

Anonymised version

Translation

C-633/22 – 1

Case C-633/22

Request for a preliminary ruling

Date lodged:

11 October 2022

Referring court:

Cour de cassation (France)

Date of the decision to refer:

28 September 2022

Appellants:

Real Madrid Club de Fútbol

AE

Respondents:

EE

Société Éditrice du Monde SA

[...]

**JUDGMENT OF THE COUR DE CASSATION, PREMIÈRE CHAMBRE
CIVILE (COURT OF CASSATION, FIRST CIVIL CHAMBER), OF 28
SEPTEMBER 2022**

I – Real Madrid Club de Fútbol, a company which has its registered office at [Avenida] Concha Espina 1, 28036 Madrid (Spain), brought an appeal [...] against a judgment delivered on 15 September 2020 by the cour d’appel de Paris (Court of Appeal, Paris, France) [...], in the proceedings between Real Madrid Club de Fútbol and:

1. Mr. EE, residing at [...] [France]

2. Société Éditrice du Monde, a public limited company, which has its registered office at 67-69 avenue Pierre Mendès France, 75013 Paris,

respondents in cassation.

II – Mr. AE, residing at [...] Madrid (Spain), brought an appeal [...] against a judgment delivered on 15 September 2020 by the Court of Appeal, Paris [...], in proceedings between Mr. AE and:

1. Société Éditrice du Monde,

2. Mr. EE,

respondents in cassation.

[...]

Joinder

1 [...].

Facts and procedure

- 2 According to the judgments under appeal (Paris, 15 September 2020, case numbers 18/09031 and 18/09180), on 7 December 2006, the digital edition of the newspaper Le Monde published an article, written by Mr. EE, a journalist employed by that newspaper, entitled ‘Le Real Madrid et le Barça liés au docteur Fuentès’ (‘Real Madrid and Barça linked to Dr Fuentès’). The following day, the article appeared in the print edition, accompanied by an interview with the doctor in question.
- 3 The newspaper claimed that Real Madrid Club de Fútbol had retained the services of Dr. Fuentès, the head of a blood-doping ring previously uncovered in the cycling world. An extract from the article appeared on the front page, along with a drawing captioned ‘Dopage: le football après le cyclisme’ (‘Doping: first cycling, now football’), depicting a cyclist dressed in the colours of the Spanish flag, surrounded by little footballers and syringes.
- 4 Many media outlets, Spanish media outlets in particular, shared the article.
- 5 On 23 December 2006, Le Monde published a letter of denial it had received from Real Madrid, but made no comment on it.
- 6 The club and a member of its medical team, Mr. AE, brought actions before the Spanish courts against the newspaper company Société Éditrice du Monde and Mr. EE, for harm done to their honour.

- 7 By a judgment of 27 February 2009, the Juzgado de Primera Instancia de Madrid (Court of First Instance, Madrid, Spain) No 19 ordered Société Éditrice du Monde and Mr. EE to pay EUR 300 000 to the club and EUR 30 000 to Mr. AE. The court also ordered that its decision be published on the inside pages of Le Monde and on the front page and given the same level of prominence as that used to publish the material at issue, in addition to publication in a Spanish newspaper.
- 8 By a judgment of 18 October 2010, the Audiencia Provincial de Madrid (Provincial Court, Madrid, Spain) upheld the financial orders but limited the publication requirement to the front page of the newspaper Le Monde and of the newspaper Marca, and no longer on the inside pages.
- 9 By judgment of 24 February 2014, the Tribunal Supremo (Supreme Court, Spain) dismissed the appeal.
- 10 By an order of 11 July 2014, the Court of First Instance, Madrid ordered the enforcement of the Supreme Court's decision and ordered Société Éditrice du Monde pay to Real Madrid the sum of EUR 390 000 by way of the principal amount, interest and costs.
- 11 On 9 October 2014, it ordered that the Supreme Court's decision be executed jointly and severally by Société Éditrice du Monde and Mr. EE for the amounts of EUR 33 000 by way of the principal amount, interest and costs. [...].
- 12 On 15 February 2018, the [...] Tribunal de grande instance de Paris (Regional Court, Paris, France) issued two declarations of enforceability, the first, at the request of Real Madrid, relating to the decision of 24 February 2014 and the order of 11 July 2014 and the second, at the request of Mr. AE, relating to that same decision of 24 February 2014 and to the order of 9 October 2014 [...].
- 13 By judgments of 15 September 2020, the Court of Appeal, Paris overturned those declarations and held that the Spanish decisions should not be enforced in France because they were clearly contrary to French international public policy.
- 14 The Court of Appeal found:
 - that the Spanish courts made their orders on the basis of [Article 9(3)] of the Basic Law on civil protection of the right to honour, and that Real Madrid had not suffered any financial loss, as was noted in the judgment of the Court of Appeal, Madrid, which was confirmed by the Spanish Supreme Court, as follows: 'given that the damage is generally associated with non-material damage, it is difficult to quantify it in economic terms';
 - that the only matter discussed before the Spanish court was the media impact of the article published on Le Monde's website, which was repeated but refuted by the Spanish media, while the Spanish courts themselves, including the Court of Appeal, Madrid, as confirmed by the Supreme Court, stated that 'none of them [the Spanish media organisations] endorsed the veracity of the story and indeed

they questioned it’, meaning that any damage arising from media impact had been limited by the denials made by local media organisations whose readership is primarily Spanish;

– that the orders to pay EUR 300 000 by way of principal amount and EUR 90 000 in interest were made against a private individual, being a professional journalist, and a newspaper publishing house whose accounts show that such an amount represented 50% of its net loss and 6% of its liquid assets as at 31 December 2017;

– that the orders to pay EUR 30 000 by way of principal amount and EUR 3 000 in interest to Mr. AE were in addition to the previous ones;

– that it is extremely rare for damages awarded for harm done to somebody’s honour or good name to exceed EUR 30 000 and that, under French law, the defamation of individuals is punishable only by a maximum fine of EUR 12 000.

- 15 The Court of Appeal concluded that the orders to pay an exceptional amount made against a journalist and a media organisation could not fail to have a deterrent effect on their involvement in the public discussion of matters of community interest such as to curtail the media’s ability to perform its information and monitoring role, meaning that the recognition or enforcement of the judgments pronouncing those penalties would be at variance to an unacceptable degree with French international public policy by interfering with freedom of expression.
- 16 Real Madrid and Mr. AE brought an appeal in cassation.

Statement of the ground of appeal

- 17 The appellants submit, in essence, that a review of the proportionality of damages may only be undertaken where those damages are punitive in nature and not compensatory; that, by substituting its own assessment of the harm for that of the court of origin, the Court of Appeal had reviewed the foreign judgment, in breach of Articles 34(1) and 36 of the Brussels I Regulation; that it did not take account of the seriousness of the wrongs accepted by the Spanish court; that the economic situation of persons on whom a financial penalty is imposed is not a relevant criterion in assessing whether the penalty was disproportionate; that the assessment of proportionality should not be carried out by reference to national standards.
- 18 Société Éditrice du Monde and Mr. EE reply, in essence, that the Court of Appeal did not review the substance of the Spanish judgments but correctly refused to recognise their enforceability due to the disproportionate nature of the penalties they imposed, which manifestly infringed freedom of expression and, therefore, international public policy.

Summary of applicable texts

EU law

- 19 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as Brussels I, provides, in Article 34:

‘A judgment shall not be recognised:

(1) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

...’

- 20 Article 36 provides:

‘Under no circumstances may a foreign judgment be reviewed as to its substance’.

- 21 Article 11 of the Charter of Fundamental Rights of the European Union provides:

‘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 freedom and pluralism of the media shall be respected.’

- 22 Article 17 provides:

‘1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.’

- 23 Article 47 provides:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.’

The Convention for the Protection of Human Rights and Fundamental Freedoms

24 Article 10 provides:

‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

Grounds justifying the reference for a preliminary ruling

25 According to the case-law of the Court of Justice (judgment of 28 March 2000, *Krombach* (C-7/98, EU:C:2000:164)):

‘36. By disallowing any review of a foreign judgment as to its substance, Article 29 and the third paragraph of Article 34 of the Convention prohibit the court of the State in which enforcement is sought from refusing to recognise or enforce that judgment solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of the dispute. Similarly, the court of the State in which enforcement is sought cannot review the accuracy of the findings of law or fact made by the court of the State of origin.

37. Recourse to the public-policy clause in Article 27, point 1, of the Convention can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.’

26 The Court added:

‘25. The Court has consistently held that fundamental rights form an integral part of the general principles of law whose observance the Court ensures (see, in particular, Opinion 2/94 [1996] ECR I-1759, paragraph 33). For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the ECHR”) has particular significance (see, inter alia, Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18).’

- 27 The European Court of Human Rights, in a judgment of the Grand Chamber, *Morice v. France*, of 23 April 2015 (No 29369/10), reiterated the general principles concerning the necessity of an interference with the right to freedom of expression. It stated (§ 125) that, ‘as regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest’.
- 28 The [same] court considered that a publication about sporting matters fell into the latter category (26 April 2007, No 11182/03 and 11319/03, *Colaco Mestre and SIC. Sociedade Independente de Comunicacao, S.A. v. Portugal*, § 28).
- 29 Lastly, the deterrent effect of an order to pay damages is a criterion in the assessment of the proportionality of such compensation for defamatory statements. As regards the freedom of expression of journalists, the European Court of Human Rights ensures that the amount of damages imposed on media organisations is not such as to threaten their economic foundations (*Blaja News Sp. z o. o. v. Poland*, 26 November 2013, No 59545/10, § 71; *Timput Info-Magazin and Anghel v. Moldova*, 27 November 2007, No 42864/05).

The questions referred for a preliminary ruling

- 30 The Court wonders whether Articles 34 and 36 of the [Brussels I] regulation and Article 11 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a financial penalty imposed for harm caused to the reputation of a sports club and of a member of its medical team by the publication of a story in a newspaper can manifestly infringe freedom of expression and therefore constitute a ground for refusing to recognise and enforce a judgment.
- 31 In the event of an affirmative answer, the Court wonders whether those provisions must be interpreted as meaning that the court in which enforcement is sought may find that the penalty is disproportionate only where the damages have been categorised as punitive by the court of origin and not where they have been awarded as compensation for non-material damage.
- 32 It wonders, given the prohibition on any review of the substance of the foreign judgment, what factors may be relied upon by the court in which enforcement is

sought when assessing whether the penalty is disproportionate. In particular, it wonders whether the provisions in question must be interpreted as meaning that the court in which enforcement is sought may take account only of the deterrent effect of the penalty in the light of the resources of the person on whom the penalty is imposed, or whether it may have regard to other factors such as the seriousness of the wrong or the extent of the harm.

- 33 It wonders whether the deterrent effect in the light of the resources of the newspaper can in itself form a ground for refusing to recognise and enforce a judgment due to a manifest infringement of the fundamental principle of freedom of the press.
- 34 It wonders whether the deterrent effect must be understood as meaning that the financial stability of the newspaper is threatened or whether it may simply refer to an intimidating effect.
- 35 It wonders whether the deterrent effect on the newspaper publishing house and on the journalist as an individual must be assessed in the same way.
- 36 Lastly, it wonders whether the general economic situation of the print media is a relevant factor when assessing whether, beyond the newspaper in question, the penalty is likely to have an intimidating effect on the media overall.

ON THOSE GROUNDS, the Court [of Cassation]:

REFERS the following questions to the Court of Justice of the European Union:

- 1) Must Articles 34 and 36 of the [Brussels I] regulation and Article 11 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that a financial penalty imposed for harm caused to the reputation of a sports club by the publication of a story in a newspaper can manifestly infringe freedom of expression and therefore constitute a ground for refusing to recognise and enforce a judgment?
- 2) In the event of an affirmative answer, must those provisions be interpreted as meaning that the court in which enforcement is sought may find that the penalty is disproportionate only where the damages have been categorised as punitive either by the court of origin or by the court in which enforcement is sought and not where they have been awarded as compensation for non-material damage?
- 3) Must those provisions be interpreted as meaning that the court in which enforcement is sought may take account only of the deterrent effect of the penalty in the light of the resources of the person on whom the penalty is imposed, or may it have regard to other factors such as the seriousness of the wrong or the extent of the harm?

4) Can the deterrent effect in the light of the resources of the newspaper in itself form a ground for refusing to recognise and enforce a judgment due to a manifest infringement of the fundamental principle of freedom of the press?

5) Must the deterrent effect be understood as meaning that the financial stability of the newspaper is threatened or may it simply refer to an intimidating effect?

6) Must the deterrent effect on the newspaper publishing house and on a journalist as an individual be assessed in the same way?

7) Is the general economic situation of the print media a relevant factor when assessing whether, beyond the newspaper in question, the penalty is likely to have an intimidating effect on the media overall?

[...] [staying of proceedings]

[...] [closing formulae]

[...]

WORKING DOCUMENT