Portugal, Lisbon Court of Appeal, Decision of 6th October 2016

Member State

🇵🇹 Portugal

Topic

Rule of Law, prohibition of arbitrariness

Deciding Court Original Language

Tribunal da Relação de Lisboa

Deciding Court English translation

Lisbon Court of Appeal

Registration N

5533-03.4TBALM.L2-2

Date Decision

16th October 2016

ECLI (if available)

PT:TRL:2016:5533.03.4TBALM.L2.2.16

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence
Not applicable

ECtHR Jurisprudence
Not applicable

Subject Matter

Judge's discretion - arbitrariness- prohibition of arbitrariness

Legal issue(s)

When the law refers to the "prudent arbitration of the judge", it is necessary to know what are its limits.

Request for expedited/PPU procedures
Not applicable

Interim Relief
Not applicable

National Law Sources

Article 943 (2) of the Portuguese Civil Procedure Code

Facts of the case

Following legal representation the applicant considered that the total amount charged was exorbitant.

At the date of the judgment, the Civil Procedure Code established, in Article 943, paragraph 2, that the judge, whenever he has to decide on a question of this nature, must decide it according to his "prudent will/discretion"

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

This decision is important insofar as it clarifies what this means: namely, the "prudent discretion of the judge" does not refer to the exercise of a discretionary/arbitrary power, but rather, the judge is given latitudinarian power within the standards of reasonability.

Relation of the case to the EU Charter
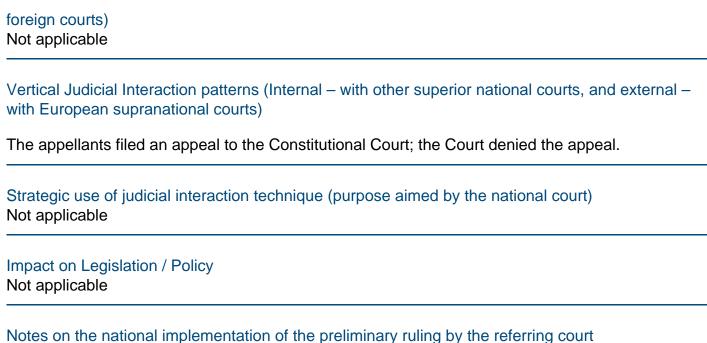Not applicable

Relation between the EU Charter and ECHR
Not applicable

Use of Judicial Interaction technique(s)
Not applicable

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

foreign courts)
Not applicable

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

The appellants filed an appeal to the Constitutional Court; the Court denied the appeal.

Strategic use of judicial interaction technique (purpose aimed by the national court)
Not applicable

Impact on Legislation / Policy
Not applicable

Notes on the national implementation of the preliminary ruling by the referring court
Not applicable

Impact on national case law from the same Member State or other Member States
Not applicable

(Link to) full text

https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:TRL:2016:5533.03.4TBALM.L2.2.16/