



Men who criticised politicians in the media suffered rights violation after being convicted and fined for defamation

In its committee judgment in [Antunes Emídio v. Portugal and Soares Gomes da Cruz v. Portugal](#) (applications nos. 75637/13 and 8114/14) the European Court of Human Rights has unanimously held that in each case there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned two men, a journalist and a doctor, who were convicted of defaming politicians, fined and ordered to pay compensation.

The Court found that the statements for which the applicants had been convicted had been made in the context of debates on matters of public interest and in neither case had the restriction on their freedom of expression been proportionate.

The judgment is final.

Principal facts

The applicants are Joaquim António Antunes Emídio and Luís Manuel Soares Gomes da Cruz. They are Portuguese nationals born respectively in 1955 and 1944 and living in Santarém and Lisbon.

In March 2011 Mr Antunes Emídio, a journalist at the time, wrote an opinion piece in the regional weekly *O Mirante*, headlined, “Only chickens were left”, which criticised the Portuguese political class. In particular, it said of R.B., the State Secretary for Agriculture, Forests and Regional Development, that he was the most “idiotic politician I know”.

After a criminal complaint by R.B., Mr Antunes Emídio was convicted in July 2012 of aggravated defamation. The court found his statements had amounted to value judgments which had no connection to R.B.’s conduct as a State Secretary and had gone beyond what could be considered as objective criticism. He was ordered to pay 2,500 euros (EUR) compensation and fined the same amount. His appeals were rejected.

Mr Soares Gomes da Cruz, a doctor and managing partner of a clinic providing occupational health services in the town of Lourinhã, published an open letter in a local newspaper in September 2009 after his clinic was not invited to take part in negotiations with the town council to set up a council-run occupation health service.

The article was critical of the town’s mayor, referring among other things to his alleged “lack of character and honesty and his cowardice”. The applicant also distributed a similarly critical leaflet. After a complaint by the mayor and the town council, Mr Soares Gomes da Cruz was convicted of two offences of libel through the media and one offence of insulting a legal entity. He was fined and ordered to pay compensation to the mayor. On appeal, the fine and compensation were reduced and set at EUR 18,000 and EUR 4,500 respectively.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 26 November 2013 and 8 January 2014.

The applicants complained that their convictions had been in breach of Article 10 (freedom of expression).

Judgment was given by a Committee of three judges, composed as follows:

Helen Keller (Switzerland), *President*,
Paulo Pinto de Albuquerque (Portugal),
María Elósegui (Spain),

and also Fatoş Aracı, *Deputy Registrar*.

Decision of the Court

Mr Antunes Emídio

The Court agreed with the domestic court findings in this case that the applicant's statements in the newspaper had amounted to value judgments whose truthfulness was not susceptible of proof. The statements had also been made in the context of a political situation and had been of general and public interest. As such, they should have been accorded a high level of protection by the courts.

The Court concluded that the use of the word "idiotic" had not been a personal attack on R.B. but rather had to be read in the context of the political situation. Indeed, journalistic freedom covered the use of a certain amount of exaggeration or provocative remarks. The applicant had also been punished with a fine and substantial damages.

The Court held that the conviction was not reasonably proportionate to the legitimate aim pursued, having regard to the interest of a democratic society in ensuring and maintaining freedom of the press. Finding strong reasons to substitute its view for that of the domestic courts, the Court found that there had been a violation of Article 10.

Mr Soares Gomes da Cruz

The Court held that the applicant's conviction for insulting a legal entity had not been prescribed by law, as required by the Convention, as the domestic provision related only to "untrue facts" and not to value judgments. That conclusion alone was enough to find a violation of Article 10 over that conviction, however, the Court went on to examine whether all three convictions had met Convention criteria related to freedom of expression.

The applicant's letter and leaflet had been written in the context of the mayor's political activities and those of the town council relating to the provision of occupational health services. The matter has thus been of legitimate general interest as it had contributed to a public debate.

The Court did not agree with the domestic courts' findings that the mayor's personal interest in having his reputation protected had outweighed the applicant's right to freedom of expression. The applicant had made value-laden statements rather than statements of fact concerning the mayor's professional activities and the work of the town council.

There had also been a sufficient factual basis for the applicant's statements: the mayor had explained that the town council had not chosen the applicant's company for negotiations on occupational health services because the company was not officially accredited. However, two of the companies which had been invited had lacked such accreditation. The Court also took note of the high amounts which the applicant had been ordered to pay in fines and compensation.

The Court concluded that the national courts had exceeded their discretion ("margin of appreciation") on limiting debates on matters of public interest and that they had not carried out the necessary balancing exercise in full conformity with Convention criteria. The Court found strong

reasons to substitute its view for that of the courts and held that there had been a violation of Article 10.

Just satisfaction (Article 41)

The Court held that Portugal was to pay Mr Antunes Emídio 5,285.21 euros (EUR) in respect of pecuniary damage and EUR 918 in respect of costs and expenses. It also held that Portugal was to pay Mr Soares Gomes da Cruz EUR 22,500 in respect of pecuniary damage and EUR 459 in respect of costs and expenses. It held that the finding of a violation alone was sufficient just satisfaction for Mr Soares Gomes da Cruz in respect of non-pecuniary damage.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.