



Breach of freedom of expression in conviction of a journalist for defamation of a politician

In today's Chamber judgment in the case of [Conceição Letria v. Portugal](#) (application no. 4049/08), which is not final,¹ the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned the conviction of Joaquim Letria, a well-known Portuguese journalist, for defamation of a local politician in connection with the collapse of a bridge at Castelo de Paiva in 2001 which resulted in the death of 59 people.

Principal facts

The applicant, Joaquim Letria, is a Portuguese national who was born in 1943 and lives in Corroios (Portugal).

On 6 March 2001 the collapse of a bridge at Castelo de Paiva (Portugal) resulted in the death of 59 people. The Portuguese parliament set up a parliamentary commission of inquiry to investigate the causes of the accident. The commission questioned Mr Antero Gaspar, governor of the district of Aveiro and former mayor of Castelo de Paiva, about permits that might have been granted to companies for sand extraction, which might have contributed to weakening the bridge. Mr Gaspar stated that he did not recall any such permits. He was subsequently shown documents signed by him, casting doubt on the truth of his evidence to the commission.

At the relevant time the journalist, who was very well-known in Portugal, was a reporter for *24 Horas*, a national newspaper that is no longer published. In the edition of 25 September 2001 he published an article entitled "Risks and shady characters" in which he suggested that Mr Gaspar had lied to the parliamentary commission. He used the word *aldrabão* (shady character) to describe the politician.

Following a complaint lodged by Mr Gaspar against Joaquim Letria, the latter was convicted of aggravated defamation by a judgment of the Castelo de Paiva District Court delivered on 24 December 2005, among other offences, on account of the use of the term *aldrabão*. Joaquim Letria appealed against that decision, arguing on the basis of Article 180 § 2 (b) of the Criminal Code that he was able to prove the facts considered to be defamatory. On 28 June 2006 the Court of Appeal dismissed that appeal, holding that he had expressed a value judgment, the truth of which could not be proven. Believing that the Court of Appeal's interpretation of Article 180 § 2 (b) was unconstitutional,

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

Joaquim Letria lodged a constitutional complaint. By a judgment of 11 July 2007, of which the applicant was notified on 16 July 2007, the Constitutional Court held that such an interpretation of that Article was not in breach of any provision of the Constitution.

Complaints, procedure and composition of the Court

Relying on Article 10 of the Convention, Joaquim Letria complained that his conviction for defamation had violated his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 15 January 2008 and declared admissible on 22 March 2011.

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

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Ireneu **Cabral Barreto** (Portugal),
David Thór **Björgvinsson** (Iceland),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

There was no doubt that Joaquim Letria's conviction had a legal basis in Portuguese law and had pursued the legitimate aim of protecting the reputation or rights of others. However, the Court had to determine whether the conviction was also "necessary in a democratic society".

The Court noted firstly that the Portuguese courts had criticised Joaquim Letria principally for having used the term *aldrabão* (shady character) in the article at issue to describe the former mayor of Castelo de Paiva and governor of Aveiro at the relevant time.

However, the Court reiterated its case-law to the effect that the limits of acceptable criticism were wider with regard to politicians acting in their public capacity than in relation to private individuals. Even when not acting in his private capacity, a politician was entitled to have his reputation protected, but the requirements of that protection had to be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression had to be interpreted narrowly.

In the case of Joaquim Letria, the use of the term *aldrabão* had not constituted a gratuitous personal attack. It had been his way of highlighting what he considered to be contradictions in Mr Gaspar's responses to the questions asked by the parliamentary commission responsible for investigating an accident involving numerous victims.

Since it was clearly a value judgment, the truth of the expression at issue could not be proven. However, Joaquim Letria's opinion had not been excessive, in that it had been based on reports revealing contradictions in Mr Gaspar's evidence and thus constituting a sufficient factual basis.

Admittedly, the article at issue was highly critical of Mr Gaspar, but as a politician, the latter was expected to display a greater degree of tolerance in order to contribute to open discussion of a matter of public interest without which there could be no democratic society.

Lastly, the Court held that the weight of the penalties imposed on Joaquim Letria as a result of his conviction could dissuade journalists from encouraging public discussion of such issues. They were therefore liable to hamper the press in performing its task as purveyor of information and public watchdog.

The Court concluded that a fair balance had not been struck between the need to safeguard Joaquim Letria's right of freedom of expression and the need to protect the rights and reputation of Mr Gaspar. The restriction placed on Joaquim Letria's freedom of expression had not been proportionate to the legitimate aim pursued.

Accordingly, there had been a violation of Article 10.

Article 41 (just satisfaction)

The Court held that Portugal was to pay Joaquim Letria 5,000 euros (EUR) in respect of non-pecuniary damage. It held that there was no need to award him any amount in respect of pecuniary damage or costs and expenses.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.