

## Portugal, Supreme Court of Justice, 07P1521, Supreme, 17.04.2008

### Member State

 Portugal

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### Topic

Freedom of expression

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### Sector

Freedom of Expression and Association

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### Deciding Court Original Language

Supremo Tribunal de Justiça

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### Deciding Court English translation

Supreme Court of Justice

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### Registration N

07P1521

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### Date Decision

17.04.2008

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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### ECtHR Jurisprudence

N/A

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### Subject Matter

Knowing whether a judge writing a response to a lawyer's opinion article, using inelegant language, and publicly sharing that same response in various places, is still within the limits of the judges' freedom of expression.

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### Legal issue(s)

What is the extent of the freedom of expression of judges.

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### Request for expedited/PPU procedures

NO

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### Interim Relief

N/A

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### National Law Sources

Portuguese Constitution; Statute for Judicial Magistrates (Law No. 42/2005, 29 August).

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### Facts of the case

A., a lawyer, wrote an opinion article in a well-known Portuguese newspaper in which he criticized the allowances to which certain judges were entitled, particularly about the tax regime from which these same allowances benefited. B., a judge in Guimarães Court of First Instance, responded to this article, criticizing the opinion expressed by A., by claiming that lawyers lived in a "pornographic fiscal untruth", that the lawyer in question "lacked courage" and that the opinion he wrote was "circus-like".

B's conduct, however, did not stop there. In fact, not only did he write the opinion article in response to A., but he also posted both articles (of A. and B.) in various places in the court where he performed his duties with the authorization of the Court's President. Having this situation come to the attention of the Superior Council of the Judiciary, this body condemned B. for a disciplinary infraction, namely a recorded warning. B. appealed to the Supreme Court of Justice.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court did not agree with the judge's reasoning, although it did agree that the sanction applied was not necessary. Specifically, it understood that the judge violated his duty of correction. For the Supreme Court, the judge did not violate the duty of correction because he wrote an offensive letter to lawyers intended for publication in a weekly newspaper. Instead, the Court found a violation of that duty because he publicized the same letter in the building where he works and where, therefore, he is the judge and not a person within the scope of his private life, thus offending, in the exercise of his relationship with public service users, some of them. Thus, for the Supreme Court, the right to good name of lawyers does not have to give way, in this case, to freedom of expression, in the sense of being able to affirm that in the name of the right to freedom of expression, offense is possible.

However, despite this conclusion, the Supreme Court ruled that the sanction applied - a recorded warning - was not necessary.

In fact, the Court looked at the crime of offence against honour, as laid down in the Portuguese Criminal Code, and drew the conclusion that if an offence against honour is in response to another offence - and in this case it was, because B's article was in response to A's - then the penalty can be waived. If this is the case in the criminal field, then the Superior Council of the Judiciary should have done similar reasoning and applied an equivalent disciplinary sanction, namely an

unrecorded warning. Having failed to do so, the disciplinary sanction imposed on B., was excessive.

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Relation of the case to the EU Charter

N/A

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Relation between the EU Charter and ECHR

N/A

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Use of Judicial Interaction technique(s)

N/A

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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Impact on Legislation / Policy

N/A

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Notes on the national implementation of the preliminary ruling by the referring court

N/A

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

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Did the national court take into account national case law on fundamental rights?

N/A

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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(Link to) full text

<http://www.gde.mj.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/a54ae877ee5ae6e880257434004e31ff>

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Author

Afonso Brás, Lisbon Public Law Research Centre/University of Lisbon School of Law

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Portuguese Supreme Court of Justice, Judgement No. 07P1521, 17 of April 2008.
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