

Freedom of speech, distortion and corruption: The verdict against Gonalo Amaral in the Portuguese libel court, 18 February 2010

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Today, in a Lisbon court, the original senior investigating detective in the Madeleine McCann case, Gonalo Amaral, lost an application to overturn a previous court decision to ban his book about the case: ‘Maddie: The Truth About A Lie’.

What was the case all about?

A. The limits to freedom of speech

At the opening of this latest phase of the McCanns’ libel action against Mr Amaral, Dr Gerald McCann declared, in response to those who claimed the case was about freedom of speech and freedom of expression:

“Freedom of speech does not mean the freedom to distort”.

And we agree with him on that.

In any society there must be limits to free speech.

Most societies make it a criminal offence to incite to murder, to incite violence, to incite riot. Many also make it a criminal offence to incite racial or religious hatred.

Article 10 of the European Convention on Human Rights is the main article of the Convention dealing with issues of freedom of speech and freedom of association. It says:

“Freedom of expression: 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”.

But that same Article also says: “The exercise of these freedoms, since it carries with it duties and responsibilities”. It adds: “These freedoms 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 preventing the disclosure of information received in confidence, for maintaining the authority and impartiality of the judiciary, or *for the protection of the reputation or rights of others*”.

And it is that last part of Article 10 on which the McCanns rely for their libel claim against Gonalo Amaral. They say that in exercising his right to freedom of speech, by suggesting that Madeleine died in their holiday apartment, a fact which he says the McCanns must have known, Mr Amaral has at the same time infringed their reputation.

His book not only gives details about the investigation of him and his team. Crucially, he went beyond that to expound his basic thesis on the case - namely, that in his opinion, the evidence as a whole tended to show that Madeleine had died in Apartment 5A, rented by the McCanns for that fateful week of 28 April to 5 May 2007.

B. The history of the McCanns’ libel action against Gonalo Amaral

So what is the history of this libel claim against Gonalo Amaral by the McCanns?

The story began with the publication of Mr Amaral’s book: *A Verdada da Mentira*: ‘Maddie: The Truth About A Lie’. It was published in July 2008, shortly after the Portuguese Attorney-General had pronounced that the investigation into Madeleine’s disappearance would be archived, on the basis that, whether Madeleine had died in her parents’ holiday apartment or whether she had been abducted, there was insufficient evidence to charge anyone with a crime.

The book sold rapidly in Portugal and was immediately translated into several European languages - Italian, Spanish, French, German, Dutch, Danish and Norwegian. It sold hundreds of thousands of copies in Portugal and hundreds of thousands more elsewhere in Europe.

But an English translation, already prepared, has never seen the light of day because Mr Amaral could not find a mainstream publisher willing to

take the risks of a possibly ruinous libel action against them. The fact that between them, the McCanns, Robert Murat and his friend Sergei Malinka and his wife Michaela Walczuk and the ‘Tapas 7’ friends of the McCanns collected over £1.7 million in libel awards in a series of court actions concluded in the first half of 2008, will undoubtedly have weighed heavily on their minds.

The first we heard about the planned libel action of the McCanns was an article in the *Sunday People* on 12 July 2009.

It claimed that it had received a translation of the libel writ, which of course had been prepared in Portuguese by the McCanns’ team of Portuguese lawyers. In the libel writ, the McCanns claimed 1.2 million euros (over £1 million) from Mr Amaral, which the McCanns estimated was the ‘profit’ made by Mr Amaral and his publishers, Guerra e Paz [‘War and Peace’]. Many commentators could simply not understand why the McCanns, if they believed the contents of the book to be so libellous and damaging to them, did not attempt to injunct the book at birth, rather than wait until Mr Amaral and his publishers had, over a full 12 months, made a net profit of over £1 million. It remains a mystery.

The writ claimed that Mr Amaral’s book had hindered the ongoing search for Madeleine McCann and had caused them immense distress and significant ill-health. According to *The People*, the writ stated that as a direct result of the book:

“Dr Kate McCann is deeply and seriously depressed. Both the McCanns are suffering from permanent anxiety, insomnia, lack of appetite, irritability and ‘indefinable fear’. The McCanns are as a direct result of the book totally destroyed, irreparably damaged, and ‘totally destroyed from a moral, social, ethical, emotional and family point of view’.”

The writ alleged that this range of ill-effects was not triggered by the loss of their eldest daughter but by *Mr Amaral’s book*.

C. The injunction to ban the book

No date has yet been set for the final trial of the McCanns’ libel action, although the month of June has been mentioned. In the meantime, the McCanns successfully applied in September last year for a temporary injunction banning the sale of Mr Amaral’s book and of DVD based on the book, and a further injunction banning the TV company TVI from further screening of a documentary based on Mr Amaral’s book, first

shown in March 2009 on Portuguese TV, and now viewable on the internet.

D. Judge bans sales of Portuguese policeman's book containing 'unforgivable' claim that Madeleine McCann is dead

On 9 September 2009 there was a surprise interlocutory (i.e. interim) application by the McCanns, within the libel proceedings. The McCanns argued that the book by Mr Amaral was so damaging that the court should immediately ban its further sale and distribution. This application was 'ex parte', i.e. in secret, without Mr Amaral and his lawyers even being told about it. In the U.K., injunctions like this can only be obtained in true emergency situations e.g. to restrain an ex-partner from entering one's home or committing violence, or to order the immediate return of a child who has been snatched by an ex-partner - or perhaps to halt the screening of a TV programme which might contain libellous content.

The application was successful.

The McCanns went further. They demanded that Mr Amaral and the publishers recover all available stocks of the book: 'The Truth About A Lie', and deliver them up to the McCanns' Portuguese lawyers. This included copies of the book still on sale. They had to be passed on to the McCanns' solicitors so that, if they wanted to, those books could be destroyed by them. That application was successful as well.

The McCanns went further still. They demanded a daily fine of 1,000 euros (about £850) for any day that Mr Amaral and/or the publishers failed to comply with the terms of the order. That application also succeeded.

The McCanns sought a further injunction barring Mr Amaral until further from repeating his claims about Madeleine's disappearance and her parents' possible involvement.

Once again, that succeeded.

A fifth application to the court was to require the copyright for the book and the documentary film to be passed to the McCanns' lawyers. That fifth injunction was also granted.

On top of all that, the court agreed to notify the terms of this injunction to the relevant authorities in Italy, Holland, Denmark, Norway, Germany, Spain, France - all the countries where Mr Amaral's book had been translated and published. So far as we are aware, however, Mr Amaral's book remains on sale in all those countries.

It all went the McCanns' way - without Mr Amaral or his lawyers present where they might have raised some inconvenient objection or other to all these orders being made.

The *Daily Mail* reported the following day that "The father of missing Madeleine McCann said it was 'unforgivable' that Portuguese people may have been led to believe his daughter was dead". That was despite the parents' claim to be 'devout Catholics', whose belief system includes the forgiving of others. The McCanns' chief public relations adviser, Clarence Mitchell, former Director of the government 'spin machine', the Media Monitoring Unit, had arranged a news conference at the Rothley Court Hotel. At that pre-arranged news conference, Dr Gerald McCann told the media:

"There's a lot of people in Portugal, who might have evidence, that believe Madeleine is dead. If people believe that, they won't search for her, and they won't come forward with information. I know for a fact people have been told Madeleine is dead. There is no evidence to support that and that is unforgivable. Mr Amaral's book is a skewed version of events. This has been incredibly damaging. People have profited from the book. The question I would be asking is why someone would be continuing to put forward a thesis that a child is dead when there is no evidence. As parents, the search goes on and what I would ask is that if anyone has any information that might be relevant to come forward, please.

"Mr Amaral's central thesis has no evidence whatsoever to support it. To claim, as he did, that Madeleine is dead, and that we, as her parents, were in some way involved with her disappearance has caused our family incredible distress and continues to do so. Without doubt, Madeleine will have suffered as a result of the negative effect this book and DVD will have had on the search for her. Sean and Amelie need protection, too, from such awful claims. Hopefully this injunction today will go a long way towards reducing further unnecessary and unjust distress to us all and allow people to concentrate completely on what is important - finding Madeleine".

E. The appeal against the injunction

Gonçalo Amaral had 30 days in which to appeal. He did so - and on 24 September he also applied for the Portuguese equivalent of Legal Aid, to help him deal with his mounting legal costs. *Jornal de Notícias* reported on 1 December that Gonçalo Amaral had asked for state help to be able to defend himself against the McCanns. His declared income was 39,000 euros a year (about £35,000). He has a wife and two girls at home and said he had no assets apart from his house.

The hearing of Mr Amaral's appeal was due to start on 11 December, but had to be adjourned due to the ill-health of his lawyer. The first three days of the hearing of Gonçalo Amaral's appeal were from 12 to 14 January this year, when our Chairman Grenville Green was in court to support him. A further hearing on 11 February heard legal arguments.

F. The decision today - 18 February

Today, 18 February, the judge made her decision. It was brutally simple. Judge Maria Gabriela Cunha Rodrigues said that the injunction banning the sale and distribution of the book must stay in place until the full libel trial, probably in June. In ruling that Mr Amaral's book 'violated the McCanns' rights', she was echoing that part of Article 10 of the European Convention on Human Rights which says that freedom of speech may be restricted 'for the protection of the reputation or rights of others'.

The McCanns made a brief statement today saying:

"We are very pleased and relieved with the judge's decision in Lisbon today. By upholding the injunction against Gonçalo Amaral's book and DVD, the judge has rightly agreed that there has been significant, ongoing damage to the search for our beloved daughter Madeleine and to the rights of our family. We are grateful to the judge for accepting that this injustice must not continue. The court case has demonstrated, once again, that there is no evidence that Madeleine has come to any harm. We are grateful to the judge for accepting that this injustice must not continue. The court case has demonstrated, once again, that there is no evidence that Madeleine has come to any harm.

"It has also clearly shown that no police force is actively looking for Madeleine, even, shockingly, when they are presented with new information and leads. The motives of those who have tried to convince the world that Madeleine is dead, and who've disgracefully and falsely

tried to implicate us in her disappearance, need to be seriously questioned. As painful and personally damaging as the slanderous claims of Mr Amaral and his supporters have been to us and our family, our primary focus has always been, and always will be, to find Madeleine through our own best investigative efforts.

“It is still incumbent upon the British and Portuguese authorities to ensure that every credible lead has been investigated and that a meaningful search for our innocent and vulnerable little girl is properly carried out. We must and will keep looking for Madeleine and those responsible for her abduction.

“We implore the public, especially the Portuguese people, to help us look for Madeleine, to remain vigilant and to give us any information that could help us find our daughter”.

Mr Amaral reacted to the verdict by saying: “It was an unbalanced decision. What is at stake is freedom of speech. From the beginning we have been prepared to carry this through to the end and if need be take it all the way to the European Court of Human Rights”.

G. Other legal actions against Mr Amaral

The libel action by the McCanns against Mr Amaral has been sandwiched between two criminal cases against him.

Before the McCanns served their libel writ in July 2009, Mr Amaral had been convicted by a panel of three judges and four members of a jury of the offence of ‘filing a false report’ during his investigations into the disappearance of eight-year-old Joana Cipriano. Mr Amaral, as we saw in our biography of him in the ‘Goncalo Amaral’ section of our website, successfully prosecuted Joana’s mother and uncle in 2005 for brutally killing her. They are both serving lengthy jail sentences.

But subsequently, the mother, Leonor Cipriano, claimed that her confession had been beaten out of her by four detectives in Mr Amaral’s team. In late 2007, a criminal case against Mr Amaral and the four detectives named by Leonor Cipriano was initiated. In an extraordinary set of proceedings with five lengthy adjournments, the case lasted a total of over seven months, from an initial hearing on 14 October 2008 until the verdict on 22 May 2009.

On that day, Mr Amaral was given an 18-month suspended jail sentence by a court in Portugal. He and another detective were convicted of 'falsifying evidence' to help cover up, it was said, for the alleged torture and beating of Leonor Cipriano by three fellow detectives, Leonel Marques, Pereira Cristovao and Paulo Marques Bom. Some British media hyped up the conviction by describing his conviction as 'perjury'.

Gonçalo Amaral and his detectives maintained that Leonor Cipriano had suffered the injuries as the result of an attack on her by fellow prisoners at the Odemira prison. They also pointed out that she had suffered additional injuries as a result of trying to throw herself down a staircase whilst in police custody.

The three inspectors were, however, fully cleared of the allegations of torturing and beating a confession out of Leonor Cipriano. Yet despite that, the Court found Mr Amaral guilty of falsifying documents to help cover for them, while a fifth officer, Antonio Nunes Cardoso, was also found guilty of falsifying documents and was given a two-and-a-half year suspended jail sentence.

The court's decision against Gonçalo Amaral was immediately hailed by the lawyer who prosecuted him, Marcos Alexandre Aragao Correia, with the words: 'The target was hit'. And that very comment raises questions about whether this was a fair trial of Mr Amaral, or whether there was some kind of political interference in these proceedings.

The McCanns' chief public relations adviser, Clarence Mitchell, told the media: "Kate and Gerry believe that the conviction of Amaral speaks for itself. The media weighed in with various anti-Amaral comments, among them SKY NEWS's Martin Brunt, who said: "Amaral is a controversial figure. This is a real knock to his credibility".

Mr Amaral himself said: "I am not surprised. There has been political pressure in this case".

Incidentally, those proceedings were also brought by Leonor Cipriano in an attempt to win her freedom by being released from prison. She claimed that her confession was false - beaten out of her. On that respect, her claim failed. But that was unimportant to her lawyer. He wasn't really bothered about his client being freed from prison. His target in those proceedings, as he frankly admitted to the world, was Gonçalo Amaral.

The sentence does not take effect under Portuguese law if there is an appeal. Mr Amaral appealed immediately, *yet 9 months later, his appeal against his conviction has not yet been heard*. Why is that? It's simply because the government delayed paying the four jurors their fees for their jury service. Under Portuguese law, some aspects of which seem to deny rather than to deliver justice, an appeal cannot be heard until the jurors have been paid. So why was it that payments to the jurors was delayed for so long in this case?

And Mr Amaral now also faces a third set of legal proceedings - namely further allegations by Leonor Cipriano's partner, Leandro da Silva, that Mr Amaral was also directly involved in torturing him. Mr Amaral has already been indicted in this matter. The formal court proceedings are due to begin soon.

H. Corruption in the Portuguese political and judicial elite: the real reason for the persecution of Gonçalo Amaral?

The question has been raised by Gonçalo Amaral that there has been 'political pressure' on the courts to deliver verdicts against him.

We will make our position clear. The Madeleine Foundation also believes that the two criminal trials against Mr Amaral, and what has happened to him in the McCanns' libel action against him, bear all the hallmarks of 'political show trials' against him, engineered by powerful individuals in the Portuguese political and judicial establishments for whom Gonçalo Amaral has proved a severe embarrassment. He was successful in prosecuting drug barons who might well have had useful links with powerful political figures. His investigation into the disappearance of Madeleine McCann caused embarrassment to Portugal, especially when it leaked out that he was claiming that there had been interference at a high level within the British government in his investigation.

We also believe that the judges in the libel trial have been selected so as to determine the eventual outcome against him. Of course, if we are right, the evidence to prove those statements is likely to be hard to find.

But there are many indications that Mr Amaral is indeed the victim of political forces determined to crush him. Here's a brief list of some of those indications:

- (1) The original indictment against him in his first criminal trial was founded on the deeply flawed testimony of Leonor Cipriano - murderess of her own daughter and a proven serial liar.
- (2) The conviction against Mr Amaral in this first criminal trial was only secured after the Head of Odemira Prison in Portugal admitted causing her Prison Medical Director to give false testimony against Mr Amaral and his fellow detectives.
- (3) The trial of Mr Amaral and his detectives was spun out over a disgraceful seven months, with long adjournments granted for specious reasons.
- (4) The lawyer prosecuting Mr Amaral, Marcos Alexandre Aragão Correia, clearly only had Mr Amaral in his sights, with his notorious comment when Mr Amaral was convicted: 'The target has been hit'. In addition, as we shall see in a forthcoming article on our website which tracks his controversial career to date, he was deeply involved with the McCanns' controversial private detective agency, Metodo 3, in developing false trails about the disappearance of Madeleine McCann. He admitted to receiving payments from them for this.
- (5) The evidence relied on against Mr Amaral in the first criminal trial was substantially that from the lips of Leonor Cipriano, who can be demonstrated to have lied or changed her story in at least 14 significant respects - see our forthcoming article on Marcos Alexandre Aragão Correia.
- (6) The banning of Gonçalo Amaral's book was achieved only by a secret injunction hearing held behind closed doors - a hearing which Mr Amaral and his lawyers knew nothing about in advance and therefore could raise no objections to.
- (7) The orders banning Mr Amaral's book, the banning of his DVD and documentary from being transmitted, the granting of the copyright of his book to the McCanns' lawyers, and ordering the seizure of all unsold copies of his book were unusually oppressive orders in advance of the full libel trial, and gained as we say by a secret hearing not notified to Mr Amaral and his lawyers.
- (8) The libel trial has been delayed, adjourned and generally dragged out so as to involve Mr Amaral in further expense.

(9) The second criminal trial against Mr Amaral, alleging that he tortured Leonor Cipriano's partner Leandro da Silva, is due to begin soon. It appears to be based entirely on the testimony of the partner of proven serial liar and murderess Leonor Cipriano. Again, the case has been filed against Gonçalo Amaral by Marcos Alexandre Aragão Correia, the lawyer who gloated: 'target hit' when Mr Amaral was found guilty of falsifying a false report at his first criminal trial.

We might note that there is excessive and overt political control over the appointment of judges in Portugal. A body called the 'Superior Magistracy Council' is responsible for the appointment and promotion of judges. Amazingly, nine out of 16 members of that body are political appointments; seven are appointed by the Assembly of the Republic, and a further two are appointed by the President of the Republic. That means, quite simply, that the political party with the majority of MPs in the Assembly effectively decides who the judges are. The President of the Superior Magistracy Council is also the President of the Supreme Court of Justice. Judges appointed to Portugal's Supreme Court are, therefore, in effect, political appointments.

It is also of no little interest that one of the blogs closest to the McCanns, which promotes their views on the disappearance of Madeleine McCann and which attacks with venom anyone who dares to articulate a different view of what really happened to her, namely <http://justice4mccannfam>, has gone on record recently to say: "I think an example is going to be made of Amaral. The Portuguese government is sick to the back teeth of Goncalo Amaral. He and he alone is harming Portugal's £2.8 billion tourist industry and they are not going to keep standing for the antics of Amaral for much longer".

Incidentally, on the very same pro-McCann blog are comments about Marcos Alexandre Aragão Correia, the lawyer who successfully prosecuted Goncalo Amaral and is now doing so a second time. Marcos Correia has admitted to having received payments from the McCanns' private detective agency, Metodo 3 - see our forthcoming article on him. Despite this, the 'justice4mccannfam' blog makes these extraordinary claims about Mr Correia:

"Marcos Aragão Correia does NOT receive a single penny from Leonor Cipriano or from Leandro da Silva for representing them.

EVERYTHING he does, he does absolutely 100% free of charge. Marcos represents Leonor and Leandro because he truly believes in his country and that this is the right and moral thing to do. He will NEVER walk away from them, he will continue to fight for Leonor Cipriano's freedom and for a just conclusion to redress the balance for the torture that Leandro da Silva is alleged to have suffered at the hands of Gonçalo Amaral. Marcos has nothing. He uses his own money to fund the legal representations of others less fortunate than himself'.

I leave readers of this article to judge for themselves whether this claim by a leading McCann supporter is credible, given that Marcos Correia has spent most if not all of his career in the last two years trying to 'hit the target' of Gonçalo Amaral.

Someone is paying Mr Marcos Correia.

Who?

[Madeleine Foundation website - Article posted by Tony Bennett, 18 February 2010]