

Sheets 2175-2183 (documents submitted by the claimants on 26 February):

The documents submitted by the claimants intend to remedy a dilatory exception detected in this trial, so they can't be subsumed to the provision of article 423 of the Civil Procedure Code dealing with "the documents intended to prove the grounds of the action or of the defence."

In any case, being at stake a presupposition of the regularity of the instance as flows from articles 6, n°1 and 278, n° 3 of the Civil Procedure Code, it is the rule of the civil procedure that the ground issue supplants, where legally permissible, the mere form.

So by the exposed the documents offered by the claimants are admitted.

Notify.

When wishing to deliver the following judgment, I found that, in the reply to article 20 of the Instruction basis / proof themes, an obvious writing lapse had occurred because the words "June 21, 2008 "should be read" July 21, 2008 ", as results from document p.536, referring to the grounds of this matter.

Therefore, in the articles 613, n° 3 and 614°, n°1 of the Civil Procedure Code, this lapse must be corrected, in order to read "July 21" where "June 21" is mentioned.

Notify and correct on the spot.

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**Kate Marie Healy MCCANN, GERALD PATRICK MCCANN**, married , doctors, for them and in representation of their children **MADELEINE BETH MCCANN , SEAN MICHAEL MCCANN** and **AMELIE EVE MCCANN** , residents in xxx have instituted the following declarative action , under the form of process , against **GONCALO DE SOUSA AMARAL**, resident in xxx. The claimants have requested that, based on the proceeding action the accused is convicted to the following:

**I-** Payment to each of them of damages with a global value not inferior to 1.2 million Euros , being 500.000 Euros to the 3rd claimant (MBM), 100.000 Euros each for the 4th (SMM) and 5th (AEM) claimants and 250.000 Euros each for the 1st (KM) and 2nd (GM) claimants.

**II** – to pay retroactive interest, at the legal rate, on the value of the above mentioned amounts since the date of the citation till the payment is fully settled.

**III** – To pay emerging material damages, comprising of all the costs that may be liquidated in the execution of the sentence and that are directly and necessarily inherent to the judicial initiatives that are deemed necessary or that have been or will be carried out with grounds on the contents, interviews and news texts mentioned in the official documents / files.

**IV** – That the convicting sentence be published (extracts) at the convicted expenses, for two consecutive days in one of the most read newspapers in Portugal and one of the most read daily UK newspapers and also to publish the said convicting sentencing (extracts) and only once in one of the most read weekly newspapers in Portugal and in the UK, chosen by the claimants in the 15 days immediately subsequent to the final the judicial decision P (transito em julgado = Res Judicata, preclusion, no appeal is possible any more)

**V** – To pay the court fees, including the fees of its authorized representatives

They invoked so much and in summary, as follows:

- The claimant Madeleine is missing from the day May 3, 2007, having run, in order to determine the criminal responsibility for her disappearance, a criminal investigation where the 1st and 2nd claimants came to be made arguidos (formal suspects) that ended up with an order of shelving.

- The archiving report concluded there was no evidence that the 1st and 2nd claimants practiced any crime.

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- On July 24, 2008, the defendant launched in Lisbon a book written by him, entitled " Maddie The Truth of the Lie ", of which were published several editions in several languages, namely French, Italian and German.

- In this book the defendant developed the thesis that the 3rd claimant died in the apartment that the family occupied in Praia da Luz on the night of May 3, 2007, that this death occurred as a result of an accident for which the 1st and 2nd claimants are responsible, that these

claimants simulated the abduction of the child and then subtracted the body that they concealed, everything to evade the action of justice.

- This thesis has been reproduced by the defendant in several interviews in the media, particularly in the interview given to the newspaper *Correio da Manhã*, published in the edition of July 24, 2008.

- The same thesis was broadcast twice on television content produced by *VC-Valentim de Carvalho-Filmes, Audiovisual, SA* by *TVI Television*, having had a large audience.

- These facts deprive the 3rd claimant of the just and appropriate investigation of her disappearance.

- These facts damage and will continue to damage in the future the moral integrity of the 4º and 5º claimants, whose right to good name and good name of their family are affected by those facts.

- The 1st and 2nd claimants are, because of the same facts, totally destroyed, depressed, feeling ashamed and experiencing a deep malaise because they are considered as having responsibility in the disappearance of their daughter and as coward people who have hidden her body, simulating a kidnapping.

- More than any financial compensation, the plaintiffs claim a public moral reparation, therefore the sentence to be given should be published in the demands' terms.

The defendant challenged this view arguing, in essence, that:

- the book contains no new or confidential matters that have not been examined by the criminal investigation and widely reported by the media,

- the international media attention on this case was not created by him, but by the claimants.

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- the thesis that the defendant claims in the book is anchored in the extensive and grounded report of the investigation by a chief inspector of Judicial Police that is part of the criminal proceedings.

He added further that this action is an attack against his right to opinion and freedom of expression.

He in part challenged the articulated factuality and concluded by the lack

of pertinence of the action.

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The claimants presented articulated reply under the pretext of defence against "cloaked exceptions".

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A dispatch was produced, inviting to improve the initial petition, which was corresponded by and deserved the legal contradictory.

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By order of 12 July 2010 it was determined joining as annexe to these autos of the declaratory action under the process ordinary form, No. 6000/09, pending in the 3rd section of the 7th Civil Court of Lisbon (this is the "book" injunction etc.)

In this action the (here) claimants **KATE MARIE PATRICK HEALY MCCANN** and **GERALD PATRICK MCCANN**, for themselves and on behalf of their minor children, **MADELEINE BETH MCCANN**, **SEAN MICHAEL MCCANN** and **AMELIE EVE MCCANN** require against the following defendants :

**GONCALO DE SOUSA AMARAL**, (here) defendant ;

**GUERRA & PAZ, EDITORES, S.A** , collective entity No. 507 588 509 , in rua do Conde de Redondo, No. 8, 5th left , Lisbon;

**V.C. – VALENTIM DE CARVALHO-FILMES, AUDIOVISUAIS, S.A.**, collective entity nº 508 202 884, in Estrada de Paco de Arcos, nº 26, Edifício Central, Paco de Arcos, Oeiras;

**TVI – TELEVISAO INDEPENDENTE**, S.A., collective entity No. 502 529 750 , in rua Mario Castelhana , No. 40, Queluz de Baixo, Barcarena , Oeiras.

The claimants argued that the 2nd defendant is the publisher of the book "Maddie The Truth of the Lie", the 3rd defendant is the producer of the program / documentary that was broadcast by the 4th TV channel which explores and holds the exclusivity for Portugal .Based on the same facts and grounds they requested :

**I.** The ban on the sale and order to gather, for destruction , the books and videos "Maddie - The Truth of the Lie" that still remained in bookstores or other retail points, warehouses, naming their mandatory (Dra Duarte) as faithful depository, all defendants having to be notified for that recollection ;

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**II.** The prohibition to all defendants to implement, even on the Web, new editions of the book or video or other books and/or videos that defend the same thesis and are intended to be commercialised or divulged in Portugal,

**III.** The prohibition to all defendants to transfer onerously or freely, in any way, the publishing rights or copyright on the book's or the video's contents, or other books and videos about the same theme, to be published anywhere in the world,

**IV.** The prohibition to all defendants and by any means, including the Web, to cite, analyse or comment, expressed or implied, oral or written, parts of the book or video that defend the thesis of the death of the 3rd claimant or of the concealment of her body, in any part of the world,

**V.** The prohibition to all defendants and by any means, including the Web, to provide or reproduce comment, opinion or interview where this thesis is defended or could be inferred,

**VI.** The prohibition to all defendants to transfer, publish and provide statements, photographs or other documentation related to the book, video or the thesis, by any possible means, including the Web,

**VI (sic).** The sentence for the defendants to publish the convicting judgement, in extract, at their own expense, for two consecutive days, in one of the most widely read newspapers in Portugal and one of the most widely read daily newspapers in the UK and, as well, to publish such a convicting judgement, in extract and only once, in one of the most widely read weekly magazines in Portugal and in the United Kingdom, at the choice of the claimants, in the 15 days immediately following the *Res Judicata* (1)

**VII.** The sentence for the defendants to pay a deterrent penalty for the circumstances mentioned of an amount not less than 100.000 € for each act of non-compliance of the prohibitions or of order of seizing the books and videos,

**VII (sic).** The sentence for the defendants to pay the costs of the trial, including the fees of the claimants' agents.

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All the defendants challenged this, essentially in the following terms :

- The **TVI** defendant claimed that they acted within the scope of freedom of expression and constitutionally consecrated freedom of press, having

issued, before broadcasting the program, a statement showing they had taken no position whatsoever on the conflicting theses and simply intended to exercise the right and the duty to inform.

- The defendant **Goncalo Amaral** argued with freedom of expression and opinion, deeming the claimants' request of unconstitutionality for violation of the provisions in the article 37 of the Portuguese Republic Constitution.

- The **VC Valentim de Carvalho** defendant challenged the factuality articulated by the claimants and submitted that they had transferred the rights of marketing, distribution, exhibition and broadcasting of all their creation works to a third company, having not edited nor sold any video.

- The **Guerra&Paz** defendant challenged the articulated factuality and argued that the book is an objective account of true events that by their relevance are of obvious public interest, having the "Maddie" case been the subject of several studies in the social communication area and in other books.

They concluded by dismissing the action.

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A preliminary hearing (in 5 sessions) occurred, during which was produced the generic preparatory dispatch that declared the plea valid and regular (**3**)

At the same hearing the undisputed facts were established and the instruction basis was structured, the complaint of the claimants being rejected.

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The final hearing (in 14 sessions) occurred, in compliance with the legal formalism.

After hearing the parties in accordance with the articles 6º, paragraph 1 and the 547º of the Civil Procedure Code, a period was granted to the parties for alleging, in writing, on the matter of law, once produced independent decision on the facts, with which was closed the final hearing.

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Once closed the final hearing, the instance was suspended, in conformity with the dispatch of May 20, 2014 (pp. 2024-26) for the claimants to

join a certificate issued by the UK High Court authorizing them to represent the 3rd claimant.

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The instance's suspension was declared terminated by the February 11, 2015 dispatch (p.2169).

Thereafter the claimants and the defendants Goncalo Amaral and *Guerra&Paz* presented, in writing, the following law allegations :

**A)** The claimants, concerning the pertinence of the trial, invoke that their constitutionally guaranteed rights are superior to the eventual freedom of expression that the defendants may benefit of, that the book and remaining pieces gathered in this suit are not information and aim at transforming the theory of their involvement in the death of the claimant Madeleine and the concealment of her body in the "result " of the criminal investigation, and that Goncalo Amaral violated his duties as a State servant to which he was constrained being an inspector of the Judicial Police.

**B)** The defendant Goncalo Amaral, concerning the lack of pertinence of the requests, states, synthetically, that the book was written mainly to defend his personal and professional honour, that the claimants were the ones who breached the reserve of their private life and the rights to image and good name, and that the book and the documentary describe the facts contained in the investigation.

**C)** The defendant Guerra e Paz, for the lack of pertinence of the suit brought against them, argues the illegality of the requests in a Democratic State of Law and the fact that the book is an exercise of freedom of opinion, and also of freedom of expression and of information.

Among the assumptions of the instance's validity and regularity, the question of the regularity of the representation of the claimant Madeleine McCann by the claimants Gerald and Kate McCann, her parents, was left to this sentence, by the May 20, 2014 dispatch. (2)

It was felt then that the situation was the lack of authorisation provided for in paragraph 1 of article 29° of the Civil Procedure Code, missing in the autos, in particular, the authorisation of the UK High Court (the minor being Ward of Court) to the bringing of this action.

The claimants joined a certificate issued according to the article 39° of the EC Regulation n° 2201/2003 which demonstrates that the Family Division of the High Court of Justice of that country, by decision of March 21, 2014, authorised the claimants Gerald and Kate McCann to represent the minor in procedures related to the content and effects of the book in question on the action and subsequent media activity related to it.

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Moreover, as evidenced in the copy of pp. 2158 and 2159 ("reqto" of the claimants of January 23, 2015), the referred claimants own since July 16, 2010 a decision of the same court for the minor Madeleine to tale part in the action against the four defendants.

These data being present, the irregularity of the representation detected in accordance with the article 29° of the Civil Procedure Code will be deemed remedied and therefore reject the objection raised by the defendant Gonçalo Amaral.

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The assumptions of timely appreciated instance remain valid, not befalling nor subsisting exceptions, annulments or previous issues that could prevent the appreciation of the merits of the case.

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## **PROVED FACTS**

Taking into account the matter considered undisputed in the selection of facts and the decision handed down in due course after producing the matter of evidence and discussing the case, the following facts are demonstrated :

- 1.** The claimants KM and GM are married to each other
- 2.** The claimant Madeleine Beth McCann was born on the 12.05.2003 and is the daughter of the claimants Kate and Gerry McCann
- 3.** The claimant Sean McCann was born on the 01.02.2005 and is the son of the claimants Kate and Gerry McCann
- 4.** The claimant Amelie McCann was born on the 01.02.2005 and is the daughter of the claimants Kate and Gerry McCann



**5.** The claimant Madeleine Beth McCann has been missing since the 3rd of May of 2007, and the criminal investigation n. 201/07.0GALGS was open by the Public Prosecutor of the Republic for the Portimao District.

**6.** The British police dogs "Eddie" and "Keela" detected human blood and cadaver in the apartment 5A, Ocean Club [alínea AR) of the undisputed facts].

**7.** The British police dogs "Eddie" and "Keela" detected human blood and cadaver in a vehicle rented by the claimants after the disappearance of MMC [alínea AS) of the undisputed facts].

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**8.** The claimants Kate and Gerry McCann were constituted arguidos (formal suspects) in the scope of the police investigation [alínea F) of the undisputed facts]

**9.** Pp. 2587-602 of the criminal investigation, 19.07.2007, chief Inspector Tavares de Almeida wrote a report in which the following section can be transcribed

:

*"From all that was gathered, the facts point in the direction that the death of Madeleine McCann occurred, on the night of May 3rd of 2007, inside the apartment 5A, of the Ocean Club resort, occupied by the couple McCann and by their three children;" (...)*

*"From all that was exposed, it results from the Autos that :*

**A)** *The minor Madeleine McCann died in the apartment 5A of the Ocean Club resort, on the night of May 3rd of 2007;*

**B)** *A simulation of kidnapping occurred ;*

**C)** *In order to turn impossible the death of the minor before 22H00, a situation of vigil of the McCann children while they slept was invented ;*

**D)** *Kate McCann and Gerald McCann are involved in the concealment of the cadaver of their daughter Madeleine McCann;*

**E)** *At the present moment, it seems that there are no strong clues that the death of the minor wasn't due to a tragic accident;*

**F)** *From what was obtained until now, everything points out that the*

*McCann, in self-defence, don't want to deliver immediately and voluntarily the cadaver, existing a strong possibility that the same was transported from the initial place of deposition. This situation is susceptible to raise questions about the circumstances under which the death of the minor occurred.*

*So we suggest that the 'Autos' be sent to the Public Prosecutor for Lagos, in order to proceed to :*

**G)** *an eventual new questioning of the arguidos (formal suspects) Kate and Gerry McCann ;*

**H)** *the evaluation of the measure of restraint to be applied in this case;" (p. 2601 of criminal Investigation Autos) **10.** P. 2680 of the criminal investigation, on 10th September 2007, the Public Prosecutor in charge of the case produced a dispatch that contains in particular the following :*

**10.** P. 2680 of the criminal investigation, on 10th September 2007, the Public Prosecutor in charge of the case produced a dispatch that contains in particular the following :

*In the course of the investigation, where is still investigated the disappearance of Madeleine McCann, being the investigation therefore open either to confirm or infirm its occurrence (the disappearance) in relation to the crimes of abduction, homicide, neglect or abandonment and concealment of body and according to defined plan, it is necessary to document the real time of said disappearance, find out the precise location of each of the protagonists – from the McCann couple to the group of friends that were on holiday with them in the tourist apartments Ocean Club in Praia da Luz: Jane Michelle Tanner, Russell James O'Brien, Matthew David Oldfield, Rachael Marianna Jean Manpilly, David Anthony Payne, Fiona Elaine Payne and Diana Webster – when the event occurred and also after.*

*There is also a need to determine the movements of the arguidos Kate and Gerry McCann for the time of their stay in Portugal while establishing all the connections between all the protagonists and third parties. In this sense, and because the diligences that will be pointed here after are essential to finding the truth, namely to analyse the telephone activity of the McCann couple and their friends, as well as other telephone numbers, that has been established were related to the facts that happened on the night of the 3rd of May 2007, refer the autos to the Mmo. JIC"[alínea AU) of the undisputed facts]*

**11.** Page 3170 of the criminal investigation, 03.12.2007 by the Criminal

Instruction Judge of Portimao produced a dispatch which mentions in particular the following :

" Since in the current autos the crimes of abduction, homicide, abandonment and concealment of a body are being investigated being the first 3 crimes punishable with sentencing superior to 3 years and because it is relevant to identify the suspicious behaviour observed in the surroundings of the place where the child disappeared from and mentioned in pages 3150 and 3154 and following of the case files , having so a high importance to the discovery of the truth , the data requested by the Public Ministry I order that (...) is requested from operator Portugal Telecom (...)" Point AV of the proved facts.

**12.** The Defendant Goncalo Amaral was the Inspector of the Judiciary Police in charge of the coordination of the investigation into the disappearance of the applicant MBM [alínea G) of the undisputed facts].

**13.** The defendant Gonçalo Amaral retired from the police force on the 1st July 2008 (art 19 of the instruction basis).

**14.** On the 21st July 2008 the Attorney General office divulged a note to the media announcing the archiving of the criminal investigation which could be reopened by the initiative of the Public Ministry or any interested parties if new elements of evidence would lead to pertinent diligences (article 20 of the instruction basis).

**15.** The criminal investigation was put to an end by the Procurador da Republica (*who lead the investigation*) in the archiving dispatch dated 21.07.08 - *Courtesy of Astro who translated the first part of the so-called AG Report :*

*"Taking into account that there were certain points in the arguidos' and witnesses' statements that revealed, apparently at least, contradiction or that lacked physical confirmation, it was decided to carry out the "reconstruction of the fact", a diligence that is consecrated in article 150 of the Penal Process Code in the sense of duly clarifying, on the very location of the facts, the following very important details, among others:*

**1 –** *The physical, real and effective proximity between Jane Tanner, Gerald McCann and Jeremy Wilkins, at the moment when the first person walked by them, and which coincided with the sighting of the supposed suspect, carrying a child. It results, in our perspective, strange that neither Gerald McCann nor Jeremy Wilkins saw her, or the alleged abductor, despite the exiguity of the space and the peacefulness of the area;*

**2** – *The situation concerning the window to the bedroom where Madeleine slept, together with the twins, which was open, according to Kate. It seemed then necessary to clarify if there was a draught, since movement of the curtains and pressure under the bedroom door are mentioned, which, eventually, could be verified through the reconstitution;*

**3** – *The establishment of a timeline and of a line of effective checking on the minors that were left alone in the apartments, given that, if it is believed that such checking was as tight as the witnesses and the arguidos describe it, it would be, at least, very difficult to reunite conditions for the introduction of an abductor in the residence and the posterior exit of said abductor, with the child, namely through a window with scarce space. It is added that the supposed abductor could only pass, through that window, holding the minor in a different position (vertical) from the one that witness Jane Tanner saw (horizontal);*

**4** – *What happened during the time lapse between approximately 6.45/7 p.m. – the time at which MADELEINE was seen for the last time, in her apartment, by a different person (David Payne) from her parents or siblings – and the time at which the disappearance is reported by Kate Healy – at around 10 p.m.;*

**5** – *The obvious and well-known advantages of immediate appreciation of evidence, or in other words, the fulfilment of the principle of contiguity of evidence in order to form a conviction, as firm as possible, about what was seen by Jane Tanner and the other interposers, and, eventually, to dismiss once and for all any doubts that may subsist concerning the innocence of the missing [child's] parents.*

*In this sense, the legal procedures were followed, according to the norms and conventions that are in force, and the appearance of the witnesses was requested, inviting them to be present inclusively appealing to solidarity with the McCann couple, as it is certain that since the beginning they adhered to that process diligence.*

*Nevertheless, despite national authorities assuming all measures to render their trip to Portugal viable, for unknown motives, after the many doubts that they raised about the necessity and opportunity of their trip were clarified several times, they chose not to attend, which rendered the diligence in-viable.*

*We believe that the main damage was caused to the McCann arguidos, who lost the possibility to prove what they have protested since they were constituted arguidos: their innocence towards the fateful event; the*

*investigation was also disturbed, because said facts remain not clarified."(...)*

*"This shows that the parents were not persistently worried about their children [and] that they didn't check on them like they afterwards declared they did, rather neglecting their duty to guard those same children, although not in a reckless, or gross, manner" (...)*

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*"While it is an unavoidable fact that Madeleine disappeared from Apartment 5A of the 'Ocean Club', the manner and circumstances under which this happened are not – despite the numerous diligences made in that sense –, therefore, the range of crimes that were indicated and referred to during the inquiry remains untouched." (...)*

*"Concerning the other indicated crimes, they are no more than that and despite our perception that, due to its high degree of probability, the occurrence of a homicide cannot be discarded, such cannot be more than a mere supposition, due to the lack of sustaining elements in the files.*

*The non involvement of the arguidos parents of Madeleine in any penally relevant action seems to result from the objective circumstances of them not being inside the apartment when she disappeared, from the normal behaviour that they adopted until said disappearance and afterwards, as can be amply concluded from the witness statements, from the telephone communications analysis and also from the forensics' conclusions, namely the Reports from the FSS and from the National Institute for Legal Medicine.*

*To this can be added that, in reality, none of the indications that led to their constitution as arguidos was later confirmed or consolidated. If not, let us see: the information concerning a previous alert of the media - before the police - was not confirmed, the traces that were marked by the dogs were not ratified in laboratory, and the initial indications from the above transcribed email, better clarified at a later date, ended up being revealed as innocuous.*

*Even if, hypothetically, one could admit that Gerald and Kate McCann might be responsible over the child's death, it would still have to be explained how, where through, when, with what means, with the help of whom and where they freed themselves of her body within the restricted time frame that would have been available to them to do so. Their daily routine, until the 3rd of May, had been circumscribed to the narrow borders of the 'Ocean Club' resort and to the beach that lies next to it, unknowing the surrounding terrain and, apart from the English*

*friends that were with them on holiday there, they had no known friends or contacts in Portugal." (...)*

*"- Tests and analyses were performed in two of the most prestigious and credited institutions for this effect – the National Institute for Legal Medicine and the British lab Forensic Science Service -, whose final results did not positively value the collected residues, or corroborated the canine markings;"(...)*

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*"- Despite all of this, it was not possible to obtain any piece of evidence that would allow for a medium man, under the light of the criteria of logics, of normality and of the general rules of experience, to formulate any lucid, sensate, serious and honest conclusion about the circumstances under which the child was removed from the apartment (whether dead or alive, whether killed in a neglectful homicide or an intended homicide, whether the victim of a targeted abduction or an opportunistic abduction), nor even to produce a consistent prognosis about her destiny and inclusively – the most dramatic – to establish whether she is still alive or if she is dead, as seems more likely."(...)*

*"Therefore, after all seen, analysed and duly pondered, with all that is left exposed, it is determined:*

*b) The archiving of the Process concerning arguidos Gerald Patrick McCann and Kate Marie Healy, because there are no indications of the practice of any crime under the dispositions of article 277 number 1 of the Penal Process Code." (...)*

**16.** The defendant Guerra e Paz , Publishers is a commercial society and its activity consists of editing, publishing, trading, including import and export of books [alínea L) of the undisputed facts].

**17.** On the 10th March 2008 the defendant, Guerra e Paz Editores, SA and the defendant Goncalo Amaral signed a written agreement, add pages 277-281, designated contract for transfer of author rights through which the defendant Goncalo Amaral gave the exclusive right to publish the text "Madeleine, the Truth of the Lie "exclusively for ten years, in the form of a book, printed or electronic, in any language and in the whole world" [alínea M) of the undisputed facts].

**18.** Clause 4, n1 of this agreement states the following: "The retribution to be paid by the 1st party to the 2nd party for author rights relative to the editions of the work to be commercialised in Portugal will be of:

a) 12% of the cover price of each copy sold, net of VAT, up to 30.001 copies.

b) 14% of the cover price of each copy sold, net of VAT, from 30.001 to 50.000 copies.

c) 16% of the cover price of each copy sold, net of VAT from 50.001 copies sold [alínea N) of the undisputed facts].

**19.** Clause 5, n2 of this agreement states the following: "If the first party sells the copyright to other languages, in any country in the world and after deducting the costs inherent to that sale, the net revenue from that sale will be divided in equal parts between the 1st and 2nd parties, ie 50% each [alínea O) of the undisputed facts].

**20.** The defendant Goncalo Amaral is the author of the book "Maddie , the Truth of the Lie", published by Guerra e Paz , Editores SA [alínea H) of the undisputed facts].

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**21.** The cover of the book has the word "confidential" written in red and in the inside cover "Reserved Reading" and "contains unique revelations" [alínea P) of the undisputed facts].

**22.** The technical summary of the book, page 4, has the following data: Revision :Fernanda Abreu. Cover and Pagination: Ilidio J.B. Vasco. Photograph of the author: Sandra Sousa Santos. C Guerra e Paz Editors , SA, 2008, All rights Reserved. © Cofina media for photographs and info-engravings elaborated by Nuno Costa.

**23.** From the book "Truth of the Lie", introduction note pp. 11-12, p. 16, pp. 19-20, p. 21, pp. 22-4, p. 193 pp. 220-21. [alínea I) of the undisputed facts]

*Courtesy of AnnaEsse who translated from the French translation (Maddie - L'enquête interdite)*

*"Certainly, this book responds to the need I felt to defend myself, having been discredited by the institution for which I worked for more than twenty-six years, without being given any chance to explain myself, publicly or within the institution itself. I made the request several times, but it was never heard. I, therefore, scrupulously respected the rules of the judiciary*

*police and I refrained from making any comment. But this goes without saying: I experienced that silence to which I was constrained as an attack on my dignity. Later, I was removed from the investigation. It was then that I understood that it was time to speak. To do that, I requested early retirement in order to be able to express myself freely.*

*However, the purpose of this work is more important: to contribute to finding the truth so that justice can finally be done in the investigation known as the "Maddie case." Truth and justice are two values strongly anchored within me, which reflect my profound beliefs: they always guided the work I did for the institution to which I am proud to have belonged. Even in retirement, they continue to inspire me and to be present in my life.*

*In no way does this text seek to challenge the work of my colleagues in the judiciary police or to compromise the ongoing investigation. I am convinced that the disclosure of all the facts may, in the present case, result in harming the investigation. However, the reader will have access to unpublished information, to new interpretations of events - always with respect for the law - and, of course, to relevant enquiries.*

*The only objective of a criminal investigation is the search for truth. There is no place for the "politically correct."*

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*Numerous suggestions were put forward, mixing truth and lies; at the same time as regular information bulletins from the police, a campaign of disinformation was developed with the objective of discrediting the work of the investigators. For me, the investigations came to an end on October 2nd 2007, the date on which there seems to have been a new English ultimatum, incidentally on the same day that the Treaty of Lisbon was being discussed.*

*Considering the length of time I witnessed that media spectacle, including, at its height, "forcing," by the McCann family with the disclosure of a photo-fit sketch of the alleged abductor, nothing more could have surprised me.*

*- Don't worry, it's carnival...*

*I follow the conversation as if it was nothing, but deep down, I have the feeling that the world is caving in.*

*After hanging up, I go back to contemplating the almond trees in flower, planted in the hard soil of the Algarve. I wonder if a body is resting under that earth and if God, in the end, is not a little precipitous in making these trees flower in the winter...*

## **AN INVESTIGATION DESTINED FOR THE ARCHIVES**

*I feel it; with that television statement, the national director has the intention of preparing public opinion for the inevitable, that is to say, the end of the investigation and the closing of the case.*

*I get the impression that that decision was hatched on October 2nd and that all actions taken after that date were only a matter of form, with the sole purpose of sticking to the pre-established schedule. I fear that challenging all the previous work of the investigation is only a pretext for closing a case that was beginning to undermine the judiciary police, the investigators and Portugal. Perhaps that was why it had to come to a close.*



*Placing Madeleine's parents under investigation - Kate Healy and Gerald McCann as arguidos - must have marked a turning point in relations between the police in charge of the investigation and the couple. The Portuguese police officers began to consider the McCanns as potential suspects, which their British counterparts did not. At that time, the two police forces seemed to agree about exploring the hypothesis of the child's death inside the apartment. But the English police - without any really practical justification - suddenly stepped back and gave up on following that track. We have always found it strange the way the couple were treated, even after they were placed under investigation, and we have often wondered how the McCanns could have had access to information that had not been made public.*

*I recall various moments in the investigation, and the memories come pouring out;*

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*I think of that little girl who was not yet four years old and who was denied the right to live.*

*It would seem that there are preparations to smother the case, that the importance of the evidence is being minimised, that it's losing its strength. Thus, the rights of that child are flouted, the rights of many other children. Who wants to get to that point? Who required my departure from the operational coordination of the investigation? Who is it who wishes to bring an end to the arguido status of the McCanns and Murat? Those who support the theory of abduction? Those who suggest - I'd go further and say they would - that in England the suspects would already have been arrested? Or those who perpetuate the lie, in straying from the search for the material truth? The closing of the case certainly serves someone's interests.*

*After my departure from Portimao on October 2nd 2007, I had decided to forget about this case. Perhaps the best thing to do, considering the forces at play. If the authorities of her own country were not worried any more about what had happened to that child and they satisfied themselves with the theory of abduction, why worry myself about it? It's certainly not the unfortunate statement from a director of police (as perhaps inferred by the journalist) that will make the existing evidence be forgotten - I no longer think that was his intention. The only means of erasing the record of everything that was done would be the destruction of the official records. And then, our memory remains, that of all those who set out on this investigation to discover the truth.*

*(...)*

*Yes, I affirm it, a child is dead! This certainty is not fed by vague assumptions, no, I base myself on facts, details, clues and evidence recorded in the official records.*

*(...)*

*In Portimao, I meet chief inspector Tavares de Almeida, a member of the team I directed. We have known each other since we started in the judiciary police. He is worried because of the national director's statements; he heard that our work was going to be the object of an investigation. A request in that direction has allegedly already been placed before the national directorate of the judiciary police. According to him, that would allow the truth to be re-established and would lead to recognition of the quality of our work.*

*During the five months that the investigations lasted, we had heard all sorts of comments, but we had got on with our job.*

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*We remind ourselves of everything that was accomplished, with a great deal of effort, rigour and honesty, and we are certain that nobody could have done better. That might seem presumptuous, but it's just fair recognition of the conscientious attitude of all the police professionals who worked on the case.*

*- They can't count! How can they accuse us of being precipitous when the couple were only declared suspects four months after the events! Don't they know the principle of non-self-incrimination?*

*It is legally impossible to continue to take statements from someone as a witness if these statements risk later turning against him. While a witness is making a statement about an ongoing case and at a given moment it is realised that he could himself be involved in an illegal act, he is constituted arguido. Thus, from then on, he has rights and duties. Contrary to what one reads in the press - above all the English -, the arguido is protected and acquires the right to silence which no one can reproach him for - which would not be the case if he were being heard as a witness.*

*- I agree with you. If a mistake was made, it was in taking so long to make the couple arguidos. Too much politics, that's what there was, too much politics and not enough policing.*

*- I'd say rather that the mistake was in treating the McCanns "with tweezers." From the start of the investigation, we realised that certain things did not add up and yet, they continued to benefit from favourable treatment; that's what's not normal!*

*- Does the national director perhaps think that the couple only left Portugal because they had been placed under investigation?*

*- In fact, the McCanns stayed in Portugal as long as we stuck to the theory of abduction; from the moment that was placed in doubt, they talked about returning to England.*

*- From which can be concluded that their being placed under investigation gave them an excuse to leave the country...*

*- You know, certain English journalists consider Portugal to be a third world country. Of course, I don't agree with that definition. And yet, if it's not a third world country, why is the head of an ongoing investigation dismissed when the quality of his work is not in doubt....*

*- There is a lot of talk about the "politicising," of the law....they forget the extent to which a police investigation can be influenced.*

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*- It's a matter of either or: either the investigation is entrusted to trustworthy people, or, if things go wrong those responsible are replaced with more "reliable," people.*

- I don't believe that was the main reason.

- There are always reasonable and perfectly legal arguments. In fact, those who should stand in the way of this almost political management of the investigation are the most senior police managers. They should object to any situation or action that risks bringing prejudice to the investigation and to its correct operation. They can't agree to everything under the pretext of being afraid of losing their jobs.

- No, you are aware that you don't direct the police according to personal interests but properly according to public interests. It is only thus that we can conceive of a police force in a democratic state.

- OK, but look where we are! You will see, soon the arguidos will be choosing who leads the investigation. Maybe that's the modern way..

- The modern way....Rather self-interests, you mean! Deplorable! (...)

### **FRAUD OR ABUSE OF TRUST?**

During a more relaxed moment at one of these meetings, I come out with an ill-judged comment. Inopportune or undiplomatic, but this is my reasoning: thinking about the kinds of crime that may have been committed if the McCanns were involved in their daughter's disappearance, something occurs to me. If they were involved in one way or another, then a crime of fraud or abuse of trust is a possibility concerning the fund that was set up to finance the search for Madeleine. Donations have reached nearly 3 million Euros.

If such a crime exists, Portugal would not have jurisdiction to investigate and try it. The fund being legally registered in England, it would be our English colleagues who would deal with the case. Our English colleagues then realise a hard reality: the strong possibility that they would have a crime to investigate in their own country, with the McCann couple as the main suspects: a prospect that does not seem to appeal to them. I notice a sudden pallor in the faces of those British people present.

(...)

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### **A DISAPPEARANCE, A WINDOW AND A BODY**

It is now important to present a summary of this case, based on our deductions: reject what is false, throw out what we can't show with sufficient certainty and validate that which can be proven.

**1.** The theory of abduction was defended from the start by Maddie's

parents.

**2.** *In their group, only the McCanns state that they saw the bedroom window open. The others cannot confirm it since they arrived at the apartment after the alert was raised.*

**3.** *The only person to have seen that window open with the shutters raised is Amy, one of the play workers from the children's centre of the Ocean Club. She made that observation at around 10.20/1030pm, which means well after the alert - which doesn't exclude that the window could have been closed at the time of the criminal act.*

**4.** *The witness statements raise a great number of inaccuracies, inconsistencies and contradictions. Jane Tanner's witness statement in favour of the theory of abduction is probably false: little by little it has lost all credibility because of successive modifications introduced by Jane, modifications that have ended up invalidating it.*

**5.** *The body, the existence of which has been confirmed by the EVRD and CSI dogs but also by the results of the preliminary laboratory analyses, cannot be found.*

**24.** *The defendant Goncalo Amaral concluded his book the following way (pp. 220-21) [alínea J] of the undisputed facts]  
The conclusions my team and I have arrived at are the following:*

**1.** *The minor, Madeleine McCann died inside apartment 5A of the Ocean Club in Vila da Luz, on the night of May 3rd 2007;*

**2.** *There was simulation of abduction.*

**3.** *Kate Healy and Gerald McCann were probably involved in the concealment of their daughter's body.*

**4.** *The death may have occurred as a result of a tragic accident;*

**5.** *The evidence proves the parents' negligence concerning the care and safety of the children.*

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**25.** *The book Maddie - the Truth of the Lie was launched on the 24th July 2008, in the commercial center El Corte Inglés, in Lisbon [alínea R) of the undisputed facts].*

**26.** On that same day, 24.07.08, the book was also sold with the newspaper Correio da Manhã [alínea S) of the undisputed facts].

**27.** The book Maddie - the Truth of the Lie had the following printed editions in Portugal:

1st July edition 2008, 30.000 copies

2nd July 2008, 10.000 copies

3rd July 2008, 10.000 copies

4th July 2008, 30.000 copies

5th August 2008, 25.000 copies

6th August 2008, 10.000 copies

7th August 2008, 15.000copies

8th August 2008, 10.000 copies

9th August 2008, 10.000 copies

10th August, 10.000 copies

11th August 08, 10.000 copies

12th 2008, 10.000 copies [alínea T) of the undisputed facts].

**28.** The book was published through other editors in the following countries:

Spain, September 2008, with the possible commercialization in South American Spanish speaking countries,

Denmark, November 2008, with possible commercialization in other Nordic countries,

Italy , December 2008, with the commercialization in Italian for all the world,

Holland, April 2009, with commercialization in Dutch for all the world,

Germany, June 2009 with commercialization in Austria and Switzerland [alínea U) of the undisputed facts].

**29.** Within the scope of the injunction attached there were only around 7.000 copies of the book delivered to the applicants legal representative [alínea V) of the undisputed facts].

**30.** Copies of an English and Portuguese version circulate in the internet without the authorization of *Guerra&Paz, Editores SA* [alínea X) of the undisputed facts].

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**31.** The cover price of the book *Maddie - the Truth of the Lie* in Portugal was determined by the defendant *Guerra&Paz* on the amount of 13.33 € VAT included (artº 2º of the instruction basis).

**32.** The sale of the books was partly on consignment and another part subject to right of return for reasons such as faults, use or not being sold (artº 23º of the instruction basis).

**33.** The defendant *Goncalo Amaral*, received the following amounts from the sale of the book: 2008 and 2009, the amount of 342,111.86 (artº 3º & 4º of the instruction basis).

**34.** The defendant, *VC Valentim de Carvalho* is a commercial society that creates, develops, produces and promotes the exhibition and broadcast of cinematographic and audiovisual works.

**35.** On the 7th March 2008, the defendant *Goncalo Amaral* and the defendant *Valentim de Carvalho* signed a written agreement (add pages 282-283) designated "concession of rights - Option of Rights – deal demo" through which the defendant *GA* gave the exclusive rights of film adaptation (documentary and fiction) of a book about the investigation of the disappearance in *Praia da Luz*.

**36.** On the 11th March 2008, the defendant *GA* and the defendant *Valentin de Carvalho* signed a written agreement (284-288) , designated "passing of Rights - Option contract" through which the defendant *GA* gave the defendant *VC* the right to adapt the book to a documentary and/or a fiction that may have the format of a film for cinema or a TV movie.

**37.** Clause 2 of this agreement states the following: By the transfer

of these exclusive right of option, VC Filmes commits to pay the author the gross sum of 25.000, subject to legal fees and added VAT.

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**38.** Clause 4, the author is obliged to participate as a narrator, transferring all image and sound rights. 2 For that participation and transfer patrimonial content of author rights connected to VC filmes the author will receive the gross sum of 15.000 euros, subject to legal fees. 3. For the transfer of rights named in 2 the author will receive 10% of all receipts national or international of the trading of the documentary (in all platforms and supports invented or yet to be invented) after deduction of production costs.

**39.** The defendant V.C- Filmes , Audiovisuais, SA agreed with VC Multimedia SA, on the 6th June 2008, to transfer to the latest all trading, distribution and exhibition and broadcast of cinematographic and audiovisual works (film, miniseries, documentaries) that they intended to produce within 5 years.

**40.** The defendant VC produced the documentary Maddie , The Truth of the Lie, directed by Carlos Coelho Silva, which is an adaptation of the book written by the defendant GA. I have attached such documentary to the files.

**41.** At the beginning of the documentary, the defendant Goncalo Amaral states the following:

*My name is Goncalo Amaral and I was a police investigator for the Judiciary Police for 27 years. I co-ordinated the investigation of the disappearance of Madeleine McCann on the 3rd of May 2007. During the next 50 minutes I will prove that the child was not abducted and that she died in the holiday apartment in Praia da Luz. Discover all the truth about what happened that day. A death that many want to cover up.*

**42.** At the end of the documentary, the defendant Goncalo Amaral states the following:

*What I know tells me that Madeleine McCann died in apartment 5A on the 3rd of May 2007. I am certain that this truth will one day be verified. The investigation was brutally interrupted and there was a hasty political archival. There are some who hide the truth but, sooner or later, the*

*varnish will crack and the revelations will surface. Only then will there be justice for Madeleine McCann.*

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**43.** The defendant, Valentin de Carvalho-filmes Audiovisuais, SA concludes the documentary with this statement:

The mystery goes on, the former inspector believes that one day the truth will be known. For now, we only know that on the 3rd May of 2007, Madeleine McCann disappeared in Praia da Luz. She was 3 years old and she was a happy child.

**44.** In the sequence of deliberations on the 27th October 2008, an increase was registered in the share capital of the defendant Valentim de Carvalho-Filmes Audiovisuais SA, which was registered on the 28th September 2009, where by the capital of the company was held in the proportion of 60% by Estudios Valentim de Carvalho-Gravacoes e Audiovisuais, SA and 40% by Fundo de Investimento para o Cinema e Audiovisual.

**45.** On the 13th April 2009 and on the 12th May 2009 the documentary was broadcast by the defendant TVI-Televisao Independente SA.

**46.** Before the documentary's broadcast, the defendant, TVI-Televisao Independente SA issued the following statement:

*The following programme is a documentary based on the book by Goncalo Amaral, former PJ Inspector that investigated the disappearance of Madeleine McCann in the Algarve. His version of events is denied by Maddie's parents that continue to insist this was abduction. The criminal investigation carried out by the Portuguese Authorities ended with the investigation archival, a decision contested by Goncalo Amaral. More than to find those responsible, a task for the justice system, the broadcast of this documentary aims at shedding some light and provide facts that may contribute to understand a case that remains a mystery for almost two years.*

**47.** At least two million and two hundred thousand people watched the programme broadcast on the 13.04.2009.

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**48.** The defendant Goncalo Amaral gave an interview to the newspaper Correio da Manha, conducted by the journalists Eduardo Damaso and Henrique Machado, published on the 24th July 2008. Its contents is



totally reproduced and announced on the front page, having been attributed to GA in particular the following statements (Joana Morais is the translator) :

Correio da Manha – As the case investigator, what is your thesis?

*Goncalo Amaral – The little girl died in the apartment. Everything is in the book, which is faithful to the investigation until September: it reflects the understanding of the Portuguese and the English police and of the Public Ministry. For all of us, until then, the concealment of the cadaver, the simulation of abduction and the exposure or abandonment were proved.*

CdM — What led you to indict the McCanns over all of those crimes?

*GA — It all starts with an abduction theory that is forced by the parents. And the abduction is based on two facts: one is Jane Tanner's testimony that says she saw a man passing in front of the apartment, carrying a child; the other is the bedroom window, which, according to Kate, was open when it should have been closed. It was proved that none of that happened.*

CdM — How was it proved?

*GA — Jane Tanner is not credible: she identifies and recognizes different people. She starts with Murat, later on someone else is mentioned, according to the drawing done by a witness, and she already says that is the person, completely different from Robert Murat.*

CdM — Jane Tanner's testimony drove the abduction theory.

*GA — In order to advance into that direction, it would be necessary to give her credit: there was no other clue of abduction. And the issue of the bedroom window, where Maddie and her siblings slept, is vital. It leads to simulation. This means, whether or not it was open when Jane says that she saw the man carrying the child. The little girl's mother, Kate, is the only person that mentions the open window.*

CdM — Does that undo the abduction theory?

*GA — There lies the solution. To be closed or not, is a strong clue for simulation. And why does one simulate abduction, rather than simply saying that the child has disappeared? She could have opened the door and left...*

CdM — Do Kate's fingerprints reinforce the simulation theory?

*GA — They are the only fingerprints on the window. And in a position of opening the window.*

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CdM - What do you think happened to the body?

*GA – Everything indicated that the body, after having been at a certain location, was moved into another location by car, twenty something days later. With the residues that were found inside the car, the little girl had to have been transported inside it.*

CdM — How can you state that?

*GA — Due to the type of fluid, we policemen, experts, say that the cadaver was frozen or preserved in the cold and when placed into the car boot, with the heat at that time [of the year], part of the ice melted. On a curb, for example, something fell from the trunk's right side, above the wheel. It may be said that this is speculation, but it's the only way to explain what happened there.*

CdM — If the body was hidden in the beach area first, was it always out of reach for the searches?

*GA — The beach was searched at a time when it is not known whether the body was still there. Using dogs, but sniffer dogs have limitations, like the salted water, for example. Later on, it may have been removed.*

**49.** The defendant Goncalo Amaral issued the above mentioned affirmations.

**50.** The defendant Goncalo Amaral gave interviews to the defendant TVI-Televisao Independente SA on the 16.05.2009 and on the 27.05.2009.

**51.** By the end of April 2009, the documentary went on sale in DVD with the title Madeleine - the Truth of The Lie - a powerful documentary based on the best seller "The Truth of the Lie" by Goncalo Amaral.

**52.** The above mentioned DVD was edited and the edited copies were traded by Valentim de Carvalho Multimedia SA through agreement with Presselivre-Imprensa Livre SA (artº 8º of the instruction basis)

**53.** 75.000 copies of the DVD were distributed for sale [alínea AO) of the undisputed facts].

**54.** 63.369 copies of the DVD were not sold, having subsequently been destroyed (artº 18º of the instruction basis).

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**55.** In the video cover the Word "confidential" is written in red [alínea AP) of the undisputed facts].

**56.** The DVD was sold by Presselivre-Imprensa Livre SA as an insert with he newspaper owned by the same company Correio da Manha at the price of 6,95 € VAT included (artº 6º of the instruction basis).

**57.** To this current date, the documentary was reproduced only once to be edited, published and traded in Portugal in its video format (artº 31º of the instruction basis).

**58.** The reproduction and editing of the documentary in video format were authorized by Valentim de Carvalho Multimedia SA to the company Presslivre-Imprensa Livre SA, proprietor of the newspaper Correio da Manha, as per the contract celebrated between both (artº 32º of the instruction basis) .

**59.** In the terms of the contract, the DVD's covers and packaging would be produced by the Presslivre-Imprensa livre SA, to be distributed with the newspaper Correio da Manha (artº 33º of the instruction basis).

**60.** All registration and edition classification with IGAC would be carried out, as it was, by Valentim de Carvalho Multimedia and the costs to be supported, as they were, by Presselivre (artº 34º of the instruction basis).

**61.** The documentary DVD was distributed for sale together with the distribution for sale of the newspaper Correio da Manha ( art 35º of the instruction basis) .

**62.** The defendant Goncalo Amaral earned by selling the DVD, in 2008, the amount of 40.000 € (Article 7 of the instruction basis) .

**63.** The documentary was played , including subtitled in English by others than the spread on the Internet without the consent and against the will of the defendant VC-Valentim de Carvalho-Movies, Audiovisual, SA (Article 36 of the of the instruction basis) .

**64.** This illicit spread undermines not only the rights of the defendant VC-Valentim de Carvalho- Movies, Audiovisual, SA holds about the documentary, as its commercial exploitation, as any citizen can access the documentary, also with just one " click " (Article 37 of the instruction basis) .

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**65.** The Republic Prosecutor Office in Portimão determined the creation of a digital copy of the investigation process, with the exception of parts subject to absolute secrecy, and its delivery, on request, to several people, including journalists, which occurred [ point AX) of the undisputed facts] .

**66.** The content of such a digital copy was made public , including through the Web, having been publicly and universally known, commented and discussed [ point AZ) of the undisputed facts] .

**67.** The claimants Kate McCann and Gerald McCann alerted the press about the disappearance of their daughter [alínea BA) dos factos assentes].

**68.** The claimants Kate McCann and Gerald McCann gave an interview to the American television program "Oprah" hosted by Oprah Winfrey, revealing the existence of new witnesses, reconstructions and e-fits [ point BB) of the undisputed facts ] .

**69.** The interview on "Oprah" was worldly broadcast by signals available through satellite and cable networks [ point BC ) of the undisputed facts] .

**70.** This interview with "Oprah" program was broadcast in Portugal, by SIC , the days 9.5.2009 and 12.5.2009 [ point BD ) of the undisputed facts] .

**71.** The claimants Kate McCann and Gerald McCann, in collaboration with the British television station Channel 4, made a documentary about

the disappearance of their daughter, entitled *Still missing Madeleine*, lasting 60 minutes [ point BE) of undisputed facts] .

**72.** On 15.4.2009 , the defendant *TVI-Televisao Independente, SA* signed a license preliminary agreement for broadcasting, exclusively in Portugal, the documentary *Still missing Madeleine* for 35,000 € [ point BF ) of undisputed facts] .

**73.** The claimants Kate McCann and Gerald McCann asked that the license for broadcasting the documentary *Still missing Madeleine* would not be attributed to the defendant *TVI-TelevisãO Independente, SA* [ point BG) of undisputed facts] .

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**74.** The documentary *Still missing Madeleine* translated Maddie, two years of anguish was broadcast by SIC on 12.5.2009 [ point BH ) of undisputed facts].

**75.** On 17.10.2007, Clarence Mitchell, spokesman for Kate McCann and Gerald McCann said they were realistic enough to admit that their daughter would probably be dead [ point BI) of undisputed facts] .

**76.** There was a huge public interest in Portugal and throughout the world, about the events surrounding the disappearance of Madeleine McCann, the investigations carried out to find and to determine what in fact happened, their evolution and vicissitudes, among which the constitution of the claimants Kate and Gerald McCann as suspects in the investigation process and the removal of the defendant Goncalo Amaral from the investigations that were developed under his coordination [ point BJ ) of undisputed facts] .

**77.** The claimants Kate and Gerald McCann hired through Madeleine's Fund, PR firms and spokesmen [ point BL ) of undisputed facts] .

**78.** The so-called Maddie case has been deeply treated in the Portuguese society and in foreign countries, either by media organs or in books, like the works of author Paulo Pereira Cristovao, Manuel Catarino and Hernani Carvalho (article 24 of the instruction basis) .

**79.** The so-called Maddie case was commented by Dr. Francisco Moita Flores, former Inspector, writer, as a criminologist in various media (article 25 of the instruction basis) .

**80.** The facts related to the criminal investigation of Madeleine McCann's disappearance that the defendant Goncalo Amaral refers in the book, in an interview with the newspaper Correio da Manha and in the documentary are mostly facts that occurred and are documented in this investigation (clauses 27 and 28 of the instruction basis) .

**81.** As a result of the defendant Goncalo Amaral's statements in the book, the documentary and interview with the CdM , the claimants Kate and Gerald McCann felt anger, despair, anguish, worry, suffering insomnia and lack of appetite (article 13 of the instruction basis) .

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**82.** The same claimants feel unease because they are considered by people who believe in Goncalo Amaral's thesis about the disappearance of Madeleine McCann, as responsible for the concealment of the body and as authors of the simulation of her abduction (article 14 of the instruction basis) .

**83.** The claimants Kate and Gerald McCann feel, with deep concern , the need to keep their young children far from the thesis referred to above (article 15 of the instruction basis) .

**84.** Sean and Amelie McCann entered the school in August 2010 without knowledge of the defendant's thesis referred to above (article 17 of the instruction basis) .

## **FACTS NOT PROVEN**

Were not proved any other facts and from those brought on time to the instruction basis/ proof topics have not been proven in particular :

**a)** that the cover price of the book Maddie-The Truth of the Lie in Portugal is of € 13,80, VAT included,

**b)** that the defendant Goncalo Amaral had earned from the sale of the Portuguese edition of the book Maddie-The Truth of the Lie an amount not less than 621.000 €,

**c)** that the defendant Goncalo Amaral had earned from the sale of editions of the book in foreign languages an amount not less than 498,750 €,

- d)** that the book had been sold in Brazil by the defendant Guerra&Paz, Editores, SA,
- e)** that the DVD has a cover price of 6 €,
- f)** that the defendant Goncalo Amaral had earned by selling the DVD an amount not less than 112.500 €
- g)** that the DVD had been edited and the edited copies had been sold by the defendant Valentim de Carvalho- Movies, Audiovisual, SA,
- h)** that the defendant Valentim de Carvalho-Movies, Audiovisual, SA had already put the DVD available in English version, for immediate delivery through order on the web,
- i) i)** that because of the defendant Goncalo Amaral's statements in the book, the documentary and the interview with the Correio da Manha, the Judicial Police had ceased to collect information and to investigate the disappearance of Madeleine McCann,
- j)** that because of the defendant Goncalo Amaral's statements in the book, the documentary and the interview with the Correio da Manha, the claimants Kate and Gerald McCann find themselves completely destroyed, from a point of view moral, social, ethical, sentimental, family, far beyond the pain that the absence of his daughter causes them,
- k)** that in particular because of the defendant Goncalo Amaral's statements in the book, the documentary and the interview with the Correio da Manha, the claimant Kate McCann finds herself immersed in a serious and deep depression, which has already made her declare publicly I'd like to be in a coma, to relieve pain,
- l )** that the defendant Goncalo Amaral had been retired of the Judicial Police from 1.6.2008,
- m)** that the criminal investigation had been reopened by the emergence of new evidence,
- n)** that the attention of the media and people in general had decreased with the publication of the defendant Goncalo Amaral's book .

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## **MOTIVATION**

The motivation for the positive and negative conviction is contained in the autonomous decision of the matter of facts (materia de prova), reproduced in the minutes of the final hearing, to which reference is made.

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## **MATTERS TO BE DECIDED**

In view of the requests made, the decision on the merits essentially depends on the answer to the following question :

- Are the book written by the defendant Goncalo Amaral, the adaptation of this book for the audiovisual documentary and the interview given by the same defendant illicit /anti-juridical according to article 484° of the Civil Procedure Code ?

In response attempt will travel the following discussion levels :

**I.** the content of the book, the documentary and the interview.

**II** . The conflict in this case between freedom of expression and the right to good name and reputation of the claimants.

If the conclusion is unlawfulness, it will matter to establish :

**III.** If damages have been proven that are in a causal relationship with the unlawful acts and, if so , what is the amount with which they should be compensated.

**IV.** If the claims made by the plaintiffs in the appended action are appropriate for removing the effects of the committed crimes.

Finally it will be important to close the discussion with analyses of the procedural conducts of the parties in the light of the premises of bad faith litigation.

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## **LAW**

I. Starting the discussion in a logical and chronological order through book analysis, one immediately establishes that what is at stake is not a text with informative content.



In fact, one doesn't find in the book, reported in a stripped and simple way, the facts of the investigation that intended to clear the circumstances of the disappearance of the minor Madeleine McCann on May 3, 2007. No added value is brought to the partial copy of the investigation that the Attorney General's Office did distribute for Social Communication after the closure of the investigation (paragraphs 65 and 66 of proven facts).

The book is the expression of an opinion, including the account of the conclusions that the author draws from the means of obtaining evidence produced in the investigation in order to formulate a thesis, an hypothesis of verifying of the facts.

The thesis is synthetically that there was no kidnapping of the minor, contrary to the initial premise of the criminal investigation which is what the child's parents maintain up to now. What happened was the accidental death of the child in flat of the tourist resort, then the cover up of this event through the concealment of her corpse and the simulation of the referred crime, carried out by the claimants Gerald and Kate McCann.

Going through the book, one is driven along the days of the investigation since the breaking news about the crime. The author underlines, at each step of the time-line, the various indices that present a match with the referred thesis - among others, the lack of bedroom break-in signs and of strange fingerprints (pp. 44 and 48), the presence of the press alerted by the group of friends of the couple (p. 48), the fact that the key witness Jane Tanner affirmed the sighting of the "pseudo-raptor" (sic) when two other protagonists, in the same place, saw nothing (p. 51), the inconsistencies of the statements and discrepancies of those elements of proof between themselves (p. 53, 57, 59, 144), the statements of the Smith family (p. 115) and the evidence collected by the K9 team (p. 157, 162, 167).

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A first conclusion is that if the book is about an hypothetical checking of the facts or about the opinion of the author on how the evidence collected in the investigation should be read, one shouldn't speak of falsehood, untrue facts, and it doesn't make sense, without a better understanding, to discuss the "exceptio veritatis" ( [4](#) )

The means of obtaining evidence and the evidence referred to in the book are those of the criminal investigation and most of the facts that the book is concerned with (as well as those referred to in the documentary and interview), when related to the criminal investigation,

are mostly facts that occurred or are documented in the investigation (n° 80 of the proved facts).

In our view, the issue, in this trial, is the exercise of the right of opinion by the defendant in that context.

This kind of view is, moreover, evident in the final conclusions of the book when the author himself says:

*For me and for detective inspectors who worked with me on the case up to October 2007, the results we have reached are as follows:*

- 1.** *The minor Madeleine McCann died in apartment 5a of the Ocean Club, in Vila da Luz on the night of May 3, 2007;*
- 2.** *A kidnapping simulation occurred;*
- 3.** *Kate Healy and Gerald McCann are suspected of involvement in hiding the corpse of their daughter;*
- 4.** *Death may have resulted from a tragic accident.*
- 5.** *There are evidence of negligence in the guard and safety of the children (# 24).*

The interview given by Goncalo Amaral to the newspaper *Correio da Manhã* and published in the edition of July 24, 2008 is a way to advertise the book and therefore the thesis developed in it. Here the defendant reaffirms that thesis in so many answers as questions put to him :

- 1** *the girl died in the apartment*
- 2** *the testimonies of Jane Tanner and Kate McCann are not credible*
- 3** *there are clues of crime simulation*
- 4** *there was concealment of the body (No. 48 ).*

The documentary develops the referred opinion in a more appealing way, as it is proper to the audiovisual support, giving it an appearance of police reconstruction of the facts.

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It steps from the expression of an opinion to the attempt to prove a thesis. It is the defendant Goncalo Amaral who says it, while the narrator at the beginning of the program:

*In the next 50 minutes I will prove that the child was not abducted and died in the holiday apartment in Praia da Luz (No. 41).*

In the documentary, this thesis is clearly stated as the contra-narrative of the abduction hypothesis, as the real alternative to it and to the shelving of the investigation for lack of evidence. This is why the challenge *is discover the truth about what happened that day. A death that many people want to cover up*, ending the defendant with this conclusion

*I am sure that this fact [Madeleine McCann died in the apartment] on day will be revealed. The investigation was brutally interrupted and there was a political and precipitated shelving. Some hide the truth, but later or earlier, the varnish will crack and the revelations will emerge. Only then there will be justice for Madeleine McCann "(paragraphs 41 and 42).*

In either supports - book, interview, documentary - the presented thesis aims to be perceived as the real narrative of events, compared with the initially sustained in the investigation and by the claimants mediated abduction theory. The same thesis is still held as the truth that is hidden behind a shelving determined by political reasons and subservience to the British authorities .

It is that, it appears , the meaning that the average reader attributes to the title Maddie - the Truth of the Lie, the "truth" being the thesis of the book and the "lie" the abduction narrative.

Now the thesis that the minor died accidentally in the apartment and that this fact was hidden by her parents, who spread and fed, in order to deceive, an hypothesis of abduction, is not new, there's nothing new neither in the book, in the interview or in the documentary.

This theory of the facts comes from the own investigation, it is shaped in the chief inspector Tavares de Almeida's report (No. 9), it was an avenue pursued by the investigation (paragraphs 10 and 11), it determined the constitution of the claimants Gerald and Kate McCann as arguidos and was put within the reach of the media, and soon of the general public through a copy of the inquest (paragraphs 65 and 66) .

One wonders then what is the difference between 1) asserting – as it was done at a certain step of the investigation or as many commentators do – that there are indices of accidental death, concealment of the corpse and simulation of crime and 2) supporting this view as did the defendant Goncalo Amaral in those three mediums.

There is one aspect that stands out in this comparison and it is the particular relationship between the defendant Goncalo Amaral and the investigation.

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The defendant is not referred to the investigation as a mere commentator of criminal "fait divers", a writer of police intrigues or a criminologist.

Considering the matter in question here and what obviously contributes to the authority and credibility of his opinion, the defendant was the coordinator of the criminal investigation into the disappearance of Madeleine McCann from the day of the event up to October 2, 2007.

It is this particular aspect conjugated with others that are appurtenances - as is the time coincidence between the shelving of the investigation on the one hand, and the launch of the book, the interview and selling of the book on the other - ~~(are aspects)~~ that are part of the discussion on how to solve, in this case, the conflict between the right of the defendant and the rights of the claimants.

( **5** ).

At the centre of this trial, there is a conflict between two existing rights, the right to good name and reputation of the claimants (through the presumption of innocence that they always were entitled to) and the right to freedom of expression of the defendant, in the concrete field of the right to opinion he is entitled to.

The legal protection of such rights of the claimants is based on the *Universal Declaration of Human Rights*, of which the article 12 states that no one will suffer, among others, attacks upon one's honour and reputation, stipulating that against such attacks anyone is entitled to the protection of the law.

However, the article 16 ( **6** ) of this great *Declaration* states, with equal protection, that *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

The criteria of harmonization of the various consecrated rights results of the following artº 29, paragraph 2, which states that

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*

Also from the European Convention for the Protection of Human Rights and Fundamental Freedoms results the protection of both rights.

The paragraph 1 of its artº 10 states :

*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.*

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In spite of the freedom of expression affirmed in this norm and of the prohibition of any interference in it by public authorities of each country, the paragraph 2 of the same article states that

*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.*

The same Convention consecrates in the nº2 of its article 6 one of the fundamental pillars of societies governed by the principles of the democratic State of Law, establishing that *everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

As it will appear below, the activity of the European Court of Human Rights in interpreting and precipitating in the concrete case of those standards reveals to be particularly important [retain up yet the principle of the reception of the international law into Portuguese law, in paragraph 1 of article 8 the Constitution of the Portuguese Republic].

The Portuguese Constitution protects the rights analysed in the chapter on rights, freedoms and personal guarantees, which is the part of fundamental rights.

Indeed, the article 26-1 of that legal document, under the heading "other personal rights", states that *to all are recognized rights ( ... ) to good name and reputation ( ... )* ( **8** )

However, in the same fundamental legal document and with equal dignity, the article 37 establishes the protection of the freedom of expression, stating its paragraph 1 that *all have the right to freely express and divulge their thoughts by words, images or by any other means, as well as the right to inform, to seek information and be informed without hindrance or discrimination.*

In spite of the value of this fundamental freedom, the paragraph 3 of the same art<sup>o</sup> 37 refers to offences committed in the exercise of this freedom by handing them over to the area of the general principles of criminal law and of the unlawful regarding simple social order, while paragraph 4 points clearly to the limits which the same freedom may be subject to, recognizing *to all persons, private or collective ( ... ) under conditions of equality and effectiveness , the right to reply and rectify as well as the right to be compensated for damages suffered.*

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Glossing the said paragraph 3, Vital Moreira and Gomes Canotilho write : *From # 3 results, however, that there are certain limits to the exercise of the right to freely express and divulge one's thoughts. The freedom of expression and information can not actually take precedence over the fundamental rights of citizens to good name and reputation, to moral integrity, to privacy ( ... )* [Constitution of the Portuguese Republic] .

In the Constitution and also interesting for the present case, the freedom of the press is also protected, being one of its greatest exponents *the freedom of expression and creativity for journalists and collaborators* [ art<sup>o</sup> 38, paragraph 2, alinea a)].

It should be noted that the Constitution itself provides the criteria to resolve the eventual conflict between fundamental rights by establishing in article 18, paragraph 2 that the legal restrictions on these rights must *(...) be limited to what is necessary to protect other rights or constitutionally protected interests.*

The Constitution also welcomes the presumption of innocence as one of the guarantees of the criminal case (paragraph 2 of article 32).

Under the aegis of ordinary law, the artº 70 of the Civil Code establishes the general protection of the personality, stating that *the law protects individuals against any illegal offence or threat of offence to their physical or moral integrity.*

On the other hand, still in that CC, the artº 483º generically states that

*Anyone who, intentionally or recklessly, unlawfully violates the rights of others or any legal disposition intending to protect interests of others has to compensate the injured party for damages resulting from violation.*

and the artº 484º specifically establishes that

*Anyone who claims or spreads a fact capable of harming the credit or the good name of any person, natural or legal, is liable for the damages suffered.*

In this regard Pires de Lima and Antunes Varela teach that

*Whether, by natural or legal persons, a subjective right to credit and good name exists or not, a behaviour threatening to cause them harm, in the prescribed terms, is considered as expressly anti-juridical. Never mind that the stated or disclosed fact corresponds to the truth or not, as long as it likely can, given the circumstances of the case, reduce the confidence in the ability and willingness of the person to fulfil their obligations (loss of credit) or shake the prestige that the person enjoys or the good image the person has (loss of good name) in the social environment in which the person lives or carries on their business ( ... ) [CC noted , Vol . I, Coimbra Editora , p. 486].*

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The Civil Code also contains a norm on conflict of rights, pointing, paragraphs 1&2 of article 335, to two fundamental rules in this regard , namely:

**1 .** *Having a collision of rights, equal or of the same kind, the holders (of those rights) should give in to the extent of the necessary for all (the rights) producing their effect without major detriment for any of them .*

**2. If the rights are unequal or of a different kind, prevails the one that should be considered superior.**

This being the general outline of the law applicable to the decision arisen in this trial, it is important to know how the Superior Courts fall and solve the conflict of between the contemplated rights, starting with the European Court of Human Rights, of which the jurisprudence is particularly industrious and interesting in this matter.

From this same jurisprudence one retains that in contrast to the traditional current of the Portuguese higher courts, this court does not accept, in principle, the priority of the right to honour and good over the freedom of expression/freedom of the press [are examples of this traditional line, among others, the Supreme Court Rulings of 14 February 2002 ( [9](#) )and 7 March 2002,( [10](#) ) reported in reviews N° 3379/01 and 184/02, of the 1st and 7th sections].

Very differently, according to the jurisprudence of

the European Court of Human Rights freedom of speech and press prevails, admitting strict restrictions, especially when is at stake the debate of matters of public interest.

Thus, this jurisprudence deals with an utterance of ideas with the following essential core:

**(i)** freedom of expression is a postulate of a democratic society and of a State of law, being the basis of pluralism, tolerance and open-mindedness necessary to progress in this kind of societies and to the individual development of its members,

**(ii)** the limitations to freedom of expression must be anticipated by law, pursue a legitimate aim and be necessary in a democratic society,

**(iii)** in debates of matters of public interest the possibility of restrictions on freedom of expression is particularly limited,

**(iv)** the politicians, public figures and senior officials of public administration, when exercising their functions, are subject to wider limits of critic than individuals,

**(v)** considering the limits of freedom of expression, one should distinguish between factual assertions and value judgements, between statements addressed to the opinions of the opponents as opposed to judgements *ad hominem* and between what is critic and what is insult



and (vi) the press has the duty to impart information and ideas on matters of public interest and in doing so is allowed to a certain amount of exaggeration, even of provocation

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[cfr., among many others, the Smolorz Processes vs Poland, ( [11](#) ) Thoma vs Luxembourg ( [12](#) ) and Palomo Sanchez and Others vs Spain, ( [13](#) ) can read an exhaustive statement of the fundamental guidelines that the learned Court Judgement of the Lisbon Overview of February 14, 2012, that was the Rapporteur Hon. Judge Rijo Ferreira, available in [.\]www.dgsi.pt](http://www.dgsi.pt)].

The most recent national jurisprudence is echoing these guidelines, stressing the importance of the decisions of the European Court of Human Rights in implementing the boundary between freedom of expression and the rights to honour and good name of the concerned persons and the contribution of those decisions in resolving each particular conflict between the two rights.

In this sense, the Judgement of February 7, 2008 says

*It seems to us that the position of the ECHR results in an imposition on the way of thinking. There is no justification to think, from the outset, on whether a journalistic piece offends someone. It should rather start from the freedom that the respective authors enjoy. Only then one should seek whether is justified – in respect of the referential criteria mentioned above, with the inclusion of a margin of proper appreciation by the internal organs of each of the Convention's signatory States - the restrictive interference in the field of that same freedom and the consequent move to legal sanctions.*

This does not mean, however - in our view - that the cases in which such a restrictive interference is justified aren't intensely relevant. It is enough to read the paragraph 2 of Article 10 to weight what it contains in terms of essential values for human beings "[Review No. 4403/07 of 2nd Section. In the same sense, can be read the Judgement of 12 March 2009 in the Review Nos 2972/08].

It should also refer to the content of the right to honour and the qualities or attributes that it welcomes.

The Judgement of the Supreme Court of May 27, 2008 , quoted above, says :

*The honour of the person translates therefore into the positive value that they infer themselves from the core of their being, that is the moral and ethic substrate of their existence, while the social consideration, the good name and the reputation translate into the judgment by others about every one. Correspondingly, the right to good name and to reputation is essentially for the person not be offended or injured in their honour, dignity or social consideration by imputation of others and to fight back against this offence and to obtain redress [ idem ]*

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Capelo de Sousa teaches that *honour covers immediately the projection of the value of human dignity, which is innate, offered by nature equally to all human beings, unlikely to be lost by any man in any circumstance ( ... ). In a broad sense, it also includes the good name and reputation, as syntheses of social appreciation for determining qualities of uniqueness of each individual at the intellectual, moral, sexual, family, professional or political level [The Personality General Law, 1995 , p. 303] .*

Brito Correia added that honour also includes *(...) the qualities acquired throughout life, by the individual's effort or otherwise and in various aspects (family, political, professional, scientific, literary, artistic, commercial, etc.). It covers inter alia, character, honesty, righteousness, loyalty, etc., corresponding to a sense of personal self-esteem. It is based on individual awareness of one's own worth : self-recognition and self-assessment.*

According to the same author, *the law protects, however, not only that personal feeling of own worth, which can call up the internal honour, but above the projection in the social consciousness of all the personal values of each individual, which can be called external honour : the qualities a person needs to be respected in a social environment, including the good name and the reputation, the social consideration [ op. cit. p. 587] .*

The protection of the rights of the claimants to their good name and reputation is, in this case, closely related to the presumption of innocence.

The claimants Gerald and Kate McCann were made arguidos (formal suspects) in the criminal investigation, a status that had the function to

guarantee their rights (though not being interpreted this way by the general public) and ceased with the closure of the investigation having the dispatch (AG) report concluded :

*it has not been possible to obtain any piece of evidence that would allow for a average man, under the light of the criteria of logics, of normality and of the general rules of experience, to formulate any lucid, sensate, serious and honest conclusion about the circumstances under which the child was removed from the apartment (whether dead or alive, whether killed in a neglectful homicide or an intended homicide, whether the victim of a targeted abduction or an opportunistic abduction), nor even to produce a consistent prognosis about her destiny and inclusively - the most dramatic - to establish whether she is still alive or if she is dead, as seems more likely.*

*(...) Therefore, after all seen, analysed and duly pondered, with all that is left exposed, it is determined: (...) The archiving of the process concerning arguidos Gerald Patrick McCann and Kate Marie Healy, because there are no indications of the practise of any crime under the dispositions of article 277 number 1 of the Penal Process Code. (No. 15).*

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In the European Court of Human Rights' jurisprudence, the principle of presumption of innocence imposes a standard of conduct for all agents, public servants and magistrates involved in the administration of criminal justice.

The presumption of innocence prohibits, according to these decisions, the premature expression of opinions or beliefs of guilt by the courts but also assumptions by public officers involved in procedures which might lead the public to suspect the responsibility of the suspects in the facts under investigation.

Accordingly the decision in Karaman process vs Germany claims that

*the Court has previously held in this context that Article 6 § 2 aims at preventing undermining of a fair criminal trial by prejudicial statements made in close connection with proceedings. It not only prohibits the premature expression by the tribunal itself of the opinion the person «charged with a criminal offence» is guilty before he has been so proved according to the law, but also covers statements made by other public officials about pending criminal investigations which encourage the public*

*to believe the suspect guilty and prejudge an assessment of the facts by the competent judicial authority [HUDOC].*

In the United Kingdom the case *Allen v UK* emphasized the importance of the presumption after the acquittal or dismissal of the criminal investigation, explaining that this principle prevents suspects or defendants in such cases are treated as if they were in fact responsible for the criminal offences of which they were accused and stressing that without this second level of protection – the level of full respect for acquittal or archiving – the presumption of innocence will remain illusory or merely ideal.

Likewise, the presumption of innocence requires that the absence of guilt that emanates from it is respected, after the acquittal or dismissal, in all legal proceedings of any kind and by any authority that comes into contact with these facts [idem *Allen c. United Kingdom*].

In this case, the claimants Kate and Gerald MacCann never ceased to benefit from this presumption of innocence and from the imperative of behaviour that this presumption places on national judicial and justice authorities and all the civil servants and agents.

The defendant Goncalo Amaral was the coordinator of criminal investigation from the date of the crime news and October 2nd, 2007 (No. 12)

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On July 1, 2008 GA retired from the Judicial Police, having the book *Maddie-The Truth of the Lie* been released on the 24th and sold with the same day edition of the newspaper *Correio da Manhã*, an edition that published the interview which is part of this trial (paragraphs 13, 25, 26 and 48).

*The police have the responsibility of defending democratic legality, insuring internal security and protecting the citizens' rights [artº 272 of the Portuguese Constitution].*

*The Judicial Police is an upper organ of criminal police that assists the administration of justice, organised hierarchically, depending on the Minister of Justice and supervised by law [article 1 of the Organic Law of the Judicial Police, approved by Decree-Law No. 275- A / 2000 of November 9, as amended by Decree-Law No. 235/2005, of 30 December, then in force].*

The criminal investigation coordinators are authorities of criminal police for the purposes of criminal procedural law [article 11 paragraph g) of the same law].

Under the Disciplinary Regulations of the Judicial Police, the duty of confidentiality is one of the general duties of the members of the Judicial Police [paragraph e) of article 5 of the Regulation approved by Decree-Law No. 196/94, of 21 July].

Alongside this general duty of confidentiality, the organic law requires from the civil servants working in the Judicial Police a duty of reserve, prescribing that

*(...) they cannot make public disclosures related to lawsuits or matter of reserved nature other than what is planned in this law about public information and preventive actions concerning the population and also the provisions of the criminal procedure law [paragraph 2 of article 12].*

Even so the admissible statements

*(...) are subjects to prior authorisation provided by the national director or the national deputy directors, at risk of disciplinary proceedings, maintaining the eventual criminal liability [paragraph 3 of article 12].*

The duty of reserve is a functional requirement common to magistrates and organs of criminal police. As an example, in the case of the magistrates of the Public Ministry, the ordinary law postulates that this duty will remain after retirement, establishing the paragraph 7 of article 148 of the Statute that *retired judges must respect the reserve required by their condition.*

It is a duty that is essential to the preservation of public confidence in the institutions of the administration of justice. The duty of reserve protects the purposes of the criminal action, but also the physical and moral integrity, the freedom and the dignity of those concerned by that action

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The criminal investigation officers, retired for various reasons of disciplinary penalty application, retain special rights, being holders of an identification card for recognition of their quality and the rights they enjoy [paragraphs 1 and 2 of article 149 of the Organic Law of the Judicial Police and Ordinance No. 96/2002 of 31 January].

The statute of the retirement [approved by Decree-Law 498/72 of 9 December] establishes, from its original wording in the respective artº 74, paragraph 1, that

*the retired, apart from his right to a retirement pension, remains bound to the civil service, keeping the titles and the category of the position he held and the rights and duties that do not depend on being in activity.*

According to the notice of the Attorney General Department's advisory Council on February 16, 2006 (Esteves Remedio, in [www.ministeriopublico.pt](http://www.ministeriopublico.pt) )

*the legal relationship of retirement is, compared to the legal relationship of public employment, a relationship less intense where there is a blurring of the ties between the retired and the Administration, translated in the reduction of rights and duties. There is even so a "bond to the civil service", which materialises in conserving the titles and the position of the function exercised and the rights and duties that are not dependent on activity status "(emphasis added). The same note concluded that "the retired remains subject to duties of private conduct translated in particular in the abstention of practice of facts integrators of crimes that have a relevant connection with the functions previously carried out and thus affect actually the functioning of the service or in a serious way the dignity and the prestige of the function or of the Administration (idem).*

Bearing in mind that legal mosaic, how to solve the conflict in this case between the rights of the claimants Gerald and Kate McCann to their good name and reputation and the defendant Goncalo Amaral's right to his opinion as resorting to freedom of expression he's entitled to ?

It appears that the conflict should be solved with the fact data that are present from the outset and that reveal the special condition of the defendant in front of the criminal investigation, condition that he capitalises in the book, the interview and the documentary.

In this documentary, the defendant is explicit right in the opening :

*My name is Goncalo Amaral and was investigator of the Judicial Police for 27 years. Coordinated the investigation of Madeleine McCann 's disappearance on 3 May 2007. In the next 50 minutes I will prove that the child was not kidnapped ( ... ) (nº 41)*

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The book conveys the idea that the truth of the investigation is merely formal, while the truth of the author (that would have been met at the end of the line of inquiry that had been followed up to his removal from the case) is the material truth -

*This book still has a purpose greater. The contribute to the discovery of material truth and the realisation of justice ( ... ) (No. 23) .*

There is no doubt that is the proper defendant who calls his condition of former coordinator of the criminal investigation and that through this statute the book, the interview and the documentary distinguish themselves - by qualifying – from the opinion of television commentators, writers or other who gloss about the subject.

But, at least in our view, that same status cannot but mark the limits of the defendant's freedom of expression when compared to the one detained by others.

Having been in charge of that investigation as a member of the Judicial Police, the defendant Goncalo Amaral, although retired on July 1, 2008, did not enjoy, on the following July 24, in respect of the results of the criminal investigation released on the 21st of the same month and year, a large and full freedom of expression.

This freedom was conditioned by the functions he had, functions that imposed him special duties that traverse the status of retirement, including the duty of reserve.

In this concrete situation, despite the personal reasons that the defendant invokes in the introductory note of the book, the freedom of expression should cede through the imperative of that reserve.

It was not what happened and the truth is that on July 24, 2008, scant three days after the release of the the dispatch shelving the investigation for lack of proof, the book was launched, sold with the newspaper's edition and the interview was published.

The time-line displays well the intention to call for the contradictory, in the public domain, the shelving of the investigation, comparing it with the thesis of the previous line of investigation, told as the true one by a person who had been responsible for the same investigation. ( **Z** )

This form of resolving the conflict between the rights reveals the illegality of the conduct of the defendant Goncalo Amaral in respect of the effects of article 484 of the Civil Code.

III . At this point, other presuppositions of the obligation to compensate should be examined, obligation provided for in the article 483º,

paragraph 1 of the Civil Code, and determining first whether the defendant acted with guilt and, if so, whether from his conduct resulted damage having in his behaviour its proper cause.

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The judgement of personal censorship that can be directed to the defendant Goncalo Amaral seems evident, given the standard of article 487º, paragraph 2, of the Civil Code, being particularly emphasised by the way the events were organised chronologically - the disclosure of the investigation shelving on July 21, 2008, the book launch, its sale and the interview published on next 24th.

The claimants Sean and Amelie had no contact with these events (nº 84) and facing the potentiality of this to happen they'll reflexively suffer depending on the offence committed against their parents. The national civil law does not protect, in principle, reflexive damage (*Acordao* (Judiciary Agreement) of Standardisation of Jurisprudence of January 16, 2014, prescribed in the case 6430 / 07.0TBBERG.S1 clearly demonstrates the exceptional nature of such protection) .

Therefore it will necessary to compensate the duly confirmed damage within the parameters of paragraph 4 of the article 496º of the Civil Code, those whom the defendant's conduct harmed - the claimants Gerald and Kate McCann .

As the criterion to be followed in determining the "quantum" of the compensation is equity, the degree of guilt of the one who injured should be weighed, the seriousness of the offence and, because it is particularly relevant in this case, the amount of benefits he earned with the offence. The offence committed to the good name of the injured ones had a very wide dissemination (paragraphs 27, 28, 30 and 47), having been the subject of intense media coverage both in Portugal and in the UK.

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It has been shown that as a result of this (ambiguous, likely the media coverage) the claimants Kate and Gerald McCann suffered personal injury that deserves the protection of law (paragraphs 81, 82 and 83 ) . The same offence allowed the defendant earn the amount of about 382.000 € of profits (paragraphs 33 and 62, this last value including the profits of the sale of the DVD in a way supposed not to be very rigorous,



but should be materially true, because if the DVD was only sold at the end of April 2009, the process for its marketing began on March 7, 2008 with the contract concluded with the defendant *VC Filmes*, this defendant having paid the 40.000 € documented p. 2095).

In light of these vectors, the compensation requested by the claimants is deemed appropriate and proportionate, being of 250.000 € for each, to which must be added, under paragraph 3 of the article 805º of the Civil Code, default interest at the rate of civil interests, from the date the defendant Goncalo Amaral's was summoned (January 5, 2010 , p.151) until full payment.

The claimants also call for compensation to be paid later for the costs that may incur with legal actions necessary to take away the committed offence (paragraph 4 of demands) .

Civil law protects the future damage "if predictable". In case that damage is not immediately ascertainable, it will be settled at a later decision (article 564º, paragraph 2 of the Civil Code). This part of the application is not grounded on predictable future damage (nothing has been proven in that respect) but on merely hypothetical or potential damages, so it cannot be proceeded.

Another demand is the publication of the judgement by extract, a measure typical of the violations committed through the press (article 34 of Law nº 2/99 of 13 January ). The application of the press law is not an issue in this lawsuit.

Nevertheless, paragraph 2 of the article 70 of the Civil Code anticipates, regardless of the civil liability that might arise, that the court may order, in situations of offence to personality, "provisions appropriate to the circumstances" in particular in order to "attenuate the effects of the offence already committed".

The measure at issue, though suitable in theory, is not, as it appears, necessary in this case.

The claimants have, supporting them, a professional structure of communication and press attachés that makes redundant any measure of that kind (paragraphs 67, 68 , 68, 70, 71 and 77)

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Another demand is the payment, by the defendant Goncalo Amaral, of the fees of claimants' agents (paragraph 6 of demands) .

The system of legal costs provides, in respect of the expenses, the

payment by the losing party to the winning one fifty percent of the paid court fees, as compensation for the fees charged by the legal agent [paragraph c) of paragraph 3 of the article 26 of Regulation of Lawsuit Costs]. Apart from this regime only two legal hypotheses consider this requested payment : the litigation in bad faith, without application, obviously, as ground of the demand in question and the pre-existing negotiated agreement forecasting that obligation (as it happens, eg in mutual loan contracts to finance the purchase of housing). Since neither of the two hypotheses is pertinent, the demand will have to be dismissed.

So, in concluding summary, in the lawsuit brought by the claimants Kate, Gerald, Madeleine, Sean and Amelie McCann against the defendant Goncalo Amaral the requests of the first two claimants will partly proceed and, as a whole, the requests of the others will not.

IV . In the attached action the claimants face the same defendant and also *Guerra & Paz, Editores, V.C Filmes e TVI* with a set of demands that are affiliated, in our view, to the provision of the article 70 paragraph 2 of the Civil Code quoted above.

These three mentioned entities were constituted defendants as vehicles of the illegality committed by the defendant Goncalo Amaral, being then passive objects of the measures that under the referred standard must be ordered, according to the criteria of adequacy and proportionality, to attenuate the effects of this illegality.

It is important to analyse in details each of the demanded measures and check, case by case, whether they are legal, appropriate and proportionate to the case and who are the recipients of those measures :

a) prohibiting the sale and ordering to collect the books to be delivered to the claimants congregate these attributes and must be ordered, not fulfilling this office, which is merely declarative, appoint any trustee. This prohibition and order must address the defendants Goncalo Amaral and *Guerra & Paz, Editores, S.A.*

The prohibition to sale and the collection of the videos (the claimants refer certainly, in that part, to the DVD) cannot take place, because it has been shown that the first was made through third party companies (*Valentim de Carvalho Multimédia, SA and Presselivre, Imprensa Livre, SA* - paragraphs 39, 52 and 56) and it was also proven that the documentary was only processed into DVD once, having been distributed for sale 75,000 copies, of which 63.369, not sold, were destroyed (nº 57, 53 and 54),

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b) The prohibition on implementation of new editions of the book or DVD, as well as transfer of editing rights and copyright is adequate and should be directed against the defendants Goncalo Amaral, Guerra & Paz and VC Filmes who is, relative to the first, the owner of the book audiovisual adaptation rights (paragraphs 35 and 36). The court may not, under penalty of a form of prior censorship, adopt any measure concerning "other books and videos on the same theme".

c) The prohibitions required under paragraphs d ), e) and f) of the attached action's demands go beyond the scope of this action and are disproportionate. It is important to keep in mind that it is not illegal to sustain the thesis according to which Madeleine McCann died in the apartment of Praia da Luz and that her body was concealed by her parents. The scope of the lawsuit is the affirmation, by the defendant Goncalo Amaral, in the book, the interview and the documentary, in the concrete terms that he used, of the same thesis.

d) To the requested condemnation to publication of the judgement, are applicable the above considerations, related to equal demand.

e) The mandatory sanction is appropriate, but should be fixed in accordance with the provision in paragraph 1 of the article 829<sup>o</sup> -A of the Civil Code, only for payments in fact insubstituable, considering proportionate the amount of 50.000 € for each offence to this order (paragraph 2 of article 829<sup>o</sup> -A of the Civil Code ) .

f) A request for payment of fees was discussed above, dismissing new considerations.

To the extent of the above and in short, the claims made in the attached action partly proceed against the defendants Goncalo Amaral, *Guerra&Paz, Editores, SA and VC-Valentim de Carvalho-Filmes, Audiovisuais, SA* and not against the defendant *TVI-Televisão Independente, SA*.

V. In the current version of the Code of Civil Procedure remains untouched the scope of bad-faith, also covering the gross negligence litigation [art<sup>o</sup> 456th, # 2 of the Code of Civil Procedure]. In the same version, however, the responsibility for litigation of bad faith of collective persons lies on the party, and not, as it occurred before the Law n<sup>o</sup> 41/2013 of 26 June, on the legal representative [art<sup>o</sup> 544 th of the Code of Civil Procedure].

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Are examples of serious negligence, for that purpose, a reckless or bold dispute (the party, though convinced of their reason, risks gross error in filing the action or the defence disregarding the significant reasons of fact or law which compromised their claim) ; the demand on a whim, with emulation spirit or gross error ; the wanton or reckless complaint ; the serious lack of care duty ; the persistent and forceful opposition, clearly and decisively unfounded, for incorrect interpretation and application of law and maladjustment to the proven facts ; the claim or defence obviously unbearable, constituting the abuse of the right to action; the serious technical failure (this sense, A. GERALDES, Judicial Themes, I Vol).

The behaviour that the law defines as integrating bad faith are:

- a)** deducting claim or opposition of which the party should not ignore the lack of ground in fact or in law, i.e the party must weigh the reasonableness of the claim, avoiding it if it is not strongly funded ;
- b)** change the truth of the facts or omit facts relevant to the decision in the case, e.g the lie of the party, presenting a accident version that the party knew to be false ;
- c)** seriously neglecting the duty to cooperate ;
- d)** exploiting, in a clearly reprehensible way, the process or the legal means in order to prevent the discovery of the truth, obstruct the course of justice or delay, without serious grounds, the final decision with no possible appeal.

Is litigating of bad faith the party who claims, but does not prove, a version that contradicts the one submitted by the counterpart, if it is proved, in return, that this includes facts of which the first had personal knowledge [cf. Judgement of the Supreme Court of 7.10.2004, Laura Leonardo, accessible on [www.dgsi.pt](http://www.dgsi.pt) ].

It is therefore bad-faith litigation to deny essential facts that one necessarily has knowledge for being personal [cf. Judgement of Supreme Court of 20.9.2007, Maria Pizarro Beleza, accessible on the same website].

In the assessment of factual assumptions in order to condemn a party as bad faith litigant, the judge can only take into account their conduct through the lawsuit, but not their behaviour before the action started being judged [cf. Judgement of Lisbon Appeal Court of 23.6.2005, Urbano Dias, available on [www.dgsi.pt](http://www.dgsi.pt) ].

Considering the premises of bad-faith litigation and beyond what resulted from the incidental condemnation of the defendant Goncalo Amaral in the dispatch of May 20, 2014 (pp. 2024-26), there is nothing to reproach on that basis

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Given the above, on balance of fact and law, the decision is to :

**I.** judge remedied the representation irregularity of the claimant **MADELEINE BETH McCann** in accordance with article 29, paragraph 1 of the Code of Civil Procedure and, therefore, to dismiss the objection raised by the defendant **GONCALO AMARAL** .

**II.** declare partly proceeding the claims made in the main action by the claimants **KATE MARIE HEALY MCCANN** and **GERALD PATRICK MCCANN** against the defendant **GONCALO AMARAL** and, to that extent, condemn the second to pay to each of the first the indemnity amount of 250.000 € increased by default interests at the rate of civil interests, since January 5, 2010 until full payment.

**III.** dismiss the other requests, made in the same action by the claimants **KATE MARIE HEALY MCCANN** and **GERALD PATRICK MCCANN** against the defendant **GONCALO AMARAL** and of those claims acquit the defendant.

**IV.** fully dismiss the requests, made in the same action, by the claimants **MADELEINE MCCANN**, **SEAN MICHAEL MCCANN** and **AMELIE EVE MCCANN** against the defendant **GONCALO AMARAL** and of those claims acquit the defendant.

**V.** judge partly proceeding the demands expressed in the attached action by the claimants **KATE MARIE HEALY MCCANN** and **GERALD PATRICK MCCANN** against the defendants **GONCALO AMARAL**, **GUERRA&PAZ, EDITORES, SA** and **VC-VALENTIM DE CARVALHO-FILMES, AUDIOVISUAIS, SA**, and to that extent :

**a)** prohibit the defendants **Goncalo Amaral** and **Guerra&Paz Editores, SA** of selling the book *Maddie – A Verdade da Mentira* and condemn them to collect, for delivery to the claimants, within sixty (60)

days after the *res judicata* (definitive sentence), the copies of this book that still remain in book-stores, other retail outlets, and warehouses.

**b)** prohibit the defendants **Goncalo Amaral** and **Guerra&Paz Editores, SA** of executing new editions of the same book.

**c)** prohibit the defendant **VC-Valentim de Carvalho-Filmes, Audiovisuais, SA** of executing new editions of the DVD *Maddie – A Verdade da Mentira*,

**d)** prohibit the defendants **Goncalo Amaral, Guerra&Paz Editores, SA** and **VC-Valentim de Carvalho-Filmes, Audiovisuais, SA**, respectively, of transferring, onerously or freely, any form of copyright and rights for book and DVD publication,

**e)** condemn each of these defendants, to the penalty payment of 50.000 € for each breach of the above prohibitions.

**VI.** Over the remaining part, dismiss the requests made in the action attached by the claimants **KATE MARIE HEALY MACCANN** and **GERALD PATRICK MACCANN** against the defendants **GONÇALO AMARAL, GUERRA&PAZ, EDITORES, SA** and **VC-VALENTIM DE CARVALHO-FILMES, AUDIOVISUAIS, SA** and of the same claims acquit the defendants.

**VII.** Fully dismiss the claims made in the attached action against the defendant **TVI-INDEPENDENT TELEVISION, SA**, and of those claims acquit the defendant.

**VIII.** Fully dismiss the requests made in the attached action by the claimants **MADELEINE MCCANN, SEAN MICHAEL MCCANN** and **AMELIE EVE MCCANN**.

**IX.** Judge not confirmed (without prejudice to the incidental condemnation expressed in the dispatch of May 20, 2014) the bad faith litigation of either party .

**X.** Condemn the claimants **KATE MARIE HEALY MCCANN, GERALD PATRICK MCCANN, MADELEINE BETH MCCANN, SEAN MICHAEL MCCANN e AMELIE EVE MCCANN** and the defendant **GONCALO AMARAL** to pay the expenses of the main action in the proportion of 58.30% for the former and 41.70% for the second, in accordance with paragraph 1 of the article 527 of the Civil Procedure Code.

**XI.** Condemn the claimants **KATE MARIE HEALY MCCANN, GERALD PATRICK MCCANN, MADELEINE BETH MCCANN, SEAN MICHAEL MCCANN e AMELIE EVE MCCANN** and the defendants **GONÇALO AMARAL, GUERRA&PAZ EDITORES SA and VC-VALENTIMDECARVALHO-FILMES, AUDIOVISUAIS, SA** to pay the expenses of the attached action in the proportion of 50%, in accordance with paragraph 1 of the article 527 of the Civil Procedure Code.

Notify

Sign

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Almada , April 27, 2015