



## Violation of freedom of expression of a local politician convicted for publishing political satire cartoons on his blog

In today's Chamber judgment<sup>1</sup> in the case of [Patrício Monteiro Telo de Abreu v. Portugal](#) (application no. 42713/15) 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 and his sentencing to payment of a fine and damages for aggravated defamation of a municipal councillor (Ms E.G.) on account of the publication on a blog administered by him of three cartoons drawn by an artist.

The Court held that the domestic courts had not taken sufficient account of the context in which the applicant had published the cartoons on his blog. They had not carried out a thorough balancing exercise between the rights at stake. Furthermore, they had not taken into consideration the characteristics of political satire emerging from the Court's case-law or made any reference to the Court's case-law on freedom of expression. The Court held that the reasons given by the domestic courts to justify the applicant's conviction could not be regarded as relevant and sufficient. In its view, imposing criminal sanctions for conduct such as that of the applicant in the present case was liable to have a chilling effect on satirical forms of expression concerning political issues. The applicant's conviction had thus not been necessary in a democratic society.

A legal summary of this case will be available in the Court's HUDOC database ([link](#))

### Principal facts

The applicant, Tiago Patrício Monteiro Telo de Abreu, is a Portuguese national who was born in 1974 and lives in Elvas (Portugal). He is a member of a political party and was elected to the Elvas municipal assembly on three occasions between 2001 and 2009; in 2013 he was elected as a municipal councillor (*vereador*) in Elvas. At the time he lodged his application he was also an adviser to his party's parliamentary group.

In September 2008 the applicant published three cartoons, together with a text which he had written, on the blog "The House of Commons", of which he was the administrator at the material time. The cartoons depicted a white-haired donkey dressed in a suit, next to a sow with bare breasts and blond hair wearing lace stockings, a garter belt and high heels; they were surrounded by pigs, who were also undressed and all wore an armband bearing the letters "CMR" (an abbreviation of *Câmara Municipal de Rondónia* – "municipality of Rondónia"). The cartoons were by a local artist, A.C., and were part of a series that had been published since 2007 in the local newspaper *O Despertador*, entitled *A Rondónia*. The term had been used by a well-known journalist in a political column published in 2006 in the newspaper *Público* parodying the Elvas municipal council, which at the time was led by Mr José Rondão Almeida, a member of a political party that was an opponent of the applicant's party.

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](http://www.coe.int/t/dghl/monitoring/execution).

In March 2009 Ms E.G., a municipal councillor in Elvas who is now deceased, lodged a criminal complaint against the applicant, the artist and the editor of the newspaper *O Despertador*, alleging damage to her honour and reputation on account of the way in which she had been portrayed in the cartoons published in the local newspaper and on the applicant's blog.

In May 2014 the applicant was found guilty of aggravated defamation of Ms E.G.. He was sentenced to a fine and to pay damages to Ms E.G.

The Elvas District Court found it established that the sow depicted in the cartoons represented Ms E.G. and that the white-haired donkey represented the mayor of Elvas. It also considered that Ms E.G. was the mayor's "right-hand woman" and was well known in the municipality of Elvas, and took the view that by depicting the sow with lace stockings, a garter belt and heels, the artist had sought to evoke images of a prostitute and a debauched, sexually voracious woman, thereby causing Ms E.G. anguish and anxiety. The District Court also found that by placing the sow alongside the donkey, the cartoonist had implied that there was an intimate relationship between them. Lastly, it noted that the applicant was an outspoken political opponent of the Elvas municipal executive and that he had removed the cartoons from his blog as soon as he had learnt of the complaint lodged by Ms E.G.

In February 2015 the Court of Appeal upheld the fine imposed on the applicant.

Beginning in June 2015 the applicant paid the fine of 1,800 euros (EUR) in twenty monthly instalments, as well as court fees of EUR 1,368 in ten monthly instalments. In August 2015 he also paid EUR 1,666 in damages to Ms E.G.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant alleged a breach of his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 24 August 2015.

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

Yonko **Grozev** (Bulgaria), *President*,  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),  
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 10](#)

The Court deemed it necessary to examine whether the national authorities had struck a fair balance between the applicant's right to freedom of expression and Ms E.G.'s right to private life, both of which deserved equal respect, and whether the reasons given for the applicant's conviction were relevant and sufficient.

It observed that the domestic courts had acknowledged that the applicant was a political opponent of Ms E.G. and that the cartoons in question had constituted political satire. As it had previously held, satire was a form of artistic expression and social commentary which, through its characteristic

exaggeration and distortion of reality, naturally aimed to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression had to be examined with particular care, as satire contributed to public debate.

In the Court's view, the domestic courts had omitted to take into consideration the context of the cartoons in question. It noted the following in particular.

Firstly, the three cartoons in question had been part of a series of previously published cartoons by the artist A.C. which satirised local political life in Elvas.

Secondly, while the domestic courts had found it established that Ms E.G. was the "right-hand woman" of the mayor of Elvas and that she was very well known locally, they considered that by depicting the two characters side by side the cartoonist had sought to imply the existence of an intimate relationship between them. The Court failed to see how the cartoons, by depicting the characters side by side, had been intended to make such insinuations, given that none of the drawings had shown the characters kissing, touching or communicating with each other.

It was true that the cartoons echoed certain regrettable stereotypes relating to women in power. The Court noted, however, that the applicant's comments accompanying the cartoons showed that his actual intention in publishing them was to highlight the political satire expressed through caricature and, indirectly, to criticise the municipal leadership, in his capacity as a political opponent and a member of the Elvas municipal assembly. The comments had not made any specific reference to Ms E.G., her political activities or her private life, still less her sexual life, nor did they contain any insulting or stigmatising remarks about her.

The Court considered that, by focusing excessively on the interference with Ms E.G.'s right to reputation, the domestic courts had ultimately taken the cartoons out of their proper context and interpreted them in a manner that did not take sufficient account of the ongoing political debate. Furthermore, they had not given sufficient weight to the fact that all elected representatives were necessarily exposed to this type of satire and caricature and should therefore display a greater degree of tolerance in that regard. This was especially so given that in the present case, in spite of the stereotypes used, the caricatures had remained within the limits of exaggeration and provocation that were typical of satire. Moreover, Ms E.G. was not the only figure to have been depicted undressed in the cartoons, as all the pigs were portrayed in the same way; the mayor of Elvas was portrayed as a donkey, a clearly pejorative image. Thus, the cartoons had targeted the members of the municipal council as a whole.

In sum, in the Court's view, the domestic courts had not taken sufficient account of the context in which the applicant had published the cartoons on his blog. They had therefore not carried out a thorough balancing exercise between the rights at stake. Furthermore, they had not taken into consideration the characteristics of political satire emerging from the Court's case-law or made any reference to the Court's case-law on freedom of expression.

The domestic courts had also held that by using the Internet to disseminate the cartoons, the applicant had made them known to a wider audience. However, they had not analysed further the reach of the three cartoons in question or their accessibility, or even whether the applicant was a well-known blogger or a popular user of social media, which might have attracted the public's attention and increased the potential impact of the cartoons. Moreover, the Court noted that on learning that Ms E.G. had lodged a criminal complaint against him, the applicant had immediately removed the cartoons from his blog, suggesting that he had acted in good faith.

As to the nature and degree of severity of the penalties imposed, the Court considered that the sentencing of the applicant to a fine of EUR 1,800 and to joint payment of damages to Ms E.G. was manifestly disproportionate, especially as Portuguese law provided for a specific remedy for the protection of a person's honour and reputation.

Consequently, notwithstanding the margin of appreciation left to the national authorities in the present case, the Court concluded that the applicant's conviction had not struck a fair balance between the protection of his right to freedom of expression and Ms E.G.'s right to the protection of her reputation. The Court held that the reasons given by the domestic courts for the applicant's conviction could not be regarded as relevant and sufficient. In its view, imposing criminal sanctions for conduct such as that of the applicant in the present case was liable to have a chilling effect on satirical forms of expression concerning political issues. Hence, the applicant's conviction had not been necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

### Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicant. It also held that Portugal was to pay the applicant EUR 3,466 in respect of pecuniary damage and EUR 1,806 in respect of costs and expenses.

### Separate opinions

Judge Motoc expressed a concurring opinion. Judges Kucsko-Stadlmayer and Schukking expressed a joint concurring opinion. These opinions are annexed to the judgment.

*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.