Article 10 § 2 of the Convention and was "necessary in a democratic society".

(b) "Prescribed by law"

48. The parties disagreed as to whether the interference was prescribed by law (see paragraphs 38 and 41 above).

(i) General principles

49. The Court reiterates that the meaning of the phrase "prescribed by law" in Article 10 § 2 of the Convention entails a requirement of foreseeability. A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needs to be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action could entail (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 131, ECHR 2015 (extracts)).

50. Regarding criminal provisions, the Court has stated that the expression "prescribed by law" not only requires that the disputed measure should have some basis in domestic law, but also refers to the accessibility and quality of the law in question (see *Pinto Pinheiro Marques*, cited above, § 33).

51. Nevertheless, whilst certainty is desirable, it may bring excessive rigidity, and the law must be able to keep pace with changing circumstances (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV). Therefore, even in cases in which the interference with the applicants' right to freedom of expression had taken the form of a criminal "penalty", the Court has recognised the impossibility of attaining absolute precision in the framing of laws, especially in fields in which the situation changes according to the prevailing views of society, and has accepted that the need to avoid rigidity and keep pace with changing circumstances means that many laws are couched in terms which are to some extent vague and whose interpretation and application are questions of practice (see *Perinçek*, cited above, § 133).

52. The Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless their interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining the effects of that interpretation and its compatibility with the

Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018, and *Cangi v. Turkey*, no. 24973/15, § 42, 29 January 2019).

(ii) Application of those principles to the present case

53. In the present case, the Court notes at the outset that, regarding the applicant's conviction for causing offence to a legal person, contrary to Article 187 of the Criminal Code (see paragraph 30 above), the domestic courts considered the disputed statements about the law firm C. (see paragraph 8 above) to be statements of fact rather than value judgments (see paragraphs 17 and 24-25 above). They further found that those allegations were untrue and had affected the prestige of the law firm C.

54. The Court observes that this distinction is particularly relevant since the domestic case-law has treated Article 187 of the Criminal Code (see paragraph 30 above) as applicable only to the dissemination of false facts and not to value judgments (see paragraph 32 above).

55. In respect of the conviction for aggravated defamation of P.R., it has not been disputed that the interference with the applicant's right to respect for his freedom of expression was "prescribed by law" within the meaning of Article 10 § 2 of the Convention and the Court sees no reason to rule otherwise.

56. In so far as the statements made against the law firm C. were concerned, the applicant was convicted for showing his discontent with the terms of the MoU drafted by that law firm, in the context of the project for the construction of the paediatric wing of the São João Hospital, financed by the association J., of which he was the president. More specifically, the applicant was convicted for having suggested that there had been political influence over the way the document was drafted (see paragraphs 13 and 25-26 above). Even though the accusations in issue may be considered as serious and the tone of the remarks may seem unfortunate, the Court observes that the specific context in which they were made and the public interest involved could also be circumstances to be taken into account (see paragraphs 73 and 76 below), thus the disputed statements could also be seen as the expression of an opinion, and therefore as value judgments (compare *Pinto Pinheiro Marques*, cited above, § 34).

57. In the Court's view, the consideration of those relevant factors could legitimately lead to the question of whether Article 187 of the Criminal Code could be considered a sufficient legal basis for the applicant's conviction and consequently whether the interference in issue, namely the applicant's conviction for causing offence to a legal person, the law firm C., was "prescribed by law" (compare *Pinto Pinheiro Marques*, cited above, §§ 36-38). However, in the circumstances of the present case, and having regard to its findings below on the necessity question (see paragraphs 73-93 below), the Court considers that it is not required to reach a final conclusion

on the "lawfulness" issue (see, *mutatis mutandis*, *Ürper and Others v. Turkey*, nos. 14526/07 and 8 others, § 29, 20 October 2009).

(c) Legitimate aim

58. The Court finds at the outset that, in the present case, the impact of the impugned expression on reputation attained the requisite level of seriousness (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017).

59. The Court points out in this connection that the issue of whether a legal entity can enjoy the right to reputation (including the scope of such right) is debatable. However, in this case, it is prepared to assume that this aim can be relied on (see, *Freitas Rangel v. Portugal*, no. 78873/13, § 48, 11 January 2022 and the reference therein).

60. It further notes that the judgments of the domestic courts show that the interference was intended to protect the law firm C. and the individual rights of P.R. against insult and defamation (see paragraphs 19 and 26 above). Thus, they had the legitimate aim of protecting "the reputation or rights of others" within the meaning of Article 10 § 2 of the Convention, specifically the prestige, reputation and honour of P.R., as enshrined in Article 8 of the Convention.

61. It remains to be ascertained whether the interference was "necessary in a democratic society".

(d) "Necessary in a democratic society"

(i) General principles

62. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV; *Lindon, Otchakovsky-Laurens and July*, cited above, § 45; and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 78, 7 February 2012).

63. 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 in, among

other cases, *Bédat v. Switzerland* ([GC], no. 56925/08, §§ 48-54, 29 March 2016), and *Magyar Jeti Zrt v. Hungary* (no. 11257/16, §§ 63-68, 4 December 2018).

64. The Court reiterates that, under Article 10 of the Convention, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent an interference with the freedom of expression guaranteed under that provision is necessary (see, for example, *Axel Springer AG*, cited above, § 85).

65. However, under Article 10 § 2 of the Convention, there is little scope for restrictions on political speech or on debate on matters of public interest. Accordingly, a high level of protection of freedom of expression, with the authorities thus having a narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest (see *Freitas Rangel*, cited above, § 50, and the authority cited therein).

66. 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 statement or under Article 10 of the Convention by the person making that statement, because these two rights deserve, in principle, equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases (see, among many other authorities, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 91, ECHR 2015; *Axel Springer AG*, cited above, § 87; and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 106, ECHR 2012, and the cases cited therein).

67. Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Von Hannover (no. 2)*, cited above, § 107; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 57, ECHR 2011; *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; and *Haldimann and Others v. Switzerland*, no. 21830/09, §§ 54-55, ECHR 2015).

68. The Court has already identified a number of criteria in the context of balancing competing rights. The relevant criteria thus defined include: 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; and the form and consequences of the publication. Where it examines an application lodged under Article 10, the Court will also examine the gravity of the penalty imposed (see *Couderc and Hachette Filipacchi Associés*, cited above, § 93; *Axel Springer AG*, cited above, §§ 89-95; and

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], no. 931/13, § 165, 27 June 2017).

69. It may sometimes be difficult to distinguish between assertions of fact and value judgments, particularly where, as in the instant case, allegations are made about the reasons for a third party's conduct (see *Axel Springer AG v. Germany (no. 2)*, no. 48311/10, § 63, 10 July 2014, and the authorities cited therein).

70. The classification of a statement as a fact or as a value judgment is a matter which falls primarily within the margin of appreciation of the national authorities (see *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, § 46, 3 December 2013). The Court may, however, consider it necessary to make its own assessment of the disputed statements (see *Egill Einarsson v. Iceland*, no. 24703/15, § 48, 7 November 2017).

71. The Court reiterates that while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof (see *McVicar v. the United Kingdom*, no. 46311/99, § 83, ECHR 2002-III). Nevertheless, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

72. In order to distinguish between a factual allegation and a value judgment, it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Freitas Rangel*, cited above, § 51, and the cases cited therein).

(ii) Application of those principles to the present case

(α) Contribution to a debate of public interest

73. In the present case, the Court notes that the matter in question concerned the construction project for the paediatric wing of São João Hospital in Porto (see paragraphs 7-8 above), that is, facts concerning a public hospital and in particular the conditions provided for sick children – a subject that the Court considers to be of general interest. It is reasonable to believe that the public does have an interest in being informed about developments regarding such a building and any obstacles placed in the way of its construction. The criterion of contribution to a debate of general interest, is therefore fulfilled (see *Couderc and Hachette Filipacchi Associés*, cited above, § 103), with the authorities having a narrow margin of appreciation (see the case-law cited in paragraph 65 above).

(β) How well known the person affected was

74. As to how well known the person affected was, the Court considers that it is, in principle, primarily for the domestic courts to assess that issue, especially where that person is mainly known at national level (compare *Axel Springer AG*, cited above, § 98).

75. In the present case, the first-instance court established detailed facts showing that P.R. was very well known in the academic domain as a professor of law, researcher and essayist, and also as a politician, and in addition it referred to other positions he held in associations with high public visibility and to awards he had won (see paragraphs 6 and 19 above). As to the law firm C., the domestic courts characterised it as a very well renowned law firm (see paragraph 14 above).

(γ) The subject of the comments on the daily news programme

76. Regarding the subject of the statements made by the applicant, the Court reiterates that the matter in question was the project for the construction of the paediatric wing of São João Hospital in Porto (see paragraph 73 above). Furthermore, it appears that the applicant made the disputed statements while giving his opinion on the MoU and the reasons that had caused the halting of the construction of that facility, implying that the legal opinion provided to the public hospital by the law firm C., of which P.R. was the director, was motivated by political interests.

(δ) The prior conduct of the person concerned

77. As to the conduct of the persons concerned before the disputed statements were made, there is nothing in the case file to suggest that the law firm C. or P.R. had made the relevant legal document public or made public statements about the matter, and the Court finds their conduct in this regard to be compatible with their professional duty of secrecy (contrast, *mutatis mutandis*, *Axel Springer AG*, cited above, § 101, and *McCann and Healy v. Portugal*, no. 57195/17, § 88, 20 September 2022).

78**.** Nevertheless, P.R. can be regarded as a public figure (see paragraphs 6 and 19 above) who had voluntarily exposed himself to public scrutiny by virtue of his role in society and more significantly in the political sphere and who was therefore required to display a higher level of tolerance than would be expected of non-public figures (see *Oberschlick v. Austria (no. 2)*, no. 20834/92, § 29, 1 July 1997).

(ε) The content and method of obtaining the information and its veracity

79. For the characterisation of the disputed statements, the Court refers to its findings in paragraph 56 above, regarding the law firm C.

80. Regarding the disputed statements against P.R., the Matosinhos Criminal Court found that they amounted to a combination of facts and value

judgments but that they were mostly opinions, which cannot be true or false (see paragraph 21 above).

81. The Court of Appeal agreed that some of the disputed statements were value judgments, but emphasised that other assertions contained statements of fact only, including "internal facts" (see paragraphs 25 and 26 above).

82. The Court observes that the statements made by the applicant contained serious accusations against P.R., suggesting that the terms of the MoU had been influenced by his political ambitions and thus attributing responsibility to him for the halting of the construction work on the paediatric wing of the hospital. In the Court's view, these statements, as well as those concerning the law firm C. (see paragraphs 8 and 56 above), consisted of personal opinions**.**

83. Furthermore, regarding the Court of Appeal's considerations about the statements characterised as "internal facts" (see paragraph 26 above), the Court reiterates that an assumption as to the reasons and possible intentions of others is a value judgment, not a statement of fact that would lend itself to proof (see *a/s Diena and Ozoliņš v. Latvia*, no. 16657/03, § 81, 12 July 2007; *Ungváry and Irodalom Kft*, cited above, § 52; and *Axel Springer AG (no. 2)*, cited above, § 63).

84. The Court finds, however, that the statements made by the applicant must be understood within the specific context in which they were made. Even though the domestic courts did not examine them as value judgments, they can be understood as going beyond the specific allegation and as forming part of a broader critique regarding undue links between politics and public administration, which is a subject of public interest (see paragraph 73 above; compare *Freitas Rangel*, cited above, §§ 57-58).

(στ) The form and consequences of the publication

85. The potential impact of the means of communication concerned is an important factor and it is commonly acknowledged that audiovisual media often have a much more immediate and powerful effect than print media (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 134, ECHR 2015). In the present case the applicant's statements were made on a daily news programme broadcast by the private television channel Porto Canal. The statements reached an audience of more than 9,500 television viewers, in addition to anyone who listened to subsequent comments or conversations: at the date of the Matosinhos Criminal Court's judgment (12 June 2018), the interview was still available online and has had more than 2,000 views and has been reproduced in blogs (see paragraphs 5, 8 and 15 above). However, in view of the size of the city of Porto, the Court does not find that the reach of the statements was significant.

(ζ) The nature and severity of the sanctions imposed

86. Turning to the assessment of the nature and severity of the sanctions imposed on the applicant, the Court notes that he was convicted of causing offence to a legal person and aggravated defamation and sentenced to an aggregate fine of EUR 7,000 (see paragraph 23 above).

87. The Court reiterates that the fact that a person has been convicted may in some cases be more important than the penalty imposed, irrespective of its severity (see *Bédat,* cited above, § 79; *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 36, 28 September 2000; *Standard Verlags GmbH and Krawagna-Pfeifer v. Austria*, no. 19710/02, § 59, 2 November 2006; and *Milisavljević v. Serbia*, no. 50123/06, § 41, 4 April 2017). In particular, 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 (see *Morice v. France* [GC], no. 29369/10, § 176, ECHR 2015; *Monica Macovei v. Romania*, no. 53028/14, § 96, 28 July 2020; and *Anatoliy Yeremenko v. Ukraine*, no. 22287/08, § 107, 15 September 2022).

88. In the present case, the mere conviction of the applicant appears to be manifestly disproportionate, especially given that Articles 70, 484 and 496 of the Civil Code (see paragraph 33 above) provide for a specific remedy in respect of damage to honour and reputation (see, *mutatis mutandis*, *Amorim Giestas and Jesus Costa Bordalo v. Portugal*, no. 37840/10, § 36, 3 April 2014).

89. In addition, the Court reiterates that, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 77, 17 January 2017, and the cases cited therein). In this connection, the applicant was ordered to pay EUR 5,000 to the law firm C. and EUR 10,000 to P.R. for non-pecuniary damage (see paragraph 23 above), which amounts appear 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 as described in paragraph 15 above. In fact, while it is not possible to conclude that no harm at all was done to the reputation and honour of the law firm C. and of P.R., the Court finds 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 (see paragraph 20 above).

90. It follows that 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 the freedom of expression.

(iii) Conclusion

91. In view of the foregoing considerations, the Court finds 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.

92. The Court therefore considers that the interference with the applicant's right to freedom of expression was not supported by relevant and sufficient reasons (*see*, *mutatis mutandis*, *Freitas Rangel*, cited above, § 62, and contrast *Pais Pires de Lima v. Portugal*, no. 70465/12, § 65, 12 February 2019). In particular, the Court finds 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 the applicant's right to freedom of expression. The domestic courts therefore exceeded the margin of appreciation afforded to them regarding limitations on debates of public interest, and there was no reasonable relationship of proportionality between, on the one hand, the restriction of the applicant's right to freedom of expression and, on the other hand, the legitimate aim pursued (see, *mutatis mutandis*, *Bozhkov v. Bulgaria*, no. 3316/04, § 55, 19 April 2011; *Pais Pires de Lima*, cited above, §§ 66-67; and *SIC – Sociedade Independente de Comunicação v. Portugal*, no. 29856/13, § 69, 27 July 2021; see also, by contrast, *Stângu and Scutelnicu v. Romania*, no. 53899/00, § 56, 31 January 2006).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed 21,694 euros (EUR) in respect of pecuniary damage, representing the aggregate fine and the amount he had been ordered to pay the law firm C. and P.R. at domestic level, and EUR 60,000 in respect of non-pecuniary damage. The applicant also claimed EUR 1,059 in respect of costs paid to the opposing party (*custas de parte*) under this head.

96. The Government partially contested the claim in respect of pecuniary damage, noting the insufficiency of the documents provided by the applicant to support his claims. They also contested the claim regarding non-pecuniary damage. In their view, the payment of compensation in such an amount would be excessive when compared with similar cases.

97. Regarding pecuniary damage, the Court observes that under Article 449 (g) of the Code of Criminal Procedure (see paragraph 31 above), an applicant may seek the reopening of criminal proceedings in respect of which the Court has found a violation of the Convention (see, *mutatis mutandis* and in respect of the possibility of reopening civil proceedings, *SIC – Sociedade Independente de Comunicação*, cited above, § 75). The Court therefore considers that the most appropriate form of redress would be the reopening of the criminal proceedings at the applicant's request. Since the domestic law allows that solution, the Court is of the opinion that the applicant's claim under this head must be rejected.

98. Turning to non-pecuniary damage, having regard to the particular circumstances of the present case, including the severity of the sanctions imposed on the applicant, the Court considers that the applicant suffered non-pecuniary damage as a result of the violation of Article 10 of the Convention (compare *Alves da Silva v. Portugal*, no. 41665/07, § 40, 20 October 2009). Ruling on an equitable basis, it awards EUR 10,000 under this head.

99. As to the amount claimed under this head in respect of the costs paid to the opposing party (see paragraph 95 above), the Court finds it more appropriate to analyse this claim under the head of costs and expenses.

B. Costs and expenses

100. The applicant sought EUR 22,788.54 for the costs and expenses incurred before the domestic courts.

101. In addition, the applicant sought EUR 18,924 in respect of the costs of the proceedings before the Court.

102. The Government submitted that the amount claimed in respect of the applicant's initial lawyer's fees at domestic level should not be taken into account in view of the fact that it had not been paid by the applicant but rather by one of the companies he directed (see paragraph 16 above) and that the receipts submitted by the applicant were for different amounts from those claimed. The Government also noted that the last document filed, in the amount of EUR 1,000, did not correspond to any of the claims. In addition, they pointed out that that document did not identify the payer. As to the applicant's claim in respect of his current lawyer's fees, the Government noted that the applicant would only have to pay them when the proceedings before the Court were over.

103. 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 were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is

enforceable in the respective jurisdiction (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI, and *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-71, 28 November 2017).

104. As regards the costs and expenses incurred in the domestic proceedings, taking into account the fact that the applicant will be able to have those costs or at least part of them reimbursed should the criminal proceedings be reopened at his request under Article 449 (g) of the Code of Criminal Procedure (see paragraph 31 above), the Court considers that there is no call to award him any sum under this head (compare *SIC – Sociedade Independente de Comunicação*, cited above, § 79).

105. As to the amount of EUR 18,924 claimed in respect of the costs of the proceedings before the Court (see paragraph 101 above), regard being had to the documents submitted by the applicant describing the tasks performed by his lawyer and the amount of time spent plus information about the hourly rate, the Court finds that the amount claimed appears to be excessive, having regard to the current economic circumstances and examples from its case-law. Similarly, it finds that the number of hours claimed for certain tasks appears to be inflated in view of the nature of the complaint brought by the applicant under Article 10 of the Convention and the recurrent use of verbatim copies of passages from the Court's case-law (see, *mutatis mutandis*, *Karácsony and Others*, cited above, § 190, and *Marcinkevičius v. Lithuania*, no. 24919/20, § 103, 15 November 2022).

106. The Court, having regard to the above considerations and the information in its possession, considers it reasonable to award the applicant EUR 5,000 for the costs and expenses incurred before it, plus any tax that may be chargeable to the applicant (see*, mutatis mutandis*, *SIC – Sociedade Independente de Comunicação*, cited above, § 79).

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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, 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 amounts 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 claim for just satisfaction.

Done in English, and notified in writing on 19 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President