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

FOURTH SECTION

DECISION

Application no. 17655/19
Ana Cristina CHINITA RODRIGUES
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 18 November 2025 as a Committee composed of:

Anja Seibert-Fohr, *President*,
Ana Maria Guerra Martins,
András Jakab*, judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 17655/19) 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 6 March 2019 by a Portuguese national, Ms Ana Cristina Chinita Rodrigues ("the applicant"), who was born in 1970 and lives in Seixal, and was represented by Mr J.M. Farinho Pote, a lawyer practising in Lisbon;

the decision to give notice of the complaint concerning Article 10 of the Convention to the Portuguese Government ("the Government"), represented by their Agents, Mr Manuel Aires Magriço, Public Prosecutor, and Ms. H. de Carvalho Martins Leitão, Deputy Attorney-General;

and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a disciplinary sanction applied by the High Council of the Judiciary (*Conselho Superior da Magistratura* – "the CSM") to the applicant, who was a judge at the Seixal Criminal Court, on account of a decision in which she did not follow an order from the Lisbon Court of Appeal and expressed her disagreement with it. Relying on Article 10 of the

Convention, the applicant complained of a violation of her right to freedom of expression.

2. On 6 July 2015 the applicant, in her capacity as a judge and ruling on a criminal case, delivered an acquittal decision at the Criminal Court of Seixal. The public prosecutor's office appealed against that decision. On 9 March 2016 the Lisbon Court of Appeal found that the acquittal decision, though excessively long, was not sufficiently reasoned. Consequently, it quashed the decision and ordered the Criminal Court of Seixal to re-examine the case and deliver a fresh decision.

3. On 13 June 2016 the applicant reopened the hearing, albeit without taking new evidence. She then delivered a fresh acquittal decision in which she reaffirmed the contents of her previous decision, with reference to it, and presented arguments to show that it could not be considered null and void. The applicant expressed her disagreement with the Lisbon Court of Appeal's decision and included variations of the expression "with due respect". In particular, she stated "... with much respect for the opposing view, yet, even still, it is important to state that the length of the impugned decision shows the extensive research carried out to support the verdict ..." and "... with due respect for the contrasting opinion, we do not see or accept the existence of contradiction and we are now perplexed, with all and due respect, as we can consider the same that which is the same, which in reality is not". On an unknown date the public prosecutor's office appealed against that decision.

4. On 15 December 2016 the Lisbon Court of Appeal found that the applicant's refusal to follow the order to rehear the trial and the comments she had made criticising the orders she had received from a higher court were contrary to her duties as a judge. On 30 January 2017 the applicant wrote an order (*despacho*) in reply to the Lisbon Court of Appeal, presenting further arguments in favour of the decision she had taken.

5. The Lisbon Court of Appeal communicated the events mentioned above to the High Council of the Judiciary, which decided to open an inquiry which was then converted into disciplinary proceedings against the applicant.

6. On 2 May 2017 the permanent council (*conselho permanente*) of the CSM found that the applicant had violated her duty of obedience set out in sections 4(1), 82, 85 and 131(1)(a) of the Status of Judges Act, as in force at the material time, and of respect and proper conduct set out in section 73(1) and (2)(h) and section 10 of the Civil Servants' Disciplinary Act (*Estatuto disciplinar dos trabalhadores que exercem funções públicas*) and sanctioned her with a warning. That decision was confirmed by the plenary of the CSM on 11 July 2017.

7. On 9 October 2018 the Supreme Court dismissed an appeal lodged by the applicant against the decision taken by the CSM against her. A further complaint lodged by the applicant against that decision was dismissed by the Supreme Court on 22 January 2019.

8. Relying on Article 10, the applicant complained that the disciplinary sanction imposed on her had violated her right to freedom of expression. She argued that the impugned statements had not offended anyone's right to honour or dignity.

THE COURT'S ASSESSMENT

9. The Court reiterates that Article 10 of the Convention extends to the workplace, and that public servants in general and members of the judiciary, such as the applicant, enjoy the right to freedom of expression (see *Wille v. Liechtenstein* [GC], no. 28396/95, §§ 41-42, ECHR 1999 VII, and *Baka v. Hungary* [GC], no. 20261/12, § 140, 23 June 2016).

10. The Court has recognised the special role in society of the judiciary which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence (see *Baka*, cited above, § 164 with further references).

11. In order to determine whether Article 10 of the Convention was infringed in so far as the right of judges to freedom of expression is concerned, it must first be ascertained whether the disputed measure amounted to an interference with the exercise of the applicant's freedom of expression – in the form of a "formality, condition, restriction or penalty" – or whether it lay within the sphere of the right of access to or employment in the civil service, a right not secured in the Convention (see *Wille*, cited above, §§ 42-43).

12. Where it has found that disciplinary measures against judges were exclusively or preponderantly motivated by the exercise of their freedom of expression, the Court considered that there had been an interference with the exercise of that right as guaranteed by Article 10 of the Convention (see *Kudeshkina v. Russia*, no. 29492/05, §§ 79-80, 26 February 2009). In contrast, where the Court has found that the impugned measures were essentially linked to the respective applicants' professional ability to exercise judicial functions, it has found Article 10 of the Convention to be inapplicable in such case (see *Mnatsakanyan v. Armenia*, no. 2463/12, § 76, 6 December 2022, with further references).

13. In the present case, the applicant did not make a public statement or otherwise engage in a public debate in her professional capacity (contrast *Baka*, cited above, § 168).

14. The Court notes that she was punished by the CSM for failing to follow a higher court's order and for giving a fresh decision in which she restated, with direct reference, the quashed decision and challenged the reasoning of the higher court (see paragraph 3 above). The applicant's behaviour was found to constitute a violation of her duties of obedience and of respect and proper conduct and she was consequently sanctioned with a warning (see paragraphs 5 and 6 above). Though the expressions used by the

applicant in her second acquittal decision were taken into consideration by the CSM so as to show that the applicant had been intentional in her decision to disregard the order she had received, it does not appear that the language she used was a determining factor in the decision to sanction her, but rather her decision to defy the higher court's decision as a whole.

15. Therefore, the impugned decision was given on the basis of the applicant's exercise of her judicial functions and was not linked to or motivated by the exercise of her freedom of expression. The Court therefore concludes that there was no interference with the exercise of the applicant's right to freedom of expression, as secured in Article 10 § 1 of the Convention (compare *Mnatsakanyan*, cited above, § 75).

16. It follows that the applicant's complaint under Article 10 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and should therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 December 2025.

Crina Kaufman Acting Deputy Registrar	Anja Seibert-Fohr President