



Famous journalist Freitas Rangel's conviction for statements about associations of judges and prosecutors breached the European Convention

In today's **Chamber** judgment¹ in the case of [Freitas Rangel v. Portugal](#) (application no. 78873/13) 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 applicant's conviction for statements made about the professional bodies for judges and for public prosecutors at a hearing of a parliamentary committee. In particular, he had linked the judiciary and the prosecution service to, among other things, interference in politics and widespread breaches of confidentiality. He had been convicted and had had to pay 56,000 euros in fines and damages in total.

The Court found in particular that the fine and the damages had been wholly disproportionate and had to have had a chilling effect on political discussion. The domestic courts had failed to give adequate reasoning for such interference with the applicant's free speech rights, which had not been necessary in a democratic society.

Principal facts

The applicant, Emídio Arnaldo Freitas Rangel, was a Portuguese national who was born in 1947 and lived in Lisbon. He passed away in 2014 and his daughters took up the application in his stead.

Mr Freitas Rangel was a very well-known journalist.

In 2010 he gave evidence at a parliamentary committee on the topic of freedom of expression and the media in Portugal. Among other wide-ranging testimony, he stated as follows:

"... There is no democracy without quality journalism. However, the situation has got worse. This circle has recently seen the entry – and this is the trend [*modismo*] of modern times – of the professional associations of judges and public prosecutors. These are two hubs managing information relating to judicial cases [*duas centrais de gestão de informação processual*], which is achieved through close ties with journalists. They obtain documents concerning judicial cases for journalists to publish, exchange these documents at *café*s, in the open; ... breach[ing] the duty of judicial confidentiality [*segredo de justiça*], they really will share the documents. This is not going to end well, Mr President, honourable members of parliament, if we do not return to a time with rules preventing the judiciary from engaging in politics."

Later, in response to a question from a journalist, he stated the following:

"Where does the material covered by judicial confidentiality come from? Can it only come from the justice system itself? ..., what I have seen is an extensive and broad political intervention with negative consequences ... They try to limit the decisions of the Attorney-General [*Procurador Geral da República*] and [to influence] public opinion, and they have privileged relationships with journalists to whom, from time to time, they pass on documents dealing with various topics."

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.

Mr Freitas Rangel later made further statements before other bodies and in the press confirming what he had said before the committee.

In mid-2010 the Professional Association of Judges (*Associação Sindical de Juizes Portugueses* – “the ASJP”) and the Professional Association of Public Prosecutors (*Sindicato dos Magistrados do Ministério Público* – “the SMMP”) separately lodged criminal complaints against Mr Freitas Rangel for “insulting a legal entity” (*ofensa a pessoa colectiva*). He was convicted in 2012 on two counts of insulting a legal entity by the Lisbon Criminal Court, ordered to pay damages of 50,000 euros (EUR) to each plaintiff and fined EUR 6,000. The court reasoned that it was sufficient for the perpetrator to have acted with general criminal intent (*dolo genérico*), even just to attribute falsehoods, or even offensive value judgments, to the legal entities in question. That judgment was broadly upheld on appeal by the Lisbon Court of Appeal, with the damages being lowered to EUR 10,000 to each plaintiff.

The two professional associations appealed to the Supreme Court, complaining about the amount awarded. The Supreme Court found partly in their favour and increased the damages to EUR 25,000 each, citing the damage to reputation caused.

The damages were paid to the ASJP in full. However, the unpaid balance of the damages to the SMMP were transferred to Mr Freitas Rangel’s estate following his death.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention, the applicant complained, in particular, that his conviction and punishment had been in breach of his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 5 December 2013.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),
Ana Maria **Guerra Martins** (Portugal),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Firstly, the Court noted that the ASJP and the SMMP were reputable professional associations which are frequently invited to present their views before Parliament on matters connected to the functioning of justice.

The Court considered that the issues about which the applicant had spoken before the parliamentary committee – the sharing of confidential information with journalists to advance political objectives – was of interest to the public. Most of the statements had been the applicant’s opinions, rather than statements of fact. While the wording may have been unfortunate, the comments could be interpreted as an illustration of a broader societal critique regarding the inappropriate intervention of the judiciary as a whole in politics and the media, which was a subject of public interest and which he had believed to be true. Furthermore, political speech was afforded special protection in the Court’s case-law.

The Court reiterated that the protection of the reputation of a legal entity did not have the same strength as the protection of the reputation or rights of individuals.

The Court observed that the reasoning of the appellate court had been based solely on the rights of the professional associations, rather than balancing their rights with those of the applicant. The Court held that the fine and the damages had been wholly disproportionate and had to have had a chilling effect on political discussion.

Overall, the Court found that the domestic courts had failed to give adequate reasoning for their interference with the applicant's free-speech rights, concluding that the interference had not been necessary in a democratic society.

There had been a violation of Article 10 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Portugal was to pay the applicant's estate 31,500 euros (EUR) in respect of pecuniary damage, and EUR 19,874.23 in respect of costs and expenses.

The judgment is available only in English.

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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.