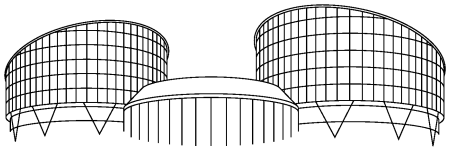

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TAVARES DE ALMEIDA FERNANDES AND ALMEIDA FERNANDES v. PORTUGAL

(Application no. 31566/13)

JUDGMENT

STRASBOURG

17 January 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

András Sajó, *President*,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Marko Bošnjak, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 13 December 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 31566/13) 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") by two Portuguese nationals, Mr José Manuel Tavares de Almeida Fernandes ("the first applicant") and Mrs Maria Gabriela Neves Rebelo Cabrita Simão de Almeida Fernandes ("the second applicant"), on 10 May 2013.

2. The applicants were represented by Mr F. Teixeira da Mota, a lawyer practising in Lisbon. The Portuguese Government ("the Government") were represented by their Agent, Ms M. F. da Graça Carvalho, Deputy Attorney General.

3. The applicants alleged a breach of the right to freedom of expression, as guaranteed by Article 10 of the Convention.

4. On 9 November 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are husband and wife. They were both born in 1957 and live in Colares.

A. The context of the case and the article in question

6. The first applicant is a well-known journalist in Portugal. At the time in question he was the editor of the daily newspaper *Público*.

7. On 29 September 2006 the newspaper published an editorial written by the first applicant entitled "The strategy of the spider" (*"A estratégia da aranha"*); the editorial addressed the election of the President of the Supreme Court of Justice, which had taken place the day before. The article expressed the first applicant's opinion of the newly elected President, Judge N.N., and on what his election meant for the Portuguese judicial system. The first applicant's editorial reads as follows:

"The strategy of the spider

N.N., the man who will be presiding over the Supreme Court, represents the dark side of our judiciary.

Do you want a symbol, a representative, an exemplar of the wrongs of the Portuguese judicial system? That's easy: simply mention the name of N.N. and all the wrongs you can think of regarding corporatism, conservatism, atavism, manipulation, games of shadows and influence immediately spring to mind.

The judge – because we are talking about a judge – is a man as intelligent as he is Machiavellian. For years, first in the Trade Union Association of Judges [*Associação Sindical dos Juízes*], then [as a member of] the High Council of the Judiciary [*Conselho Superior da Magistratura* – hereinafter "the HCJ"], and lastly [sitting on] the Supreme Court of Justice, this person – of whom the majority of Portuguese people have never heard – has been weaving a web of connections, of back-scratching, of favours and undertakings (there is an even worse word, but I will avoid it) which enabled him yesterday to stick into his somewhat tousled mane the peacock feather he has been lacking: the presidency of the Supreme Court of Justice. The position is not worth very much (who, among the readers, knows that the current president of that court is, formally, the fourth-highest-ranking figure of State?). It carries some sinecures, perhaps some perks ... but it has little effective power.

The problem, however, lies in this question: has, or will have [effective power]? The gentlemen judges, who some time ago engaged in a dispute with [the judges of] the Constitutional Court to determine who occupied the more important place in the hierarchy (those of the Supreme Court won ... but gave to those of the Constitutional Court the consolation of having at their disposal a high-end car ...) aren't even much respected. [That is] their own fault, as it is known that they occupy their seats in the Supreme Court only for some months in order to beef up their pensions. The president of that giant college of most reverend judges has had little power; [however,] ... N.N. presented himself to the voters – that is to say, to his peers, and those whom he helped to promote to a position from which one day they would be able to elect him – under the kind of manifesto which makes the hair of the most peaceful citizen stand on end. The man didn't do this out of the goodness of his own heart: at the same time that he was acting as a trade unionist (he asked for an increase in his salary and that less work be given to judges ...) he acted as someone who wanted to overthrow the regime (by wanting to sit on the Council of State [*Conselho de Estado*]) and added the glittering (due to the amount of accumulated tallow) hat of "resister" of reforms in the judicial sector. If it was advisable for a President of the Supreme Court to pay greater attention to Montesquieu and the principle of the separation of powers than to the playbook of

the CGTP [General Confederation of Portuguese Workers], N.N. did exactly the opposite. He laid out his demands in the grandiose manner of a steelworker in a futuristic "socialist realism" painting, forgetting that he is a judge and the highest representative of the third [branch of government], the judiciary, and claimed a place at the table of the "first [branch]", the executive. It is true that the power of the Council of State is as innocuous as the plume of being president of the Supreme Court, but the claim has in itself two perversities. Firstly, it is a sign that N.N. cares more about his public prominence than the problems of justice. Secondly, and much more serious, the man is volunteering himself to be the face of a group of judges [that is] against the reforming decisions of those holding political power which are currently the subject of a broad consensus between the government party and the main opposition force.

It is so pathetic as to make one laugh, were we not in Portugal and if we did not understand how the strategies of the spiders work. The man, I believe without fear of contradiction, is so intelligent and skilful as to be dangerous. But he already has an opponent: the new Attorney-General of the Republic, P.M., one of the rare people to have had the courage to stand up to him."

8. There was coverage of the election in the days preceding and following it in various articles in the national press. One of those articles, published in *Público* on 6 August 2006, was an interview with a member (*juiz conselheiro*) of the Supreme Court of Justice, P.M., who had severely criticised the electoral system for the post of President of the Supreme Court of Justice. The relevant parts of the interview read as follows:

"...

Q.: Why don't you agree with the current system of electing the President of the Supreme Court of Justice (SCJ)?

P.M.: One of the functions of the High Council of Judiciary (HCJ) is the grading of judges who rise to the post of member of the SCJ. How do they get to the Supreme Court? Through a competition, and an assessment of their work by the members of the HCJ. Among those members there is a president of judges who, obviously ... has a certain degree of control over [those judges]. It does not cross anyone's mind that they aren't people whom he trusts ... and I myself am not questioning those people. What is at stake is the system.

Q.: Because it creates inequality, is that it?

P.M.: Just look at what happens. The Vice-President of the HCJ is one of the key figures in the choosing of members of the SCJ. That man should never be able to run [for elections to the SCJ] because those who are going to elect him are those whom he has graded.

Q.: Are you saying it is a distorted system [*sistema viciado*]?

P.M.: It is a distorted system ... It is not the people – they are all serious and honest; the problem is the system itself.

Q.: Do you support a change to the rules of [elections] to the post of President of the SCJ?

P.M.: Yes; the way these [elections] work raises doubts and questions. It is an election which has the appearance of being distorted. Whether it is, I don't know ... But it is clear that if [a person] has a key role in the admission of A or B to an

[organisation], then when [that person] has a vote he is going to vote for the person who admitted him."

9. Between 2001 and 2006 several articles on the system of elections to the post of President of the Supreme Court of Justice were published in the media within the context of elections held within that period. Some of these articles called the system into question. For example, on 13 July 2004, *Diário de Notícias* published an article, written by L.L. and entitled "Grading of judges may involve a strategy of power" (*"Graduação de juízes pode envolver estratégia de poder"*), for which he had interviewed a judge who had challenged the 2004 [competition] to the Supreme Court and who had made allegations that Judge N.N. had been behind the alleged strategy. In that article, L.L. made reference to a document circulating among judges in which it was alleged that "N.N. prepared the grading of judges in order to secure a sufficient number of votes for him to be elected as President of the SCJ in the next election."

B. The civil proceedings against the applicants

10. On 7 December 2007 Judge N.N. brought an action in the Lisbon Civil Court against the applicants for defamation. He sought non-pecuniary damages amounting to 150,000 euros (EUR). The applicants contested the action against them and argued that the second applicant should not have been a party (*ela era parte ilegítima*) in that she had neither benefited from the article nor had had previous knowledge of it. In fact, the second applicant had not participated at all in the writing or publication of the first applicant's article; the civil proceedings for defamation had been instituted against her on the basis of Articles 1691 and 1695 of the Portuguese Civil Code.

11. During the proceedings the first applicant attempted to prove, *inter alia*, (i) that he had based his opinion on the different articles that had been published in the media on the elections to the Supreme Court of Justice, on information obtained from a source whose identity was confidential, and on conversations he had had with different people from the judiciary (including judges who had challenged the results of the competition for posts as judge in 2004); (ii) that the article concerned an issue of public interest; and (iii) that he had written it in good faith. In this regard, several witnesses, including journalists and people from the judiciary (*comunidade judiciária*), were heard. The relevant statements read as follows:

(i) M.P., chairman of the Bar Association from 2007 to 2013, with whom the first applicant talked, mentioned that he had had conversations with Judge N.N.'s opponents, who had made references to the methods Judge N.N. used to obtain what he wanted;

(ii) M.J., a former President of the Bar Association, considered that the first applicant had made a political criticism and that he had not intended to

attack the man personally but rather in his capacity as a politician and in terms of his way of engaging in politics and of his career, which had been based on trade unionism;

(iii) L.L. mentioned that he had contacted, regarding the article he had written, different people from the judiciary (judges who had raised suspicions regarding the competition to the Supreme Court, judges from the trade union association of judges, and prosecutors) about Judge N.N. and the system of elections to the Supreme Court; he also acknowledged that he had not talked with members of the HCJ or with Judge N.N. about the issue.

12. On 13 November 2009 the Lisbon Civil Court found for the plaintiff. It considered that the article in question had damaged the plaintiff's reputation and that the expressions used by the first applicant had been disproportionate and had clearly exceeded the limits on freedom of expression. It considered that the article had diminished public confidence in Judge N.N. and in the High Council of the Judiciary, thus damaging his honour and reputation. The first applicant was ordered to pay EUR 35,000 in compensation for non-pecuniary damage. With regard to the second applicant, the Lisbon Civil Court held that under Article 1692 of the Civil Code she should not have been a party to the proceedings and that the compensation amount due arose from an action only attributable to the first applicant. The relevant parts of the judgment read as follows:

> "...
>
> The editorial is ... the responsibility of its editors ..., appears in each edition of the publication and focuses on the most important events of the day or of that edition and aims to comment, analyse, urge – in sum, form opinion.
>
> ...
>
> The editorial in question was published on 29 September 2006 – the day immediately following the plaintiff's election as President of the Supreme Court of Justice.
>
> The established facts demonstrate to us that the plaintiff, as a member of the Supreme Court of Justice, applied for the post of president of that court and was elected with 53 votes out of a possible 72 votes, which means that he was elected by 73.6% [of the possible votes].
>
> This is the context of the editorial.
>
> ...
>
> [The editorial examines] the plaintiff on two levels: how he, allegedly, managed to achieve the electoral results; and his electoral programme as a candidate for election to the presidency of the Supreme Court.
>
> With regard to the first topic ... in [the editorial] there is no expression of any value judgment. It is stated as a fact – as a manner of behaviour on the part of the plaintiff: that the plaintiff helped those who elected him to rise to the post of member of the Supreme Court of Justice, given the function that he exercised throughout his life as a union leader and as both a member and Vice-President of the High Council of the Judiciary.

The essential aim was to state that throughout his life, the plaintiff had pursued a strategy [to attain power] which had built a college of electors in which he could have confidence, [pursuing that aim] via the functions he had exercised, particularly [during his time at] the HCJ.

It is true that the plaintiff was leader of the trade union association of judges, a member of the HCJ between 1989 and 1990 (and Vice-President between 2001 and 2004) and on 28 September 2006 was elected President of the Supreme Court.

...

The defendant did not prove the veracity of this allegation.

The defendant further argues that the opinion expressed in the editorial was based – given the lack of transparency of the whole procedure – on his knowledge of the ongoing public debate about the election of the President of the Supreme Court of Justice, of the functioning of the High Council of the Judiciary, and of the plaintiff.

...

In the instant case it is established that when the defendant wrote the editorial, he was familiar with the news and opinions mentioned in documents [contained in the case file] ... and had talked to people.

The facts established concern the publication of several articles on the above-mentioned topics ...

However it is not understood how or to what extent these articles allowed the applicant to reach the conclusion that: "For years, first in the trade union association of judges then [as a member of] the High Council of the Judiciary, and lastly [sitting on] the Supreme Court of Justice, this person – of whom the majority of the Portuguese have never heard – has been weaving a web of connections, of back-scratching, of favours and undertakings (there is an even worse word but I will avoid it) which enabled him yesterday to stick into his somewhat tousled mane the peacock feather he has been lacking: the presidency of the Supreme Court of Justice.

...

In the light of the above, there is nothing which allows us to reach the conclusion that the defendant had determined the veracity of his comments [by means of accessing] credible, diverse and verifiable sources of information.

...

[With regard to the plaintiff's] electoral programme as a candidate in the election of the President of the Supreme Court of Justice ... [t]he statements he made in support of that programme] have some factual basis.

In fact, it was proved that in the letter he distributed to his colleagues, the plaintiff, as a candidate for the presidency of the Supreme Court, defended the enshrinement – through a constitutional revision – of the President of the Supreme Court as a permanent member of the Council of State, as well as the improvement in a timely manner, consistent with the economic situation of the country, of the remuneration of members of the Supreme Court of Justice.

The plaintiff's opinions may be – and in a democratic state are – subject to criticism, even more so when they are expressed within the context of his candidacy in the election of the President of the Supreme Court of Justice.

..."

13. On an unknown date, both the first applicant and Judge N.N. lodged appeals against the first-instance judgment with the Lisbon Court of Appeal. The first applicant argued, *inter alia*, that the judgment of the Lisbon court had breached his freedom of expression and should therefore be overturned. He further contended that the compensation amount that he had been required to pay was extremely high and contested some of the facts that had been established by the court. He argued that he had obtained some information only on condition that the source providing that information would remain anonymous.

14. In his appeal Judge N.N. argued that the level of compensation should have been set at a higher amount and that the second applicant should have been considered a party to the proceedings.

15. On 9 November 2010 the Lisbon Court of Appeal upheld the first-instance judgment. It held that some of the first applicant's comments had not exceeded the limits on freedom of expression, but that most of the content of the article had constituted an attack on Judge N.N.'s honour, honesty and reputation. The Court of Appeal emphasised that the first applicant had exceeded his right to criticise and inform. It further considered that the first applicant had not been able to prove in the proceedings the veracity of some of the allegations made in the article, even though they had been based on previous articles published in the Portuguese media about Judge N.N. and his election as President of the Supreme Court of Justice. With regard to the facts, the Lisbon Court of Appeal considered that the facts had been correctly established.

16. The Lisbon Court of Appeal ordered the applicants jointly to pay Judge N.N. EUR 60,000, plus interest, in compensation for non-pecuniary damage. It considered the second applicant to be a legitimate party to the proceedings and, with regard to her, it based its decision on the fact that the applicants were married under the community property system (*regime de comunhão de adquiridos*) and she did not have any source of income and that therefore, under the Portuguese Civil Code, the income earned by the first applicant as a journalist and editor of a newspaper directly benefited both of them.

17. On an unknown date in November 2010 the applicants and Judge N.N., respectively, lodged an appeal and a cross-appeal (*recurso subordinado*) against that judgment with the Supreme Court of Justice.

18. On 15 December 2011 the Supreme Court of Justice declined to examine the applicants' appeal. It considered that the judgment of the Lisbon Court of Appeal had not clearly identified all those facts which it had considered to be proven; this made it impossible for the Supreme Court to hear the appeal. The Supreme Court ordered that the case be remitted to the Lisbon Court of Appeal in order for it to correct its statement of facts; this would enable the Supreme Court of Justice to analyse the points of law that had been raised.

19. On 13 November 2012 the Lisbon Court of Appeal delivered a new judgment in which it upheld its previous judgment of 9 November 2010.

As to the facts, the Lisbon Court of Appeal considered, *inter alia*, the following to have been established:

(i) the plaintiff had been the only candidate for the post of President of Supreme Court of Justice and had previously been a member and the Vice-President of the High Council of the Judiciary;

(ii) several articles had been published in the press and in blogs (in the periods preceding and following the election) about Judge N.N. and his electoral programme and past elections for the presidency of the Supreme Court of Justice;

(iii) on 6 August 2008 the newspaper *Público* had published an interview with P.M., a member of the Supreme Court of Justice, in which he had questioned the system of elections to the post of President of the Supreme Court of Justice on the grounds that it could be distorted in so far as the HCJ's functions included the grading of judges who ascended to the post of member of the Supreme Court;

(iv) with regard to a past competition to the Supreme Court of Justice, the daily newspaper *Diário de Notícias* had, in 2004, published two different articles in which it had raised questions about the grading of judges by the HCJ and the possible power strategy involved; in one of the articles (for one of which a judge of a Court of Appeal who had participated in the competition had been interviewed and for which a document known to judges had been consulted) it had been mentioned that Judge N.N. had already mustered support for his election in the next elections for the post of President of Supreme Court;

(v) in 2001 *Público* had published an editorial [by the then editor] criticising the system of electing the President of the Supreme Court and of HCJ judges; with regard to the latter, criticism was made of Judge N.N.'s lobbying on his own account of while exercising his functions as union leader;

(vi) the first applicant's editorial had received both positive and negative comments in the press and in blogs;

(vii) the first applicant had had knowledge of the different articles which had been published in the media before the elections and had spoken to different people about them, Judge N.N. and the functioning of the HCJ.

20. As to the analysis of the merits of the case, the relevant parts of the judgment read as follows:

> "...
>
> In the present case, it is important to take into account [the fact] that the person referred to in the ... text written by the defendant is a public figure, being the fourth-highest-ranking figure of State: the President of the Supreme Court of Justice.
>
> Despite his being a public figure, and therefore more liable to [be the target of] public criticism, his honour is still protected ...

...

... [I]t is important to emphasise that it appeared in the period which followed the election of the President of the Supreme Court of Justice by his peers.

...

... the text does not affect the plaintiff only as a public figure but also in his strictly personal sphere. In fact, starting with the latter, the expressions "which enabled him yesterday to stick into his somewhat tousled mane the peacock feather he has been lacking" and "... and added the glittering (due to the amount of accumulated tallow) hat of 'resister' of reforms in the judicial sector" seem to manifestly extend beyond the right to inform and to criticise, attacking the plaintiff's personal dignity within his private sphere ...

...

In sum, the above-mentioned segment [of the editorial article] exceeds the proportionality inherent in the legitimate purpose of debate and critical information ...

That is not the case when the defendant attributes corporatism, conservatism and atavism to the plaintiff.

...

... [T]hese expressions fall within the scope of what has to be borne by a public figure ...

...

Let us now analyse the passages where it is said that we face a man and judge who "has been weaving a web of connections, of back-scratching, of favours and undertakings (there is an even worse word but I will avoid it)" and who "presented himself to the voters – that is to say, to his peers, and those whom he helped to promote to a position from which one day they would be able to elect him".

...

... [T]he above-mentioned passages put into question the professional ethics of the plaintiff in the exercise of his functions...

...

However in the instant case there was no proof given of the allegations against the plaintiff; on the contrary, ... the right to inform was exceeded."

21. With regard to the amount awarded to Judge N.N. in pecuniary damages, the Lisbon Court of Appeal held as follows:

"In the instant case, the non-pecuniary damage, reflected in the violation of the right to a good name and the reputation of the plaintiff, given its severity ... had ... a negative impact in the personal sphere, including his family and professional circle, of the plaintiff.

...

Besides that, and this is the decisive point for the determination of the amount to be awarded, the piece written by the defendant, despite the degree of offence and suffering [caused to] the plaintiff, was not an obstacle to his re-election by a large majority (larger than that previously, as everybody knew) to the same post. As such,

the severity of what the defendant wrote did not have an impact on the professional future of the plaintiff ...

In this context, it is also important to take into account the average amount ascribed to the value of life under the case-law of the Supreme Court of Justice (which is nowadays increasing): EUR 60,000.

In the light of the above, and under the applicable legal framework, it is appropriate to award the amount of EUR 60,000."

22. On 21 November 2012 and 6 December 2012 Judge N.N. and the applicants respectively lodged with the Supreme Court of Justice an appeal and a cross-appeal against the judgment of the Lisbon Court of Appeal. On 25 January 2013 the applicants submitted their grounds of appeal. They complained, *inter alia*, that the judgment of the Lisbon Court of Appeal of 13 November 2012 was in breach of freedom of expression and that the amount which they had been ordered to pay as compensation to Judge N.N. was excessive.

23. On 22 February 2013 the appeals before the Supreme Court of Justice were discontinued on the ground that Judge N.N. had not submitted any grounds of appeal (*julgado deserto o recurso e caducado o recurso subordinado*). As a consequence, the applicants were unable to challenge the outcome of the judgment of the Lisbon Court of Appeal of 13 November 2012.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Portuguese Republic

Article 26 § 1

"Everyone shall possess the right to a personal identity, to the development of their personality, to civil capacity, to citizenship, to a good name and reputation, to their own likeness, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination."

Article 38

"1. Freedom of the press is guaranteed.

2. Freedom of the press implies:

a) Freedom of expression and creativity on the part of journalists and other staff, as well as journalists' freedom to take part in deciding the editorial policy of their media entity, save when the latter is doctrinal or religious in nature;

b) That journalists have the right, as laid down by law, of access to sources of information and to the protection of professional independence and secrecy, as well as the right to elect editorial boards;

c) The right to found newspapers and any other publications without the need for any prior administrative authorisation, bond or qualification.

...”

B. The Portuguese Civil Code

Article 70

“The law protects individuals against any unlawful interference or threat of harm to their physical or moral personality.”

Article 484

“Anyone who states or spreads [knowledge of] a fact that is capable of harming the reputation of another natural or legal person is liable for damages.”

Article 1691

“1. [The following] are the responsibility of both spouses:

...

c) Debts incurred during the marriage by the administrator spouse [*cônjuge administrador*] for the common profit of the couple and within the limits of his or her powers of administration.

...”

Article 1692

“[The following] are the sole responsibility of the spouse to which they relate:

...

b) Debts arising from crimes and compensation, restitution, court fees or fines arising from facts attributable to both spouses, unless such facts, implying purely civil liability, are covered by paragraphs 1 or 2 of the previous article. ...”

Article 1695

“1. In respect of debts which are of the responsibility of both spouses it is possible to resort to the common property of the couple or, in the absence or lack of [such property] ... the personal assets of either spouse.”

C. The Code of Civil Procedure

24. The relevant provisions of the Code of Civil Procedure, in the [wording] applicable at the material time (Legislative Decree no. 329-A/95 of 12 December 1995), provided:

Article 682

“1. If both parties succeed on some and fail on other heads, each will have to appeal in order to secure the amendment of the part of that decision which he or she considers to be unfavourable; however any appeal lodged by either of them may, in that case, be independent or a cross-appeal.

2. An independent appeal must be lodged within the normal time-limit and terms; a cross-appeal may be lodged within 10 days of the notification of the decision admitting the other party's appeal.

3. If the first [person to lodge an appeal] withdraws that appeal or if it is without effect or if the court does not examine it, the cross-appeal expires; the costs shall all be borne by the main appellant.

..."

Article 685

"1. An appeal shall be lodged within 10 days of the notification of the decision [in question] ..."

D. The Regulations on the State Attorney's Office

25. The relevant provision of the Regulations on the State Attorney's Office (*Estatuto do Ministério Público*), adopted by Law no. 47/86 of 15 October 1986 and as amended by Law no. 9/2011 of 12 April 2011, reads as follows:

"...

2. As President of the Office of the Attorney-General (*Procuradoria-Geral da República*), the Attorney-General of the Republic (*Procurador-Geral da República*) shall:

...

b) manage, coordinate and exercise the supervision of the activity of the State Attorney's Office (*Ministério Público*) and issue directives, orders and instructions to be followed by magistrates in the exercise of their functions. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicants complained that the judgments given in the case were in breach of freedom of expression. In particular, they claimed that the amount awarded to the plaintiff as compensation for non-pecuniary damage was disproportionate and had had a chilling effect on the exercise of freedom of opinion. They relied on Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. Whether the second applicant is a "victim"

(a) The parties' observations

27. The Government contested the second applicant's *locus standi* under Article 34 of the Convention.

28. They acknowledged that she had been directly affected by the decision of the Lisbon Court of Appeal ruling that she should, jointly with her husband, pay compensation to Judge N.N. However, despite the pecuniary consequences which that judgment may have had for the second applicant, the domestic courts had not interfered with her freedom of expression. The impugned article had been written by the first applicant and the second applicant had not contributed to it in any way. Therefore, and given that Article 10 was a personal and non-transferable right, the second applicant could not claim to be a victim under Article 10 of the Convention.

29. The applicants contested that assertion. They contended that the second applicant had been subject to an order to pay compensation for something which had been written by her husband. Given the situation, one could not fail to consider that the freedom of expression of the first applicant encompassed that of his spouse, given that she had been considered jointly responsible for it. Therefore, the second applicant had been the victim of a violation of Article 10 of the Convention for the purposes of Article 34.

(b) The Court's assessment

30. In the instant case, the Court firstly notes that civil proceedings for defamation were also instituted against the second applicant and that she was considered to be a legitimate party to the proceedings by the Lisbon Court of Appeal (see paragraphs 6 and 16 above). By a judgment of 13 November 2012 the Lisbon Court of Appeal ordered the second applicant, together with the first applicant, to jointly pay EUR 60,000 to Judge N.N. on account of the attack on his honour and reputation constituted by the article (see paragraph 19 above). The Court notes that in making her complaint under Article 10 the second applicant denied that she had knowledge of the article, and that she was involved in its writing and publication.

31. In the light of the above, the Court considers that the second applicant has not exercised her right of freedom of expression and that consequently she has not made out a *prima facie* case that her right of freedom of expression was interfered with (see, *mutatis mutandis*, *Kasparov and Others v. Russia*, no. 21613/07, § 72, 3 October 2013).

32. In these circumstances, the Court holds that the second applicant cannot claim to be the "victim" of a breach of her rights under Article 10 of the Convention. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4.

2. Whether the first applicant has exhausted domestic remedies

(a) The parties' observations

33. The Government argued that the first applicant had failed to exhaust the available domestic remedies in that he had not lodged an appeal with the Supreme Court of Justice challenging the ruling of the Lisbon Court of Appeal of 13 November 2012 on the merits and with regard to the level of non-pecuniary damages that they were ordered to pay. For the Government the appeal would have been the most adequate and most potentially effective remedy in the case. They argued that the cross-appeal relied on the admissibility of the appeal; however, they did not question its effectiveness. They considered that by not lodging an independent appeal within the time-limit established by law the first applicant had not exhausted the most adequate remedy (that is to say he had not sought revision of the judgment).

34. The first applicant argued that he had exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention by lodging a cross-appeal with the Supreme Court of Justice, despite the fact that the court had not issued a judgment on the merits of the case. He argued that he had missed the time-limit established by law to lodge an appeal; however, the law still allowed him to challenge the judgment by means of a cross-appeal. He therefore contended that the cross-appeal had constituted a legitimate remedy and would have allowed the Portuguese State to deliver a final judgment on the merits, which did not happen because Judge N.N. had lost interest in pursuing the appeal.

(b) The Court's assessment

35. The Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many other authorities, *Mozer v. the Republic of*

Moldova and Russia [GC], no. 11138/10, § 115, 23 February 2016, and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 84, 9 July 2015).

36. The obligation to exhaust domestic remedies therefore requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (ibid, § 85, with further references).

37. The Court has also established that, if more than one potentially effective remedy is available, an applicant is only required to have used one remedy of his or her own choice (see *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014).

38. Turning to the facts of the present case, the Court notes that Portuguese legislation provides for two possible ways of lodging an appeal with the Supreme Court of Justice (under Articles 682 and 685 of the Code of Civil Procedure – see paragraph 24 above). It further notes that Judge N.N. also made use of a cross-appeal when the applicants challenged the judgment of 9 November 2010 of the Lisbon Court of Appeal before the Supreme Court of Justice (see paragraph 17 above). The analysis of the merits by the Supreme Court of Justice was hindered because the Lisbon Court of Appeal had not clearly identified all the facts which it had considered to have been proven (see paragraph 18 above).

39. The Court notes that in order to challenge the judgment of the Lisbon Court of Appeal of 13 November 2012, the first applicant made use of one of the two available avenues foreseen in Article 682 of the Code of Civil Procedure (see paragraph 24 above); before the Supreme Court he argued that the judgment of the Lisbon Court of Appeal was in breach of his right to freedom of expression and contested the amount which he and the second applicant had been ordered to pay as compensation (see paragraph 22 above). That appeal was discontinued on the ground that Judge N.N. had not submitted any grounds of appeal (see paragraph 19 above); had it not been the case his cross-appeal would have been analysed by the Supreme Court. As a consequence the first applicant was left with no avenues of appeal.

40. In the light of the above, it follows that, in the instant case, the first applicant must be considered to have exhausted domestic remedies and the Government's objection must accordingly be dismissed.

3. Conclusion as to admissibility

41. The Court notes that the first applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

42. The first applicant submitted that the text in question constituted an opinion article. Specifically, it was an editorial article which had been written by the editor of the newspaper and it concerned an issue of public interest.

43. The first applicant contended that the opinion expressed had only concerned N.N.'s political and union career within the judiciary. He argued that the article had aimed to express his opinion on the meaning, in political terms, of the election of N.N. – a judge who had always engaged in political action. Referring to the case of *Hrico v. Slovakia* (no. 49418/99, 20 July 2004), he pointed out that a distinction should be made between criticism of a judge acting in the exercise of his functions and criticism of a judge engaging in such political and union-related activity.

44. He further pointed out that the impugned article was an opinion article and not an informative one; therefore, what it had expressed could not be considered as being either true or false. His criticism had a factual basis, including the stated opinion of different judges. He acknowledged that the criticism had been harsh and assertive, but maintained that it had concerned an issue of public interest and had been sufficiently reasoned and thus protected by Article 10 of the Convention.

45. Lastly, the first applicant submitted that the extremely large amount he and the second applicant had been ordered to pay by the domestic court had been in itself punitive and had had a chilling effect on the exercise of freedom of expression.

46. The Government acknowledged that there had been an interference with the first applicant's right to freedom of expression. They further submitted that that interference had been based on Article 484 of the Civil Code. The legitimate aim pursued by the authorities had been the protection of the reputation of others and the authority and impartiality of the judiciary, as provided by the second paragraph of Article 10 of the Convention.

47. In the Government's view, the first applicant's article had aimed to attack N.N. in his capacity as a judge. The attack had concerned the independence and honour of judges and been aimed at undermining the public's confidence in the judiciary.

48. As regards the amount of compensation the applicants had been ordered to pay, the Government conceded that it was not insignificant. However, they pointed to the civil nature of the sanction imposed and considered that it had been justified by the impact that the editorial had had on N.N.'s position in the legal community.

49. Lastly, the Government maintained that the domestic courts had considered that the first applicant's criticism of N.N. had been excessive

and unfounded in that the applicant had not limited himself to expressing an opinion but rather had stated "facts" which had had no basis in reality.

2. The Court's assessment

50. The parties do not dispute that the domestic courts' judgments amounted to an "interference" with the first applicant's exercise of his right to freedom of expression.

51. The Court also finds that the interference complained of was prescribed by law, namely Article 483 of the Civil Code, and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely "the protection of the reputation or rights of others".

52. It remains to be established whether the interference was "necessary in a democratic society".

(a) The general principles

53. The general principles for assessing 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 well settled in the Court's case-law. They have been recently summarised in the cases *Bédat v. Switzerland* [GC] (no. 56925/08, § 48, 29 March 2016) and *Pentikäinen v. Finland* [GC] (no. 11882/10, § 87, 20 October 2015).

54. The Court also reiterates that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313).

55. Moreover, as regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Morice v. France* [GC], no. 29369/10, § 125, 23 April 2015, with further references). Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest, as is the case, in particular, for remarks on the functioning of the judiciary (ibid.).

56. Further, the Court reiterates that it has always distinguished between statements of facts and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof (see, among many other authorities, *Morice*, cited above, § 126; and *Feldek v. Slovakia*, no. 29032/95, § 75, ECHR 2001-VIII). However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement: if there does not, that value judgment may prove excessive (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 55, ECHR 2007-IV; *Brasilier v. France*, no. 71343/01, § 36, 11 April 2006; *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 33, *Reports of Judgments and Decisions* 1997-IV). In order

to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks (see *Brasilier*, cited above, § 37), bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of facts (see *Paturel v. France*, no. 54968/00, § 37, 22 December 2005). The Court further reiterates that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see *Bozhkov v. Bulgaria*, no. 3316/04, § 46, 19 April 2011). In situations where on the one hand a statement of fact is made and insufficient evidence is adduced to prove it, and on the other hand the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount (see *Kasabova v. Bulgaria*, no. 22385/03, § 63, 19 April 2011, and *Flux v. Moldova (no. 7)*, no. 25367/05, § 41, 24 November 2009).

57. The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations were made, a right which, as an aspect of private life, is protected by Article 8 of the Convention. In two fairly recent cases, the Court defined its own role in balancing these two conflicting interests and went on to identify a number of relevant criteria to be considered when the right to freedom of expression is being balanced against the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-95, 7 February 2012, and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 101-113, ECHR 2012).

58. Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of the interference. As the Court has previously pointed out, interference with freedom of expression may have a chilling effect on the exercise of that freedom (see *Morice*, cited above, § 127).

(b) Application of the above principles to the present case

59. The Court reiterates that, in the context of Article 10 of the Convention, it must take into account the circumstances and overall background against which the statements in question were made (see, for example, *Morice*, cited above, § 162).

60. In the instant case, the Court notes that the first applicant is a journalist and that he wrote an editorial article entitled “The strategy of the spider” giving his opinion on the election of Judge N.N. to the post of President of the Supreme Court of Justice and its significance, from his point of view, for the judiciary and the country.

61. It further observes that the first applicant's article was written in the context of a lively debate on the election to the post of the Supreme Court of Justice. The debate started in the period preceding the election and continued afterwards. However, it appears that the domestic courts failed to take into account the overall context of the public debate regarding the election for the post of President of the Supreme Court: having established that several articles on the topic had been previously published in the media in the preceding days (see paragraph 19 above), they seem to have only pointed out that the first applicant's article had been written during the period following the election (see paragraphs 12 and 20 above).

62. There is no doubt that this issue was a matter of legitimate public interest. The Court observes, in this regard, that questions concerning the functioning of the justice system, an institution that is essential for any democratic society, relate to a matter of public interest (ibid., § 128). In the instant case, these questions also relate to those who are elected to represent the various institutions within the judiciary. The first applicant's article therefore concerned a sphere in which restrictions on freedom of expression are to be strictly interpreted.

63. The Court observes that N.N. was a judge and the newly elected President of the Supreme Court of Justice. It is well established in the Court's case-law that members of the judiciary acting in an official capacity may be subject to wider limits of acceptable criticism than ordinary citizens (see *July and SARL Libération v. France*, no. 20893/03, § 74, ECHR 2008 (extracts)). At the same time, the Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect that confidence against destructive attacks which are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (see *Mustafa Erdoğan and Others v. Turkey*, nos. 346/04 and 39779/04, § 42, 27 May 2014). The Court notes, however, that the instant case is distinguishable from the latter in so far as the President of the Supreme Court of Justice cannot be considered to be in the same position as any other judge: on the one hand, he is also the President of the HCJ; on the other hand, as the President of the Supreme Court of Justice he is the fourth-highest-ranking figure of State with a sit on the Council of State**.** The exercise of these roles is not part of adjudication. Thus, his ability to defend himself in public is wider than those of judges who exercise purely judicial acts.

64. The domestic courts found that the plaintiff's personal interest in having his reputation protected outweighed the applicant's right to freedom of expression. They noted in this connection, *inter alia*, that some of the remarks contained in the article had been excessive and had gone beyond

the limits of acceptable criticism and the right to inform and that they had constituted an attack on the plaintiff's personality rights.

65. With regard to those remarks, the Court firstly notes that the domestic courts considered that two expressions in the article each constituted a statement of fact, namely: "... has been weaving a web of connections of back-scratching, of favours and undertakings (there is an even worse word but I will avoid it)" and "... presented himself to voters – that is to say, to his peers, and those whom he helped to promote to a position from which one day they would be able to elect him". In its judgment, the Lisbon Court of Appeal considered that these statements called into question Judge N.N.'s professional ethics and that the first applicant had failed to prove the veracity of his allegations.

66. The Court notes that the domestic courts endeavored to distinguish between statements of fact and value judgments in the impugned article. However, the Court cannot follow their approach.

67. The Court firstly observes that the impugned statements do not concern the way in which Judge N.N. exercised his functions as judge nor his ability to deliver a judgment or his conduct in that respect. They concerned Judge N.N.'s career within the judiciary and were therefore connected to the functions that he had exercised until then, namely as leader of the trade union association of judges and Vice-President of the HCJ. The Court notes in this regard that the first applicant's remarks reflected the opinion that Judge N.N. owed his electoral success to actions he had pursued during his career and, in particular, the fact that he was an example of conservatism and corporatism, remarks which the domestic courts considered as being within the limits of criticism (see paragraphs 12 and 20 above). In that respect the present case differs from those where the applicants' criticism was related to the conduct of judges in relation to ongoing proceedings such as, for example, the cases of *Morice* (cited above), *Hrico* (cited above) and *De Haes and Gijsels v. Belgium* (no. 19983/92, 24 February 1997).

68. The Court thus takes the view that, in the circumstances of the case, the allegations in question were value-laden statements (compare with *Karsai v. Hungary*, no. 5380/07, § 33, 1 December 2009) in view of the general content of the article and the context in which they were made, namely the public debate which preceded the elections for the post of President of the Supreme Court of Justice (compare with *Morice*, cited above, § 156; *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*, no. 1529/08, § 51, 29 March 2011; and *De Haas and Gijsels*, cited above, §§ 43-48).

69. It thus remains to be examined whether the stated "factual basis" for those views was sufficient.

70. The Court is of the opinion that this condition was fulfilled in the present case. It observes, in this regard, that the first applicant based his

opinion on articles that had been previously published in the media about Judge N.N. In forming his opinion of Judge N.N. the first applicant echoed conversations he had had with different people from the judiciary about Judge N.N. and the lack of transparency in the system of elections for the post of President of the Supreme Court of Justice. In addition, he took into account the general criticism which had been made in the media regarding the above-mentioned system of elections and the particular role of the Vice-President of the HCJ in the grading of judges to the Supreme Court (see paragraphs 8-9 and 19 above), combined with the articles written about Judge N.N. He further relied on information that he had obtained not only from a source whose identity was confidential but also from judges who had challenged a competition for the Supreme Court of Justice (see paragraphs 11 and 19 above).

71. The Court thus considers that the expressions used by the first applicant had a sufficiently close connection with material which had been previously published in the media about Judge N.N. and that he drew his opinion from that material and from conversations he had with different people from the judiciary which, in the Court's view, constituted a sufficient factual basis for the impugned statements. In this regard, although the first applicant's allegations may be critical and harsh, they remain within the limits of freedom of opinion (see, *mutatis mutandis*, *Gouveia Gomes Fernandes and Freitas e Costa*, cited above, § 48; *Rizos and Daskas v. Greece*, no. 65545/01, § 47, 27 May 2004; and *De Haas and Gisjels*, cited above, § 41).

72. The Court also notes that the domestic courts considered two other expressions to have constituted a personal attack on Judge N.N., namely: "... which enabled him yesterday to stick into his somewhat tousled mane the peacock feather he has been lacking ..." and "... added the glittering (due to the amount of accumulated tallow) hat of "resister" of reforms of the judicial sector ...". The domestic courts considered that the first applicant with these statements had gone beyond the permissible bounds of criticism. The Court disagrees.

73. Firstly, the Court observes that these statements amounted to a value judgment made in the light of Judge N.N.'s career within the judiciary. They reflect the first applicant's opinion about someone who chose to have a career based on the exercise of the most important functions within the judiciary – first as union leader, then as Vice-President of the HCJ and, lastly, as President of the Supreme Court of Justice (with a seat in the Council of State). Thus, this opinion has a sufficient factual basis.

74. Secondly, the Court notes that the domestic courts failed to comment on the metaphorical tone of the impugned statements and no consideration was given to the content of the article as a whole (compare with *Gouveia Gomes Fernandes and Freitas e Costa*, cited above, § 48, and, *mutatis mutandis*, *Sousa Goucha v. Portugal*, no. 70434/12, § 53, 22 March 2016),

nor, most notably, that the impugned statements (that is to say the statements referred to in paragraph 71 above), which resorted to metaphors, were related to the issue that, in the first applicant's view, Judge N.N. had an interest in maintaining a prominent public profile, given the career that he had pursued and the electoral programme he had presented. Those statements were also related to the first part of the article, in which the first applicant made a general reference to the interests of the judges of the Supreme Court (such as their dispute with the judges of the Constitutional Court – see paragraph 7 above). The domestic courts appear to have taken the above statements in isolation, removed from the rest of the article (compare, for example, *Dichand and Others v. Austria*, no 29271/95, § 46, 26 February 2002). For the Court the remarks in question remain within the limits of admissible criticism and exaggeration.

75. With regard to those statements the Court further observes that the domestic courts did not sufficiently explain how the first applicant had gone beyond his right to criticism and why his right to express his opinion should have been limited.

76. In this context, the Court notes that the Portuguese State Attorney's Office (*Ministério Público*) may make use, in accordance with its statutory powers (see paragraph 25 above), guidance on the obligation to lodge an appeal against judgments involving a breach of the freedom of expression whenever such judgments fail to comply with, *inter alia*, the criteria established by the Court and its case-law.

77. Lastly, as to the sentence imposed, the Court reiterates that, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see *Gouveia Gomes Fernandes and Freitas e Costa*, cited above, § 54; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 96, ECHR 2005-II; and *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B).

78. In the present case, the Court observes that the applicants were ordered to pay EUR 60,000 in compensation to Judge N.N. by the Lisbon Court of Appeal in the context of civil proceedings. The Court notes that this amount was extremely high in itself.

79. In addition, the Court notes that the Lisbon Court of Appeal considered the amount to be awarded to Judge N.N. on account of an attack on his reputation to be comparable to the average amount ascribed to the value of life under the case-law of the Supreme Court of Justice (see paragraph 21 above). The Court cannot subscribe to this comparison which reflects a clear punitive intent, considering that the Lisbon Court of Appeal had acknowledged that the article had not had an impact on Judge N.N.'s professional future, given that he had been re-elected to his post by an even greater majority (see paragraph 21 above).

80. Lastly, the Court cannot ignore the fact that the proceedings were also instituted against the second applicant, who was ordered to pay the amount awarded as compensation to Judge N.N. jointly with the first applicant. The Court notes that the second applicant did not have any involvement in the article but was, nonetheless, liable for an act undertaken by her husband. For the Court the fact that the second applicant was summoned in the proceedings and jointly ordered to pay the compensation awarded to Judge N.N. has a negative impact on the journalist's family. By directly involving the second applicant in the defamation proceedings, the Lisbon Court of Appeal seemed to establish a collective responsibility regarding the first applicant's article which has a serious chilling effect on the freedom of the press. Consequently, the Court must take this element into account in its assessment of this case under Article 10.

81. Having regard to the above considerations, the Court finds that the reasons given by the Government were "relevant" but not "sufficient" to establish that the interference "was necessary in a democratic society." The Court therefore considers that the domestic courts have exceeded the margin of appreciation afforded to them regarding limitations on debates of public interest and that there is no reasonable relationship of proportionality between, on the one hand, the restriction on the first applicant's right to freedom of expression and, secondly, the legitimate aim pursued.

82. In these circumstances, the Court therefore concludes that there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

84. The first applicant claimed 67,179.53 euros (EUR) in respect of pecuniary damage, representing the amount he had been ordered to pay to N.N. in non-pecuniary damages by the Lisbon Court of Appeal, plus interest. He did not submit a claim in respect of non-pecuniary damage, considering that the finding of a violation of Article 10 would be in itself sufficient.

85. The Government contested the claim in respect of pecuniary damage. In their view, the finding of a violation would enable the first applicant to lodge an application for a review of the judgment in his case

before the domestic courts. Thus, payment in respect of any damage suffered by the applicants would be premature.

86. The Court considers that an applicant is, in principle, entitled to recover any sums that he or she has paid in fines and costs, by reason of their direct link with the national court judgments which the Court found to be in breach of his or her right to freedom of expression (see *Stankiewicz and Others v. Poland*, no. 48723/07, § 87, 14 October 2014, and *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 78, 2 October 2012).

87. In the instant case, however, the Court notes that the compensation which the applicants were ordered to pay to N.N. was not paid by them but by the newspaper *Público*, in which the first applicant had published his article and of which he was the editor. As such, the first applicant's claim in respect of pecuniary damage should be rejected (see *Conceição Letria v. Portugal*, no. 4049/08, § 50, 12 April 2011).

88. As regards non-pecuniary damage, the Court considers that the finding of a violation of Article 10 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the first applicant.

B. Costs and expenses

89. The first applicant also claimed EUR 9,387.35 for the costs and expenses incurred before the domestic courts. He made no claim for the costs incurred before the Court.

90. The Government, referring to the case of *Antunes and Pires v. Portugal* (no. 7623/04, § 43, 21 June 2007), left the matter to the Court's discretion.

91. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the first applicant sufficiently substantiated that these sums had been actually and necessarily incurred by submitting the relevant invoices. Therefore, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the first applicant the sum of EUR 9,400 covering costs and expenses incurred before the domestic courts.

C. Default interest

92. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the first applicant's complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention as regards the first applicant;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the first applicant;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,400 (nine thousand four hundred euros), plus any tax that may be chargeable to him, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President