

**Portugal, European Court of Human Rights, Decision of 14th February 2017**

Member State

 Portugal

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Topic

Rule of Law – reasonable time requirement

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Deciding Court Original Language

Tribunal Europeu dos Direitos Humanos

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Deciding Court English translation

European Court of Human Rights

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Registration N

Not applicable.

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Date Decision

2017

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ECLI (if available)

ECLI:CE:ECHR:2017:0214JUD005521415

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National Follow Up Of (when relevant)

Not applicable.

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EU legal sources and CJEU jurisprudence

Not applicable.

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ECtHR Jurisprudence

Van der Leer v. the Netherlands, 21 February 1990, Series A no. 170-A

Musia? v. Poland [GC], no. 24557/94, ECHR 1999-II

Rehbock v. Slovenia, no. 29462/95, ECHR 2000-XII

Kadem v. Malta, no. 55263/00, 9 January 2003

Mamedova v. Russia, no. 7064/05, 1 June 2006

Shakurov, v. Russia, no. 55822/10, 5 June 2012.

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### Subject Matter

Violation of Article 5 of the ECHR - Right to liberty and security Article 5-4 - Speediness of review – Justice delay

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### Legal issue(s)

The legal issue here is whether a delay in justice may constitute a breach of Article 5(4) of the European Convention on Human Rights

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### Request for expedited/PPU procedures

Not applicable.

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### Interim Relief

Not applicable.

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### National Law Sources

Articles 108, 219, 222 and 416 of the Portuguese Code of Criminal Procedure.

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### Facts of the case

The applicant was detained in Lisbon on 6 October 2016.

On 5 December 2013 criminal proceedings were initiated against the applicant by the public

prosecutor of the Department of Investigation and Prosecution (Departamento de Investigação e Ação Penal) in Sintra in respect of allegations of him having committed the crimes of coercion (coação), aggravated attacks upon the physical integrity of a person (ofensas à integridade física qualificada), rape (violação), and failing to assist a person in danger (omissão de auxílio).

On 2 June 2014, the public prosecutor issued a European arrest warrant (“EAW”) in respect of the applicant in order to secure his presence before a judicial authority to be questioned (primeiro interrogatório judicial).

On 28 August 2014 the applicant was arrested in the United Kingdom. Under the EAW issued by the Portuguese authorities, he was surrendered to the Portuguese authorities on 27 February 2015.

The applicant was remanded in custody by the order of 27 February 2015 of the investigating judge. The applicant’s appeal against that decision was lodged on 19 March 2015 with the Lisbon Court of Appeal. It was ruled admissible by the investigating judge on 2 April 2015, and on the same day the latter requested observations from the public prosecutor.

After receiving observations from the public prosecutor on 27 April 2015 and notifying the applicant of those observations on 29 April 2015, the investigating judge ordered that the file be submitted to the Lisbon Court of Appeal.

On 4 May 2015 the file was submitted to the Lisbon Court of Appeal, the second-instance court in such cases. Having received the file on 11 May 2015, the Lisbon Court of Appeal examined the appeal on 2 July 2015 – that is to say fifty-one days after receiving it – thus exceeding the thirty-day time-limit established under Article 219 § 1 of the Code of Criminal Procedure, taking into account the fact that, under this provision, the relevant period of time starts to run from the date on which the appeal is received by the court of appeal.

Since he still had no decision, on 24 June 2015 the applicant lodged a habeas corpus application with the Supreme Court, claiming that the lack of analysis of his appeal in respect of the lawfulness of the decision placing him in pre-trial detention had violated Article 5 § 4 of the Convention. He further argued that the time-limit of thirty days established under Article 219 § 1 of the Code of Criminal Procedure had not been complied with. Therefore, his pre-trial detention had been unlawful.

On 2 July 2015, the Supreme Court dismissed the applicant’s habeas corpus application. Examining the effects of the thirty-day time-limit on pre-trial detention orders, it considered that the

thirty-day time-limit on pre-trial detention orders simply constituted a guiding principle illustrating the urgency of such matters.

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

The Court argues that, regarding the time to review a file, the relevant period runs from when the application was lodged to the date in which a decision concerning the lawfulness of the detention is adopted, quoting the cases *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II *Van der Leer v. the Netherlands*, 21 February 1990, § 35, Series A no. 170-A).

After observing that it took a total of one hundred and five days from the moment the application was lodged on 19 March 2015 for the Lisbon Court of Appeal to adopt a decision on the applicant's appeal challenging the lawfulness of his detention (see paragraphs 10 and 19 above), the Court has found, that the requirement for a decision to be given "speedily" in respect of an appeal against a detention order was breached.

In other words, the time taken by the Lisbon Court of Appeal to adopt a decision was manifestly excessive.

Moreover, the Court also observes that the Government did not provide any justification for the delays in the appeal proceedings. For example, no explanation was provided as to why the investigating judge only delivered a decision on the admissibility of the appeal fourteen days after it had been lodged, and nor was any explanation provided for the fact that the public prosecutor only submitted observations in that regard on 27 April 2015. In addition, no explanation was provided as regards the period of fifty-one days which elapsed between the file being received by the Lisbon Court of Appeal and the decision being delivered, which the Government considered to have exceeded the thirty-day time-limit provided by Article 219 § 1 of the Code of Criminal Procedure. The compliance with the adversarial principle pointed out by the Government cannot alone justify such an excessive delay.

Thus, in conclusion, and in the light of the abovementioned, the Court considers that the time it took the Lisbon Court of Appeal to examine the applicant's appeal against the detention order cannot be considered compatible with the "speediness" requirement of Article 5 § 4.

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### Relation of the case to the EU Charter

At the outset, there is a relationship with CFREU, insofar as the author invokes article 47, as he understands that the right to an impartial court may be at stake. However, as there is no pronouncement by the CJEU, due to the fact that the Supreme Court of Justice does not submit a preliminary ruling, we are left without a decision on this issue and the rights provided for in the Charter.

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## Relation between the EU Charter and ECHR

There is a link between Article 5(4) of the European Convention on Human Rights and Article 47(2) of the Charter of Fundamental Rights of the European Union, in that both provide that any judicial decision must be delivered within a reasonable time.

Looking at both articles, it appears that the Convention has a higher degree of protection than the Charter, which is also explained by the fact that individuals do not have direct access to the ECJ under the same conditions as the ECtHR.

In view of the Court in question and the fact that the European Union has not yet acceded to the ECHR, no case law of the Court of Justice of the European Union is cited, nor is the corresponding article of the Charter.

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## Use of Judicial Interaction technique(s)

In this case, it seems that two situations are present.

Firstly, a situation of proportionality is present. The Court examines the length of time that has elapsed before a court judgment is issued to see whether, from the point of view of the principle of proportionality, this waiting period is reasonable.

At the same time, and taking into account the Portuguese State's interpretation of the relevant articles of the Code of Criminal Procedure, namely through the Supreme Court of Justice (judicial power) and the Government (executive power), it also seems that we are faced with a de-application of national legislation (namely the articles of the Code of Criminal Procedure) in favour of the European Convention on Human Rights.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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Not applicable.

Not applicable.

Not applicable.

Not applicable.

Other case law on reasonable time requirement:

- Gabriela Knaul, UN special rapporteur on the independence of judges and lawyers on her visit to Portugal in 2015, found the justice system "slow, expensive and difficult to comprehend."

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