



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

FOURTH SECTION

DECISION

Application no. 50253/18
Tânia Alexandra FERREIRA E CASTRO DA COSTA LARANJO
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 10 September 2024 as a Committee composed of:

Tim Eicke, *President*,

Armen Harutyunyan,

Ana Maria Guerra Martins, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 50253/18) 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 19 October 2018 by a Portuguese national, Ms Tânia Alexandra Ferreira e Castro da Costa Laranjo (“the applicant”), who was born in 1972, lives in Lisbon and was represented initially by Mr. M. Menezes and later by Ms I. de Oliveira Silva, lawyers practising in Lisbon;

the decision to give notice of the application to the Portuguese Government (“the Government”), represented by their Agent, Mr. R. Bragança de Matos, Public Prosecutor;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the criminal conviction of a journalist for the publication of an article based on audio recording of a taped telephone conversation between two politicians without their consent.

2. The applicant is a journalist in a well-known tabloid newspaper *Correio da Manhã* (“CM”). On 13 November 2010 CM published an article, written by the applicant, concerning a taped telephone conversation of June 2009 between two politicians, A.V., a former Minister, and E.E., a member of the European Parliament at the time, in which they criticised other members of

the European Parliament. The article was based on an audio recording of the conversation, to which the applicant had access in her capacity as *assistente* (auxiliary of the Prosecutor) in a high-profile criminal proceedings instituted against many people accused, including A.V., by the public prosecutor's office at the Aveiro District Court (see *Martins Pereira Penedos v. Portugal* (dec.), no. 74017/17, § 5, 22 November 2022).

3. On 28 July 2017 the Criminal Court of Lisbon, acting on a criminal complaint by E.E., convicted the applicant for having published the impugned article, based on the taped conversation, without prior consent by the parties involved. It also imposed a fine in the amount of 1,000 euros (EUR), corresponding to ten daily fines, pursuant to Article 348 § 1 a) of the Criminal Code, Article 88 § 4 of the Code of Criminal Proceedings and Article 30 and 31 § 1 of the Law of the Press. Lastly, it dismissed the compensation claim of E.E.

4. The court established that the source of information for the article at issue had been the personal and private conversation between A.V. and E.E. that had been in the case file to which the applicant had access in her capacity of *assistente* in the criminal proceedings described above. Referring to the case-law of the Court, particularly *Pinto Coelho v. Portugal* (no. 28439/08, 28 June 2011), the court considered that the applicant's right to freedom of expression had to be balanced against A.V.'s and E.E.'s right to privacy and that the latter had to prevail in view of the circumstances of the case.

5. On 19 April 2018 the Lisbon Court of Appeal confirmed those findings. It considered that the telephone conversation in question was a personal and private exchange between two public figures, during which they exchanged their personal opinions about other public figures. Furthermore, it noted that the applicant had not sought their authorisation prior to publishing the article, as required by Article 88 § 4 of the CPP. There had been no strong reason, in particular, public interest, evidenced in the content of the article to find that the applicant's right to freedom of expression outweighed A.V. and E.E.'s right to respect for their private life.

6. Relying on Article 10 § 1 of the Convention, the applicant alleged that the judgments against her had breached her right to freedom of expression and to impart information.

THE COURT'S ASSESSMENT

7. It is not disputed between the parties that the domestic courts' judgments constituted an interference with the applicant's right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. The Court sees no reason to hold otherwise. It also observes that the interference was "prescribed by law", as it was based on the relevant provisions of the Criminal Code, the Code of Criminal Procedure and Law of the Press (see paragraph 3 above). The interference pursued one of the legitimate aims referred to in

paragraph 2 of Article 10 of the Convention, namely the protection of the private life of E.E. and A.V. (see paragraphs 4 and 5 above). It remains to be ascertained whether the interference complained of was necessary in a democratic society.

8. The general principles regarding the issue whether an interference with the exercise of the right to freedom of expression is “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention are summarised in *Bédât v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016).

9. The criteria for balancing the applicant’s right to freedom of expression under Article 10 against the right to privacy of E.E. and A.V. are as follows: contribution to a debate of public interest; degree of notoriety of the person affected; subject of the news report; content, form and consequences of the publication; method of obtaining the information and its veracity; prior conduct of the person concerned; as well as severity of the sanction imposed (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 90-95, 7 February 2012; and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 93, ECHR 2015 (extracts)).

10. Applying the above principles in the present case, the Court notes that the applicant was sentenced for disclosing details of a private conversation between two politicians, without their prior consent (see paragraphs 2 and 5 above). The domestic courts established that the information published in the impugned article had not concerned the criminal proceedings on-going at the time (see, conversely, *Pinto Coelho*, cited above, § 35 and *Campos Dâmaso v. Portugal*, no. 17107/05, § 34, 24 April 2008), but only the personal opinions of A.V. and E.E. about other politicians. It had not served accordingly any public interest.

11. As in other cases it has examined, the Court considers that, although the public has a right to be informed, an article, such as the one in the present case, aimed solely at satisfying the curiosity of a particular readership regarding the personal opinion of a public figure about other public figures, cannot be deemed to contribute to any debate of general interest (see, *mutatis mutandis*, *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 65, ECHR 2012, *Couderc and Hachette Filipacchi Associés*, cited above, § 100). The Court therefore sees no reason to depart from the conclusion reached by the domestic courts, considering the lack of public interest of the information contained in the article (compare *Bédât*, cited above, § 65).

12. Lastly, regarding the sanction imposed, the Court observes that the applicant was sentenced to ten daily fines amounting to a total of EUR 1,000 which does not appear disproportionate in view of the particular circumstances of the case.

13. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts struck a fair balance, within their margin of

appreciation, between the applicant's right to freedom of expression and to impart information under Article 10 of the Convention, and the rights of A.V. and E.E. to respect for their private life under Article 8 of the Convention, taking into account the criteria set out in the Court's case-law.

14. It follows that the application is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 October 2024.

Simeon Petrovski
Deputy Registrar

Tim Eicke
President