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TRANSLATORS NOTES

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It means that the sentence is definitive, no appeal is possible.

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Was the Ward of Court question an issue ? Here is a time-line, if not an explanation :

- April 2, 2008 : Madeleine MC is made a WOC, i.e is placed by the court in the care of a guardian, Mrs Justice Hogg.

- July 16, 2010, Mrs Justice Hogg concedes to the McCanns an authorization to join* their daughter Madeleine in the lawsuit against Gonçalo Amaral *et al* (after consulting a letter dated July 15, 2010 from IFLG solicitor of the MCs, Ann Thomas). This would have been expected to be done the year before (June 2009) when the McCann family raised an injunction concerning the book *Maddie - a Verdade da Mentira* and the DVD.

* The authorization isn't to "represent" their daughter (perhaps this word only applies to a lawyer).

- Maio 4, 2012 : the July 16, 2010 document is copied and signed by Mrs Justice Hogg. Why ? Had it lost its validity since it finally wasn't used (not joined to the case) ?

- March 21, 2014 : judgement in the High Court, the McCann claimants are represented by IFLG Jenny Green.

How is this judgement articulated with the defence's diligences to provide the judge with a WOC certificate ?

The word "WOC" doesn't appear anywhere and the parents seem to detain all the parental responsibility.

- May 10, 2014: decision by the judge Maria Emilia Melo e Castro, likely after she received the WOC certificate (but this certificate seems to have

been issued a month later, in June 16)

The sentence mentions that GA was condemned. What for ?

- June 16, 2014 : document on the judgement of March 21, 2014 concerning the parental responsibility of the MC, signed by Mrs Justice Hogg.

- January 23, 2015 : letter of the claimants' lawyer to the judge referring to the decision of May 10, 2014 and asking to join to the autos the July 16, 2010 document.

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The "saneador tabelar" dispatch warrants formally that the plea is free from vices and irregularities and in condition to proceed. Being "generic", it usefully means that nothing will forbid some irregularity to be detected afterwards

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The *truth's exception* allows the defendant to have the case shelved if the proof that the reported facts are accurate can be brought.

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This sentence isn't syntactically correct : "this particular aspect... is the subject of no verb, hence (are aspects) should be erased

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In fact it is the article 19.

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in "comparing it", the pronoun "it" translates the feminine pronoun which can only, syntactically, refer to "intention", obviously a typo, since what is confronted is the shelving of the investigation.

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Art 26-1 - To every person are recognized the rights to personal identity, personality development, civil capacity, citizenship, good name and reputation, image, speech, privacy of private and family life and legal protection against all forms of discrimination.

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Actually this ruling's date is February 19, 2002. Summary :

- Journalists are required, as a basic ethical rule, to confrontate versions and opinions, to test and confirm the truthfulness of the news, using reliable, diversified and checked sources.

- The concept of integrity and credibility of the source and of the information is translated into a concept or value judgment about the source, in that it encloses a legal rating, compared in accordance with criteria established (...) on ethical principles contained in Code of Ethics of Journalists.
- In the exercise of its public function (right and duty of information), it is required from the press not to publish accusations that affect the honour of individuals, knowing that they are inaccurate or when it has not been possible to find out sufficiently.

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Summary:

- The rights to information and free expression suffer restrictions that are necessary for the coexistence, in a democratic society, of other rights such as honour and reputation of individuals.
- Must be sought, above all, the "practical concordance" of these rights, of information and free expression on the one hand, and of moral integrity and good name and reputation on the other, through the indispensable sacrifice of both.
- In the last term, the recognition of human dignity as supreme value of the democratic constitutional order requires that the collision of these rights should, in principle, be solved by the prevalence of the personality rights (article 332-2 of the CC), this just not happening when, in particular, compete circumstances that may, in the light of relevant public interest, justify the appropriateness of opposite solution.
- If there is genuine public interest for the community to be informed of certain matters, the duty of disclosure outweighs the discretion imposed by personal interests.
- Always, however, will be required respect for a principle, not just of truth, necessity and appropriateness, but also of proportionality (or reasonability).

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Smolorz vs Poland.

The ECHR's judgement, dated 16 October 2012 and turned definitive on January 2013, is only available in

French.

<http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?i=001-114071>

The case is one of violation of freedom of expression. The claimant is a journalist

He wrote in 2004 an article mocking architects of his town, Katowice, who are convinced their creations are great and make people happy.

He reacted particularly to one, JJ, who considered that his reputation had been damaged, requested excuses and money to pay to a caritative association.

The case went to court. The Polish court condemned Smolorz to pay JJ's court fees and publish apologies in his own newspaper.

Smolorz appealed, arguing his article was part of a public debate to which his opponent even participated and that forcing him to apology was denying him the right to criticize activities that were part of the public area.

The appeal court rejected the journalist's claim for not having proved that JJ contributed to the ugliness of the city.

Smolorz went to the Supreme court, but his claim was dismissed. The ECHR considered that the claim was acceptable. Then the ECHR's judges considered that there had been violation of the art. 10. but rejected Smolorz's claim about elements of evidence that the Polish Court hadn't accepted and the rejection of the Supreme court to examine the case without previous hearing (invoking the art. 6 of the Convention).

Smolors demanded 10.000 € for moral prejudice and 310 € for expenses, the ECHR granted him 2.000 € and 310 €.

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The ECHR judgement on Thoma vs Luxembourg, dated March 29, 2001 and definitive on June 29, 2001, exists in English

<http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?i=001-59363>

The claimant, Marc Thoma, alleged that his freedom of expression had been violated. His request was partially accepted by the ECHR. At the

time of the conflict, as a journalist, he criticized the behaviour of a public agent in a case of reforestation (he allegedly had taken a financial advantage). He was sued for defamation by the association of forests and waters administration's public agents. The court found that his evidence wasn't sufficient. Thoma appealed, but the court condemned him to pay 1 symbolic euro to the claimants. The Supreme court confirmed.

The ECHR judges weren't convinced that the interference of the administration in the claimant's exercise of his right to freedom of expression was "necessary in a democratic society" (cf. Art 10-2) and considered art 10 had been broken.

The claimant was awarded the 18.380 € for material damage that he requested, but the moral damage was dismissed since his cause had finally been heard. He was granted 14.875 € for costs and expenses.

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Judgment in September 12, 2011 of Palomo Sanchez et al vs Spain - An English version exists

<http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?i=001-106178>

Six delivery men of Barcelone had been dismissed by their company, they argued reprisal for belonging to a trade union and due to allegedly offensive content in the union's newsletter of March 2002. They were accused of serious misconduct, namely for impugning the reputations of 3 employees of the company in cartoons and 2 articles. The applicants challenged the dismissal decision before the Employment Tribunal which dismissed their claims. The applicants appealed but the High Court of Justice of Catalonia upheld the judgment. The judges considered that freedom of expression had gone beyond the right to criticise and impugned the respectability of the persons concerned. The applicants lodged an appeal with the Constitutional Court, but it was found inadmissible for lack of constitutional content.

The applicants solicited the ECHR, relying on art 10 and 11 of the Convention to state that the cartoons and articles were within the limits of what art 10 tolerates, being more joke than intent to insult. The (ordinary) Chamber considered that there had been no violation of Art 10 and that no separate question arose under Art 11.

art 11 : 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic

society ... for the protection of health or morals or for the protection of the rights and freedoms of others.

The claimants appealed, requesting the referral to the Grand Chamber which found that the respondent State has not failed under Art 10 in the light of Art 11.

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Article 484 - Who affirms or spreads a fact capable of harming the credit or good name of any individual or collective person, is liable for damages.

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Article 483-1 - Any person who, intentionally or recklessly, unlawfully violates the rights of others or any legal provision intended to protect foreign interests is obliged to compensate the injured party for damages resulting from the breach .

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In the absence of other legal criteria, guilt is judged through the diligence of a good citizen, given the circumstances of each case.

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Art 483-1 and 496-1 of the Civil Code should be interpreted in order to cover particularly serious personal injuries for surviving victim of spouse harmed in a particularly serious way.

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/7>

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The amount of compensation is fixed equitably by the court, taking into account , in any case , the circumstances referred to in Article 494 ; in case of death , they can be met not only the injuries suffered by the victim, as suffered by persons entitled to compensation pursuant to the preceding paragraphs.

Art 494 : Where liability is based on mere guilt, the compensation can be fixed, equitably, in an amount less than that would correspond to the damage, since the degree of culpability of the agent, their economic position and the one of the injured and other circumstances of the case require it.

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As such rights (right to good name and reputation and right to freedom of expression) are not absolute (as is clearly instilled in Art 18-2,3 of the Constitution and Art 8-2 and 10-2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) nor is any hierarchy established, the latent conflict between them is an issue, which is resolved according to casuistic standards and, often, with different solutions from jurisdiction to jurisdiction or even within the same jurisdiction.

In the European judicial area, due to its linkage to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has come to look into such issues, developing a jurisprudence which already ensures a minimum uniformity in the treatment and resolution of this problem, and where we can find basic guidelines for addressing the concrete situations that are being put to the discretion of courts.

According to this jurisprudence:

1) Freedom of expression, as enshrined in article 10 of the Convention, is one of the essential foundations of a democratic society based on pluralism, tolerance and open-mindedness, and is one of the basic

conditions for the progress of society and for personal fulfilment of each one of its members.

2) It can establish itself as a major means of ensuring the effective enjoyment of other fundamental freedoms, including freedom of assembly and association.

3) It applies not only to what is seen as favourable or inoffensive, but also to what offends, shocks or disturbs.

4) It applies also in the field of labor relations, public and private, but should be public whistleblowing should be preceded, unless impracticable, by internal reporting.

5) Freedom of expression guarantee in relation to the media is of particular importance given the latter's role in a democratic society, where are required pluralism of ideas, information circulation and public scrutiny.

6) The exercise of freedom of expression, however, implies duties, namely respect for the values and rights provided for in art 10-2 of the Convention, and responsibilities, particularly in the case of claims without factual foundation or uttered in bad faith.

7) However, in the discussion of matters of public interest the possibility of restricting freedom of expression is very limited.

8) It is necessary to distinguish between imputation of facts and value judgments, since the facts are able to be demonstrated whereas the validity of value judgments is not susceptible of proof, being sufficient the existence of adequate factual basis.

9) A clear distinction should be made between criticism and insult, the latter in principle justifying sanctions.

10) It is general economic interest and particular interest of the capital owners and of workers that companies can defend (and be respected) its commercial reputation and its viability. This interest, however, is devoid of own moral dimension of individual reputation.

11) Freedom of speech, when exercised in good faith and on matters of public interest, does not cease to be legitimate involving false facts or causing damage.

12) The State, in addition to the obligation not to interfere with the exercise of this freedom also has a positive obligation to protect freedom of expression against the interference of individuals (eg through the use of disciplinary powers).

13) According to the Convention art 10-2, the restrictions on freedom of expression are of strict character, requiring prove convincingly justified, and having to fill fundamental requirements: be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.

14) The legal provision limiting freedom of expression must be clear and precise in order to allow the individual to foresee the consequences of their actions, and regular for predicting their behaviour.

- 15) In order to be considered necessary in a democratic society the interference must correspond to a pressing social need.
- 16) Politicians, public figures and senior officials of government acting as such are subject to wider limits of acceptable criticism than private.
- 17) Is justified, however, the limitation of freedom of expression in defence of privacy of third parties, even public figures, when the exercise of this is motivated by mere intention of sensationalism or mere satisfaction of curiosity.
- 18) The proportionality of the interference with respect to a value judgment depends on the existence of a sufficient factual basis for such a judgment.
- 19) the nature and severity of the sanction and the relevance and sufficiency of the reasons for the decisions of national courts are of particular relevance to assess the proportionality of the interference, whose appraisal belongs ultimately, and despite the margin of appreciation that belongs to each of the States, to the European judge.
- 20) The sanctions may not be of such severity that they have the effect of deterring (particularly the press) to take part in the discussion of matters that rise the public interest or escape the democratic or judicial scrutiny, including when such participation is performed through artistic or satirical expression or as well through scientific research.
- 21) the rules of the political game and of the free exchange of ideas (particularly through the media) guarantors of a democratic society allow the involvement of the public debate recourse to a degree of exaggeration, even provocation, albeit with some immoderation and even sliding into the personal level.

<http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/5ec1817faa492ddd802579ac0050a27c?OpenDocument&Highlight=0,Rijo,Ferreira>

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- The February 7, 2008 Ruling of the Supreme Court of Justice first states
- In the field of thought, expression and information, the rule is freedom.
 - This basic idea of freedom includes, however, restrictions.
 - In the concrete border between this and these should be taken into account the art. 10 of the European Convention on Human Rights and, concomitantly, the interpretatio that makes the European Court of Human Rights must be upheld.

The March 12, 2009 Ruling of the Supreme Court of Justice states

In case of offense (or threat of it) to the human personality, the law admits, moreover, civil liability of the offending agent, if all the conditions of such liability, namely fault and checking the damage, the damage being the essential condition of responsibility, being no liability without damage.

The right to honor is one of the most important achievements of the protection of personality rights .

Being honor an immaterial achievement of personality, which translates into a claim or right of the individual not to be vilified in its value in the eyes of society and is a mode of free development of human dignity, a value to which the Constitution assigns the relevance of founding the Portuguese State.

Our Civil Code consecrated the thesis that moral damages are entitled to compensations, limiting them however, to those which by their seriousness, deserve the protection of law. This seriousness should be measured by a standard objective and not by subjective factors, although these resulting from the specific circumstances in which the offense occurred, temper it necessarily.

Freedom of the press, implying the corresponding freedom of expression and creativity for journalists, fully is part of the fundamental rights (Art 38 of the Portuguese Republic Constitution), stemming the limits to such freedom from the law - fundamental and ordinary - in order to safeguard the accuracy and objectivity of information and ensure the citizens' rights to reputation, privacy, image and speech.

It is the essential duty of the journalist to scrupulously respect the rigor and objectivity of the information, confirming facts, hearing the interested parties, the imputation of facts to someone without evidence constituting a serious fault in respect of their code of ethics.

The ECHR has firmed jurisprudencia, under art 10-2, concerning freedom of expression be valid not only for the information regarded as inoffensive or indifferent but also for those who contradict, shock or offend. However, the exercise of that freedom is subject to restrictions and sanctions. The ECHR itself recognizes to each State a margin of performance, respecting the internal institutions on honor and good name and, of course, art 484 of the CC (see note 14).

The press, in the exercise of public function, should not publish charges that affect the honor of persons and that they know are inaccurate,

having not been able to prove the inaccuracy or to get sufficient information on it.

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Quotation missing.

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<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/f56277e65afcc70180256f48005816cf?OpenDocument>

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<http://www.stj.pt/ficheiros/jurisp-sumarios/civel/sumarios-civel-2007.pdf>

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<http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/b38835785ddd48db8025709e0048af6f?OpenDocument>

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English version

<http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx?i=001-141197>

This is a case where art 6-2 of the Convention was at stake (*Everyone charge with a criminal offence shall be presumed innocent until proved guilty according to law.*)

A Turkish national, Z. Karaman, founder of the Turkish TV station Kanal 7 and director of a company that broadcasts to Germany, was investigated with co-suspects in 2006 by German authorities about the fraudulent use for their own benefit of funds donated to associations. On 11 March 2008 the preliminary criminal proceedings against the applicant were separated from the investigations against the co-suspects and in the middle of 2008 criminal investigations based on the same allegations of fraud were also initiated against the applicant in Turkey. On 6 December 2008 the applicant lodged a complaint with the Federal Constitutional Court, alleging under art 6-2 that references to his participation in a criminal offence in judgment rendered against separately prosecuted co-suspects violated his right to be presumed innocent. In September 2009 the Court dismissed the complaint. The Constitutional Court pointed out that the presumption of innocence did not protect the applicant ab initio from any factual impact of statements made in a judgment rendered in criminal proceedings against third persons with respect to his own involvement in the commission of the offence. That judgment did not constitute a decision that required the determination of the applicant's guilt or exposed him to disadvantages amounting to a conviction or sentence. ZK could not be regarded as guilty on the basis of that judgment and was still protected by the principle of the presumption of innocence. The fact that the establishment of the facts by the Regional Court not only concerned the accused, who were convicted at the end of the proceedings, but also the applicant was an inevitable consequence of the fact that in complex criminal proceedings it was hardly ever possible to conduct and terminate the proceedings against all the accused simultaneously.

On 20 August 2009 the Frankfurt am Main prosecution authorities brought charges against the applicant and three co-accused in connection with the events in issue. It further appears that on 9 April 2012 the Ankara General Prosecutor's Office brought similar charges against the applicant and that his trial in Turkey commenced on 16 January 2013.

The ECHR found nothing in the judgment of the Frankfurt am Main Regional Court that made it impossible for the applicant to have a fair

trial in the cases in which he was involved and dismissed the alleged violation of Convention art 6-2.

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English version

<http://hudoc.echr.coe.int/sites/fra/Pages/search.aspx?i=001-122859>

This is also a case where art 6-2 of the Convention was at stake.

A British lady, L. Allen, complained against a decision of justice, following her acquittal, to refuse her compensation for a miscarriage of justice, arguing that her right to be presumed innocent was thus violated.

LA was convicted on 7 September 2000 by a jury at Nottingham Crown Court of the manslaughter of her four-month old son (shaken baby syndrom) and sentenced to three years' imprisonment. She didn't appeal on time, but following a general review in which medical experts had been relied upon, she was granted an appeal. In July 2005, the Court quashed LA's conviction on the ground that it was unsafe. LA applied for compensation, but the Home Secretary replied that she didn't fulfil the statutory requirements because the medical evidence didn't disclose a new fact. LA challenged the decision but her claim was dismissed by the High Court in December 2007. LA appealed, but on 15 July 2008 the Court of Appeal (Civil Division) dismissed the claim. Then LA sought leave to appeal to the House of Lords but it was refused on 11 December 2008.

The ECHR was satisfied that the judgments of the High Court and the Court of Appeal in this case did not demonstrate a lack of respect for the presumption of innocence which LA enjoys in respect of the criminal charge of manslaughter of which she has been acquitted. Accordingly there had been no violation of Article 6-2 of the Convention.

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The general duties are a) The duty exemption, b) The duty of zeal, c) The duty of obedience, d) The duty of loyalty, e) The duty of

confidentiality, f) The duty of correction, g) The duty of attendance, h)
The duty of punctuality.

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It is not actually the article 12, but the article 13.

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idem, read 13-3