



Breach of journalist's right to freedom of expression through automatic application of publication ban

In today's Chamber judgment in the case of [Pinto Coelho v. Portugal](#) (application no. 28439/08), which is not final¹, 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 criminal conviction of a journalist for showing, during a TV report, copies of documents from judicial proceedings pending against the former director-general of the criminal investigation department, the publication of such documents being automatically punishable when the proceedings are subject to judicial secrecy.

Principal facts

The applicant, Sofia Pinto Coelho, is a Portuguese national who was born in 1963 and lives in Lisbon. She is a well-known journalist and legal correspondent on the national television channel SIC.

On 3 June 1999 the channel broadcast on the 1 o'clock and 8 o'clock news a report produced by the applicant showing that the former director-general of the criminal investigation department, who had recently been dismissed, had been charged with a breach of *segredo de justiça* (secrecy of judicial proceedings). For several months the press had been reporting that the director-general could have been responsible for leaking information about a case concerning the accounts of a private university and a commercial company.

In her report Ms Pinto Coelho showed viewers a facsimile copy of the indictment and the public prosecutor's document opening the investigation.

Criminal proceedings were brought against the applicant. On 3 October 2006 the court of Oeiras found her guilty of disobedience for publishing "copies of documents in the file of proceedings prior to a first-instance judgment", an act which was prohibited and automatically punishable under Article 88 of the Code of Criminal Procedure as then worded (the *segredo de justiça* rule). Ms Pinto Coelho was sentenced to a fine of 10 euros per day for 40 days and to the payment of court costs. Her appeals were dismissed on 27 March 2007 by the Lisbon Court of Appeal and on 11 December 2007 by the Constitutional Court.

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

Complaints, procedure and composition of the Court

Relying on Article 10, Ms Pinto Coelho complained that her conviction had breached her right to freedom of expression.

The application was lodged with the European Court of Human Rights on 9 June 2008.

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

Françoise **Tulkens** (Belgium), *President*,
David Thór **Björgvinsson** (Iceland),
Dragoljub **Popović** (Serbia),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

The main question that the Court had to address was whether Ms Pinto Coelho's conviction constituted a breach of her right to freedom of expression that could be regarded as "necessary in a democratic society".

On that point the Court first reiterated that, while the press had the task of imparting information and ideas on all matters of public interest, it had to be careful not to overstep certain bounds, regarding in particular the protection of the reputation and rights of others, or the need to prevent the disclosure of confidential information. There was nothing to prevent the press taking part in a discussion on a question pending before the courts, but in such cases it had to refrain from publishing anything that might prejudice the chances of a person receiving a fair trial or undermine the confidence of the public in the role of the courts.

Turning to the situation of Ms Pinto Coelho, the Court pointed out that the report in question clearly dealt with a matter of public interest, because the person concerned was the director-general of the judicial police. The public thus had, in Ms Pinto Coelho's case, a right of scrutiny as regards the functioning of the judicial system.

The Court then observed that the domestic courts had not balanced the interest of Ms Pinto Coelho's conviction against her right to freedom of expression. Under Portuguese law, as in force at the material time, Ms Pinto Coelho's conviction had been automatic once she had displayed on television facsimiles of documents from proceedings covered by the *segredo de justiça* rule².

The authorities, moreover, had not stated the reason why the broadcasting of two facsimiles of documents from the file had prejudiced the investigation in progress, or how, as a result, the defendant's right to be presumed innocent had been breached.

The Court pointed out that, on the contrary, the fact of displaying facsimile copies of the documents in question during the report had been relevant not only to the subject

² The *segredo de justiça* rule was considerably modified by Law no. 48/2007 of 29 August 2007 amending the Code of Criminal Procedure, which entered into force on 15 September 2007. The *segredo de justiça* rule no longer applies automatically, but only where the public prosecutor under the supervision of the investigating judge, or the investigating judge himself, has given an express decision to that effect. However, the fact of displaying procedural documents subject to the *segredo de justiça* rule remains punishable.

matter but also to the credibility of the information supplied, providing evidence of its accuracy and authenticity.

In conclusion, the Court took the view that Ms Pinto Coelho's conviction had constituted a disproportionate interference in her right to freedom of expression. It noted, more broadly, that a general and absolute ban on the publication of any kind of information was difficult to reconcile with the right to freedom of expression. The automatic nature of the application of the criminal legislation in question had prevented the courts from balancing it against the interests protected by Article 10.

There had thus been a violation of Article 10.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Portugal was to pay the applicant 4,040.32 euros in respect of pecuniary damage.

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.