

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GANHÃO v. PORTUGAL

(Application no. 23143/19)

JUDGMENT

STRASBOURG

4 March 2025

This judgment is final but it may be subject to editorial revision.



In the case of Ganhão v. Portugal,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President,*
Ana Maria Guerra Martins,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 23143/19) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 April 2019 by a Portuguese national, Mr Miguel Alexandre Ganhão ("the applicant"), who was born in 1966, lives in Lisbon and was represented by Mr M. Bouza Serrano, a lawyer practising in Lisbon;

the decision to give notice of the application to the Portuguese Government ("the Government"), represented by their Agent, Mr Ricardo Bragança de Matos, Public Prosecutor, and, from 1 September 2022, Mr Manuel Aires Magriço, Public Prosecutor.

the parties' observations;

the decision to reject the applicant's and the Government's objections to the examination of the application by a Committee;

Having deliberated in private on 11 February 2025,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The applicant is a journalist and director of the economics section of *Correio da Manhã*, a well-known Portuguese tabloid newspaper. The application concerns his conviction of aggravated defamation on account of statements made regarding criminal proceedings for tax offences instituted against R., the executive director of an advertising company, in an opinion column published in the newspaper. The applicant relied on Article 10 of the Convention.

2. On 16 October 2014 the *Correio da Manhã* newspaper published an article entitled "Jail for advertising boss" reporting that R. had been convicted of tax fraud and sentenced to two years and six months' imprisonment. It added that R. was going to lodge an appeal against his conviction. The article had been written by the applicant and was part of a news column called "Pure poison", which was also available online.

3. R. lodged a criminal complaint and, by a judgment of the Lisbon Criminal Court, the applicant was convicted of aggravated defamation under Article 180 § 1 and Article 183 § 2 of the Criminal Code and was ordered to pay a fine of 2,400 euros (EUR). Furthermore, he was ordered to pay R. EUR 48,000 in compensation for pecuniary damage and EUR 25,000 for

non-pecuniary damage, including interest. On 24 October 2018 the Lisbon Court of Appeal upheld that judgment.

4. The domestic courts established that R. was a very well-known and well-respected person in the world of advertising and found that the content of the article was untruthful and had damaged his honour and reputation. They noted that R. had been convicted of tax embezzlement rather than tax fraud and that although a prison sentence had indeed been imposed (see paragraph 2 above), it had been suspended for five years, under the condition of payment of an amount to the State Treasury. The domestic courts further held that the headline used by the applicant had been sensationalistic. Lastly, they found that the applicant had not been diligent nor had he acted in good faith, since he had relied on only two sources without attending the public reading of the judgment and without waiting for R. to confirm the veracity of the information.

5. Relying on Article 10 of the Convention, the applicant alleged that his conviction and the order for payment of damages had violated his right to freedom of expression.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

6. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

7. The parties did not dispute that the applicant's conviction (see paragraph 3 above) had amounted to an "interference" with his right to freedom of expression. The Court sees no reason to hold otherwise.

8. The Court is satisfied that the interference complained of was prescribed by law, namely Article 180 § 1 and Article 183 § 2 of the Criminal Code. It further notes that the judgments of the domestic courts show that they had the legitimate aim of protecting "the reputation or rights of others", specifically the reputation and honour of R. It remains to be established whether it was "necessary in a democratic society".

9. The fundamental principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention have been summarised, *inter alia*, in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016); *Magyar Jeti Zrt v. Hungary* (no. 11257/16, §§ 63-68, 4 December 2018); and *SIC - Sociedade Independente de Comunicação v. Portugal* (no. 29856/13, §§ 54-62, 27 July 2021).

10. The press plays an essential role in a democratic society. Although it must not overstep certain bounds, including the respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent

with its obligations and responsibilities – information and ideas on all matters of public interest (see *Bédat*, cited above § 50; *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 30, ECHR 2000-X; *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, nos. 11182/03 and 11319/03, § 23, 26 April 2007; and *Público - Comunicação Social, S.A. and Others v. Portugal*, no. 39324/07, §§ 45-48, 7 December 2010).

11. Turning to the present case, the Court accepts that the subject of the article, namely the criminal conviction of R., was a matter of public interest (see, *Bédat*, cited above, § 63).

12. As to how well known the person affected was, the domestic courts established that R. was very well known in the world of advertising (see paragraph 4 above, and compare *Axel Springer AG*, *v. Germany* [GC], no. 39954/08, § 98, 7 February 2012).

13. In the circumstances of the present case, the domestic courts established that the applicant had relied on two sources. Nevertheless, in the Court's view, they attached excessive importance to the fact that the applicant had not waited for R. to confirm the veracity of the information (see paragraph 4 above). While the protection of the right of journalists to impart information on issues of general interest requires that they should act on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism, news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see *Aquilina and Others v. Malta*, no. 28040/08, §§ 44 and 50, 14 June 2011 and the cases cited therein).

14. Moreover, it appears that the inaccuracy of the information reported was not as serious as held by the domestic courts (see paragraphs 2 and 4 above), especially since the article at issue stated that the conviction was not final given that the applicant was going to lodge an appeal against it (see paragraph 2 above). It should also be considered that the newspaper column "Pure poison" is a satirical one – as is apparent from the title – hence the provocative nature of the article's headline (see paragraph 2 above, and compare *Lopes Gomes da Silva*, cited above, § 34; *Antunes Emídio and Soares Gomes Da Cruz*, *v. Portugal* [Committee], nos. 75637/13 and 8114/14, § 48, 24 September 2019; and *UJ v. Hungary*, no. 23954/10, §§ 23-24, 19 July 2011). Lastly, the statements at issue did not concern aspects of R.'s private life (compare *Ileana Constantinescu v. Romania*, no. 32563/04, § 41, 11 December 2012, and *Antunes Emídio and Soares Gomes da Cruz* [Committee], cited above, § 60).

15. Turning to the nature and severity of the penalty imposed on the applicant, the Court notes that the applicant was fined EUR 2,600 and ordered to pay R. EUR 48,000 and EUR 25,000 for the pecuniary and non-pecuniary damage sustained respectively (see paragraph 3 above), which was disproportionate in view of the particular circumstances of the case. The Court also finds that such a sanction may be liable to deter the media from

discussing matters of legitimate public concern, having a chilling effect on the freedom of expression and of the press (compare *SIC - Sociedade Independente de Comunicação*, cited above, § 69).

16. In the light of the above considerations, the Court considers that in their decisions the domestic courts overstepped their margin of appreciation and that the applicant's conviction, the penalty imposed and the subsequent damages he was ordered to pay were disproportionate to the legitimate aim pursued. It follows that the interference with the applicant's right to freedom of expression did not correspond to a pressing social need and therefore was not "necessary in a democratic society".

17. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. He did not claim any amount in respect of pecuniary damage or costs and expenses.

19. The Government contested this claim.

20. Having regard to the particular circumstances of the present case, the Court considers that the finding of a violation of Article 10 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (compare *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 181, 17 May 2016). In addition, the Court considers that the applicant may, at his own request, have the proceedings complained of reopened (compare *SIC - Sociedade Independente de Comunicação*, cited above, § 75).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 4 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Tim Eicke
Deputy Registrar	President