European Court of Human Rights: Patrício Monteiro Telo de Abreu v. Portugal

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A recent judgment of the European Court of Human Rights (ECtHR) walks the line between permissible political satire and unlawful sexist hate speech. The ECtHR found that the criminal conviction of a blogger for a series of cartoons that echoed sexist stereotypes amounted to a violation of the blogger's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The ECtHR concluded unanimously that the cartoons in essence referred to an ongoing political debate, criticizing the municipal leadership. In spite of the sexual stereotyping of one female member of the municipal board, the ECtHR found that the caricatures had remained within the limits of exaggeration and provocation that were typical of satire. It also found that the criminal sanction in the present case could have a chilling effect on satirical forms of expression concerning political issues.

The applicant in this case is Tiago Patrício Monteiro Telo de Abreu, an elected municipal councilor and a blogger. In 2008 he published three cartoons on his blog depicting a white-haired donkey dressed in a suit, next to a sow with bare breasts and blond hair wearing lace stockings, a garter belt and high heels, surrounded by pigs. The cartoons were made by a local artist and were earlier published in a local newspaper, caricaturising the members of the local municipal board. Ms E.G., one of the municipal councilors prominently figuring in the cartoons, lodged a criminal complaint against the blogger, the artist and the editor of the local newspaper alleging damage to her honour and reputation on account of the way in which she had been portrayed in the cartoons. The domestic courts convicted the blogger for defamation, as they found it established that the sow depicted in the cartoons represented Ms E.G. and that the white-haired donkey represented the local mayor, while the cartoons suggested that there was an intimate relationship between them. The courts found that by depicting the sow with lace stockings, a garter belt and high heels, the artist had sought to evoke images of a prostitute and a debauched, sexually voracious woman, thereby causing Ms E.G. anguish and anxiety, with an impact on her personal and private relations. The blogger was convicted to pay a fine, court fees and an award of damages to Ms. E.G., all together for a total amount of about EUR 5 600. Relying on Article 10 ECHR the blogger lodged an application with the ECtHR, alleging a breach of his right to freedom of (political) expression.

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The ECtHR deemed it necessary to examine whether the national authorities had struck a fair balance between the blogger's right to freedom of expression and Ms E.G.'s right to private life, both of which deserve equal respect, and whether the reasons given for the blogger's conviction were relevant and sufficient. The ECtHR reiterated that satire is a form of artistic expression and social commentary which, through its characteristic exaggeration and distortion of reality, naturally aims to provoke and agitate (see also Tuşalp v.Turkey, IRIS 2012-4/1 and Dickinson v. Turkey, IRIS 2021-3/16). It also emphasised that political speech can count on a high level of protection by Article 10 ECHR and that politicians must accept wider limits of criticism. As the political satire at issue caricaturising local politicians contributed to a public debate, the interference with the right to freedom of expression was to be examined with particular care. The domestic courts had indeed acknowledged that the blogger was also a political opponent of Ms E.G. and that the cartoons in question had constituted political satire, but, according to the ECtHR, they had omitted to take into consideration the full context of the cartoons in question. The ECtHR referred to the fact that the cartoons had earlier been part of a series of previously published cartoons by an artist which satirised the local political life of the municipality. It held that the cartoonist had not sought to insinuate an intimate relationship between Ms E.G. and the mayor of the municipality by representing them side by side, since none of the cartoons had shown the characters kissing, touching or communicating with each other. Also the blogger's accompanying comments showed that the intention in republishing the cartoons was to highlight the political satire expressed through caricature and, indirectly, to criticise the municipal leadership, in his capacity as a political opponent and a member of the municipal assembly. Furthermore the comments had not made any specific reference to Ms E.G., her political activities or her private life, still less her sexual life, nor had they contained any insulting or degrading remarks about her. Although the cartoons echoed certain regrettable stereotypes relating to women in power, the domestic courts had excessively focused on the interference with Ms E.G.'s right to reputation, not taking sufficient account of the ongoing political debate. The ECtHR also held that the domestic courts had not given sufficient weight to the fact that all elected representatives were necessarily exposed to this type of satire and caricature and should therefore display a greater degree of tolerance in that regard. Moreover, Ms E.G. was not the only figure to have been depicted undressed, as all the pigs were portrayed in the same way and the mayor of the municipality was depicted as a donkey, a clearly pejorative image. In spite of the stereotypes used, the ECtHR found that the caricatures had remained within the limits of exaggeration and provocation that were typical of satire. According to the ECtHR the domestic courts had not taken into consideration the characteristics of political satire emerging from the Court's case-law or made any reference to the Court's case-law on freedom of expression. They had neither analysed the reach or potential impact of the cartoons, nor taken into consideration that when Ms E.G. had lodged a criminal complaint against the

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blogger, he had immediately removed the cartoons from his blog, suggesting that he had acted in good faith. Referring to the nature and degree of severity of the penalties imposed on the blogger, the ECtHR considered that the fine and the payment of damages was manifestly disproportionate, especially as Portuguese law provided for a specific remedy for the protection of a person's honour and reputation. The ECtHR concluded that the blogger's conviction had not struck a fair balance between the protection of his right to freedom of expression and Ms E.G.'s right to the protection of her reputation. Ultimately imposing criminal sanctions for conduct such as that of the blogger in the present case was liable to have a chilling effect on satirical forms of expression concerning political issues. Hence, the conviction had not been necessary in a democratic society and therefore there had been a violation of Article 10 ECHR.

Two concurring opinions expressed by three judges focused on the sexist stereotyping of the cartoons, stating that gender stereotyping usually paves the way for contempt, discrimination and violence against women, also within a political setting. The concurring judges held that the domestics courts were correct in noting the visible and denigrating gender stereotypes expressed in the cartoons at issue, and they confirmed it was relevant to include this aspect in their findings.

Arrêt de la Cour européenne des droits de l'homme, quatrième section, rendu le 7 juin 2022 dans l'affaire Patrício Monteiro Telo de Abreu c. Portugal, requête n° 42713/15

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Judgment by the European Court of Human Rights, Fourth Section, in the case of Patrício Monteiro Telo de Abreu v. Portugal, Application no. 42713/15, 7 June 2022

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