

EUROPEAN COURT OF HUMAN RIGHTS

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28.09.2000

Press release issued by the Registrar

JUDGMENT IN THE CASE OF LOPES GOMES DA SILVA v. PORTUGAL

In a judgment¹ delivered at Strasbourg on 28 September 2000 in the case of *Lopes Gomes da Silva v. Portugal* (application no. 37698/97), 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. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 480,000 escudos (PTE) for pecuniary damage and PTE 1,758,297 for legal costs and expenses. It held that the judgment in itself constituted just satisfaction for any non-pecuniary damage

1. Principal facts

The case concerns an application by a Portuguese applicant, Vicente Jorge Lopes Gomes da Silva, who was born in 1945 and lives in Lisbon (Portugal).

At the material time the applicant was the manager of the daily newspaper *Público*, one of the biggest selling papers in Portugal. In its edition of 10 June 1993 *Público* published an article saying that the People's Party (*Partido Popular - CDS/PP*) had asked Mr Silva Resende, a lawyer and journalist, to stand as a candidate in the Lisbon municipal elections. On the same page the applicant published an editorial criticising that invitation and asserting in particular: "... a more grotesque and clownish candidate from the ideological point of view could not be found anywhere, or such an incredible mixture of reactionary coarseness, fascist bigotry and vulgar anti-Semitism...". In the same edition of *Público* numerous extracts from Mr Silva Resende's recent articles were published in which, among other things, he had praised the former president Salazar, the National Front and its leader Mr Le Pen, described the then Prime Minister of France, Mr Laurent Fabius, as a "bald Jew" and attacked the Portuguese revolution of 25 April 1974.

Mr Silva Resende lodged a criminal complaint against the applicant, who was subsequently accused of criminal libel through the press (*abuso de liberdade de imprensa*), with the Lisbon prosecuting authorities, with an application to join the proceedings as *assistente* (an auxiliary of the Public Prosecutor's Office). By a judgment of 15 May 1995 the Lisbon Criminal Court acquitted the applicant, but on appeal by Mr Silva Resende and the Public Prosecutor's Office the Lisbon Court of Appeal (*Tribunal da Relação*) set aside the impugned decision in a judgment of 29 November 1995. The applicant was ordered to pay PTE 150,000 as a fine, PTE 250,000 to Mr Silva Resende in damages, and the costs. Relying on Article 10 of the

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

European Convention on Human Rights, among other provisions, the applicant lodged a constitutional appeal with the Constitutional Court (*Tribunal Constitucional*), but this was dismissed by a judgment of 5 February 1997.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 15 July 1997. The case was transmitted to the Court on 1 November 1998 in accordance with Article 5 § 2 of Protocol No. 11 and assigned to the Fourth Section. The application was declared admissible on 13 January 2000. A hearing was held on 30 May 2000. Judgment was given by a Chamber of seven judges, composed as follows:

Georg **Ress** (German), *President*,
Antonio **Pastor Ridruejo** (Spanish),
Lucius **Cafilisch**¹ (Swiss),
Jerzy **Makarczyk** (Polish),
Ireneu **Cabral Barreto** (Portuguese),
Nina **Vajić** (Croatian),
Matti **Pellonpää** (Finnish), *judges*,

and also Vincent **Berger**, *Section Registrar*.

3. Summary of the judgment²

Complaint

The applicant complained that his conviction had infringed his right to freedom of expression, contrary to Article 10 of the European Convention on Human Rights.

Decision of the Court

Article 10

The Court stated that freedom of expression was of particular importance with regard to the press, the limits of acceptable criticism being wider with regard to a politician acting in his public capacity. It noted that while political invective was prone to become personal in tone, that was one of the hazards of political life and free debate that acted as the guarantors of democratic society. The Court also considered it appropriate to reiterate that journalists could resort to a degree of exaggeration, or even provocation. By reproducing a number of extracts from recent articles by Mr Silva Resende alongside his editorial, the applicant had complied with the rules of journalism, a matter to which the Court attached considerable importance. Lastly, despite the fact that the penalty imposed had been minor, the applicant nevertheless now had a conviction and that was not a measure that was reasonably proportionate to the legitimate aim pursued. The Court therefore concluded, unanimously, that there had been a violation of Article 10.

Article 41

¹ Judge elected in respect of Liechtenstein.

2. This summary by the Registry does not bind the Court.

The applicant, who made no claim for non-pecuniary damage, sought PTE 480,000 to cover the fine and damages he had been ordered to pay and legal costs. He also requested the reimbursement of his lawyer's travel expenses for the hearing in Strasbourg (PTE 258,297) and an award on account of fees which he left to the Court's discretion. The Court awarded the applicant PTE 480,000 for pecuniary damage and PTE 1,758,297 for costs and expenses. Lastly, it held that the judgment in itself constituted just satisfaction for any non-pecuniary damage.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.