European Court of Human Rights: Sousa Goucha v. Portugal

IRIS 2016-6:1/1

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In finding that there had been no violation of the right to privacy and the right to reputation, the European Court of Human Rights (ECtHR) upheld a high level of freedom of expression in a case concerning a joke in a TV-programme about the sexual orientation of a television celebrity in Portugal. For the ECtHR it was important that the domestic courts, in dismissing the defamation complaint by Mr Sousa Goucha, took into account the context in which the joke had been made, and referred to the playful and irreverent style of the television comedy show and its usual humour. It also noted that Mr Sousa Goucha, as a well-known television host, is a public figure, who had earlier publicly declared his homosexuality.

Mr Sousa Goucha lodged a criminal complaint for defamation and insult against the television company (RTP), the production company, the television presenter, and the directors of programming and content, following the joke made during the broadcast of a late-night comedy show on television. Mr Sousa Goucha alleged that the joke, which had included him in a list of best female television hosts, damaged his reputation as it had conflated his gender with his sexual orientation. The Portuguese courts, however, dismissed his claim for damages as ill founded. They considered that for a reasonable person, the joke would not be perceived as defamatory because it referred to aspects of Mr Sousa Goucha's characteristics, behaviour, and way of expressing himself, which could be seen as feminine.

Relying on Article 14 of the European Convention of Human Rights (ECHR), Mr Sousa Goucha submitted an application to the ECtHR, alleging that the domestic courts had discriminated against him because of his sexuality, which he had made public. According to the ECtHR, the case also deserved an analysis from the perspective of Article 8 of the Convention, as the right of reputation is protected under that provision, while the concept of "private life" also covers the moral integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identity and sexual orientation. The Court stated that sexual orientation is a profound element of a person's identity, and that gender and sexual orientation are two distinctive and intimate characteristics. However, the Court reiterated that in order for Article 8 to be triggered, the attack on personal honour and reputation must have a certain level of seriousness and such a manner as to cause prejudice to personal enjoyment of the right to respect for private life. The main issue in the present case was whether a fair balance had

© European Audiovisual Observatory (Council of Europe) 2026

been achieved between Mr Sousa Goucha's right to protection of his reputation, which is an element of his "private life" under Article 8, and the other parties' right to freedom of expression, as guaranteed by Article 10 of the ECHR.

It is in this balancing exercise that the Court first noted that Mr Sousa Goucha is a well-known television host in Portugal and thus a "public figure". The Court then recalled that it had been required on numerous occasions to consider disputes involving humour and satire, and reiterated that satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with an artist's right to such expression must be examined with particular care. Additionally, the Court also referred to the judgment of the Court of Justice of the European Union (CJEU) in the case of Deckmyn v. Vandersteen (IRIS 2014-9/5), acknowledging that a particularly wide margin of appreciation should be given to parody in the context of freedom of expression. It must also be noted, however, that the joke was not made in the context of a debate of public interest and, as such, no matters of public interest were at stake. On the other hand, the Court considered that the joke would not be perceived as defamation by a reasonable person, and it referred to Mr Sousa Goucha's characteristics, his behaviour, and way of expressing himself. Also of particular importance is the playful and irreverent style of the television comedy show and its usual humour. The Court considered that the domestic courts had convincingly established the need for placing the protection of freedom of expression above Mr Sousa Goucha's right to protection of reputation. The Court noted that they also took into account the lack of intent to attack the applicant's reputation and assessed the way in which a reasonable spectator of the comedy show in question would have perceived the impugned joke, as opposed to merely considering what the applicant felt or thought towards the joke. A limitation on freedom of expression for the sake of the applicant's reputation would therefore have been disproportionate under Article 10 of the Convention. The Court concluded that the domestic courts had struck a fair balance between the television show's freedom of expression under Article 10 and Mr Sousa Goucha's right to have his reputation respected under Article 8. In sum, the Court found no reason to substitute its view for that of the domestic courts.

With regard to the complaint under Article 14 ECHR (discrimination), the Court was of the opinion that the refusal to prosecute the TV-broadcaster and persons responsible for the impugned TV-programme for defamation was not due to because he was homosexual. Rather, the Court stated that it was due to the weight given to freedom of expression in the circumstances of the case, and the lack of intention to attack the Mr Sousa Gaucho's honour. The Court stated that although the relevant passages were "debatable" and "could have been avoided", they did not have discriminatory intent. Consequently, in the absence of any firm evidence, it was not possible to speculate whether his sexual orientation had any bearing on the domestic courts' decisions. Therefore, the Court stated that it

© European Audiovisual Observatory (Council of Europe) 2026

cannot be said that the Mr Sousa Goucha was discriminated against on the grounds of his sexual orientation, and accordingly, there had been no violation of Article 14 read together with Article 8.

Judgment by the European Court of Human Rights, Fourth Section, case Sousa Goucha v. Portugal, Application no. 70434/12 of 22 March 2016

https://hudoc.echr.coe.int/eng?i=001-161527

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026