



## Conviction for libel of the author of a novel relating family dramas did not infringe her freedom of expression

In today's **Chamber judgment**<sup>1</sup> in the case of [Almeida Leitão Bento Fernandes v. Portugal](#) (application no. 25790/11), the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the criminal conviction of Ms Fernandes for libelling a number of her in-laws, following publication of a novel relating family dramas in the context of the Portuguese diaspora in the United States and the colonial war.

The Court agreed with the Portuguese courts that Ms Fernandes had overstepped the limits of her freedom of artistic creativity by disregarding the right of her in-laws to respect for their private life, on account of certain events narrated and value judgments made. It held, in particular, that the room for manoeuvre (margin of appreciation) given to the authorities in assessing the "necessity" of the punishment imposed on Ms Fernandes was a wide one because the persons concerned were not public figures.

### Principal facts

The applicant, Maria de Fátima Almeida Leitão Bento Fernandes, is a Portuguese national who was born in 1947 and lives in Fundao (Portugal).

She is the author of a novel entitled *The Palace of flies*, written under the pen name Bento Xavier, which she edited herself before having a hundred copies printed, all of which were distributed free to relatives and friends. The novel tells the story of a family who came from the north of Portugal and emigrated to the United States. In the preface to her book Ms Fernandes thanked the people who had inspired her, while stating that the facts narrated in her novel were the product of her imagination and that any resemblance with actual facts was purely fortuitous.

The novel's characters and plot were essentially depicted as follows. One of the characters, António Baptista, emigrated to the United States and made his fortune there. He married three times. Two daughters were born of his first marriage to Brígida: Inocência and Aurora. Inocência married Floro and Aurora married Rogério. Two daughters were born of the marriage between Aurora and Rogério, one of whom was called Beatriz. Floro and Inocência had several children, including a daughter called Imaculada. Brígida was portrayed as a loose woman who was unfaithful to her husband, António. It was said that Floro had done his son out of his money, visited prostitutes, had extra-marital affairs and died of Aids. His wife, Inocência, was described as an ambitious, extravagant, tight-fisted, mean, avaricious and calculating woman who abandoned him on his death bed and had an affair with Floro's brother. Aurora was portrayed as a coarse-looking woman with bad breath. Rogério, an agent of the secret police under Salazar's regime, was described as having had about a hundred political opponents imprisoned. His daughter, Beatriz, was portrayed as a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

debauched and licentious woman and a bad mother. Imaculada was depicted as a woman of loose morals who would stop at nothing to get rich, including killing her father (Floro).

The uncle, aunt, cousin, mother and sister of Ms Fernandes' husband ("the complainants") lodged a criminal complaint against her for libel, claiming that the novel related their family history and damaged the family's reputation. On 12 July 2004 the court issued a decision not to prosecute Ms Fernandes. Following an appeal lodged by the complainants with the Court of Appeal, the case was remitted to the Torre de Moncorvo Criminal Investigation Court, which committed Ms Fernandes for trial. On 26 March 2010 she was convicted of libelling the complainants and tarnishing the honour of two deceased members of the family. The Torre de Moncorvo Criminal Investigation Court found that the characters in the novel were exact replicas of Ms Fernandes's in-laws and, in weighing her right to freedom of expression against the right of the complainants to respect for their private life, held that the applicant had tarnished their honour.

She was sentenced to a cumulative sentence of 400 day-fines corresponding to the sum of EUR 4,000, and ordered to pay EUR 53,500 in damages to the complainants, namely, EUR 1,000, EUR 2,500 and EUR 10,000 to her husband's uncle, aunt and cousin respectively, and EUR 20,000 to her mother-in-law and sister-in-law. Ms Fernandes unsuccessfully appealed to the Court of Appeal.

## Complaints, procedure and composition of the Court

The applicant complained that her conviction for libelling her husband's family and tarnishing their honour had infringed her right to freedom of expression guaranteed by Article 10 of the Convention.

The application was lodged with the European Court of Human Rights on 19 April 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro** (Monaco), *President*,  
Khanlar **Hajiyev** (Azerbaijan),  
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),

and also *Søren Nielsen, Section Registrar.*

## Decision of the Court

The Court observed at the outset that novels were a form of artistic expression that fell within the scope of Article 10 in that they gave the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds.

In Ms Fernandes' case the Court had to examine whether, in curtailing her freedom of expression, the authorities had struck a fair balance between that freedom and the right of her in-laws to private life.

It was not disputed that the court decisions delivered in Ms Fernandes' case had amounted to an interference with her freedom of expression. That interference, which had been prescribed in the Criminal Code and the Press Act, had pursued the legitimate aim of protecting the reputation and rights of others.

In determining the extent of the room for manoeuvre (margin of appreciation) available to the Portuguese authorities in curtailing Mrs Fernandes' freedom of expression, the Court took account of the fact that the novel was a form of artistic expression which, although potentially maintaining

its readership for a longer period, appealed generally to a relatively narrow public compared with the print media. The Court observed, moreover, that only a hundred copies of *The Palace of flies* had been printed and that they had mainly circulated among the members of the applicant and her in-laws' circle. In the novel, which told the story of a family and its dramas and conflicts in the context of the Portuguese diaspora in the United States and the colonial war, the persons concerned were known in their own milieu, particularly in the town of Torre de Moncorvo, but were not public figures. Consequently, the authorities were afforded a wide margin of appreciation in assessing the "necessity" of the punishment imposed on Ms Fernandes.

The Court then observed that the Portuguese courts had always sought to weigh the right of the applicant to freedom of expression against the right of the complainants to respect for their private life. The Torre de Moncorvo Court had sought to determine whether the narrative of Ms Fernandes' novel was defamatory and then to establish whether there were links between the characters in the novel and her in-laws. That court, like the Porto Court of Appeal, had concluded that Ms Fernandes had overstepped the limits of her freedom of artistic creativity by disregarding the complainants' right to respect for their private life, given the nature of some of the events narrated and the value judgments made in their regard and in respect of two deceased members of the family.

Accordingly, the Court held that Ms Fernandes' conviction had been based on relevant and sufficient reasons, and saw no reason to depart from the assessment by the Portuguese courts. Furthermore, the grounds they had stated in support of their conclusions satisfied the criteria followed by the Court in this type of case<sup>2</sup>.

Taking account also of the punishment imposed on Ms Fernandes, which the domestic court had determined with regard to her socio-economic situation, the Court concluded that the interference with the exercise by Ms Fernandes of her freedom of expression had not been disproportionate with regard to the legitimate aim pursued and that there had not been a violation of Article 10.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

<sup>2</sup> See in particular [Lindon, Otchakovsky-Laurens and July v. France](#) (Grand Chamber judgment of 22.10.2007) and [Chauvy and Others v. France](#) (Chamber judgment of 29.06.2004)