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Advocate General's Opinion in Case C-633/22 | Real Madrid Club de Fútbol

First Advocate General Szpunar: manifest breach of freedom of expression may constitute a ground for refusal of enforcement

According to the Advocate General, an order to pay damages the amount of which is manifestly unreasonable has a deterrent effect that affects both journalistic freedom and freedom of information

Almost 10 years ago, the newspaper *Le Monde* and one of its journalists were ordered in Spain to pay a penalty for the publication, in 2006, of an article claiming that there were links between the football club Real Madrid and Dr Fuentès, the head of a doping ring in the cycling world. Ruling that the article was defamatory and harmed the club's reputation, the Spanish courts ordered the newspaper company Société Éditrice du Monde to pay a fine of €390,000 and that company and its journalist, jointly and severally, to pay a fine of €33,000.

Real Madrid applied for enforcement of those Spanish judgments in France but, in 2020, the Paris Court of Appeal dismissed its application, having recourse to the public policy clause: according to that court, being ordered to pay that penalty has a deterrent effect on the involvement of journalists and media organisations in the public discussion of matters of community interest, thereby breaching freedom of the press and freedom of expression.

Hearing the case, the French Court of Cassation asks the Court of Justice whether, in the EU legal order, the freedom of the press guaranteed by the Charter of Fundamental Rights of the European Union (the Charter) constitutes a fundamental principle the breach of which can justify recourse to the public policy clause.

In his Opinion, First Advocate General Maciej Szpunar considers that a Member State in which enforcement of a judgment such as that at issue in the present case is sought **must refuse or revoke enforcement** where it would **give rise to a manifest breach of freedom of expression**.

With regard to an order relating to compensatory damages, the Advocate General is of the opinion that **the risk of a deterrent effect going beyond the situation of the person directly concerned justifies refusal of enforcement** in that it constitutes a manifest and disproportionate breach of freedom of the press in the Member State in question. In that regard, he states that the overall sum that a natural person is required to pay must be considered manifestly unreasonable where that person would have to struggle for years to pay it in full or where that sum is several dozen times the standard minimum salary in the Member State concerned. For a legal entity, the amount of damages which media companies are ordered to pay must not be such as to threaten their economic foundations.

According to the Advocate General, given its importance in a democratic society and a State governed by the rule of law, freedom of the press is an essential principle of the EU legal order the manifest breach of which may constitute a ground for refusal of enforcement. Recourse may be had to public policy only in exceptional cases. That is the case where a party has been ordered to pay compensatory damages and enforcement of the judgment is likely to have a deterrent effect on the exercise of that freedom in the Member State concerned.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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