

**Portugal, Central Administrative Court, Decision of 29th April 2010**

Member State

 Portugal

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Topic

Rule of law, right to fair trial, access to justice

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Deciding Court Original Language

Tribunal Central Administrativo

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Deciding Court English translation

Central Administrative Court

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Registration N

04902/09

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Date Decision

29th April 2010

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ECLI (if available)

ECLI:PT:TCAS:2010:04902.09.4E

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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

The decision makes reference, in general terms, to the ECHR's case-law, not mentioning any particular case.

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## Subject Matter

European Convention on Human Rights - Fair trial - Access to justice

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## Legal issue(s)

In this case, the legal issue is objectively related to a factual issue: ability to decide in a reasonable amount of time.

Indeed, the delay in the processing and decision of legal proceedings, when it jeopardizes the right to a decision within a reasonable time, guaranteed by art. 20, no. 4 of the Portuguese Constitution, in line with art. 6, paragraph 1, of the European Convention on Human Rights, generates an obligation to indemnify, provided that all the assumptions of non-contractual civil liability of the State are verified.

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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

Article 20, number 4, of the Portuguese Constitution.

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## Facts of the case

Certain citizens have brought a liability action against the Portuguese State for delay in justice.

To assess this responsibility, the plaintiffs analyzed the various elements contained in Article 6 of the ECHR, reaching the conclusion that the State should be held responsible for this delay. The Court of First Instance, in turn, understood the opposite, arguing that in view of the enormous volume of proceedings that plagued the Court under consideration, plus the circumstantialism of not always having been the same judge who was following and "working" the process, which means that it had to be analyzed, studied, reassessed, and then made "the point of the situation" if the appropriate act were to be carried out, it is clear that in view of the complex web of attachments and the vicissitudes that occurred, especially the difficulty in summoning the interveners that involved another Court and the police bodies, the lack of cooperation from the parties, as well as, at a given moment, the interruption of the instance of the main proceedings under the procedural law, and nevertheless, the acts that were practiced during that period,

culminate in the conclusion that the process was, therefore, decided within the possible time.

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

The Court of Appeal came to the same conclusion. Indeed, and also citing legal scholars and the case law of the European Court of Human Rights, the Court of Appeal stated that a reasonable period must be assessed according to the circumstances of each case, taking into account the complexity of the matter, the behavior of the plaintiffs and the conduct of judicial authorities.

Applying these criteria, and taking into account the circumstances of the specific case, namely its complexity, the number of procedural acts performed, the behavior of the parties and the way the process was conducted, the Court believes that it cannot be concluded that the time elapsed in the processing of the process is attributable to the less diligent functioning of the Court of First Instance, where the said process was pending, in violation of the provisions of § 1 of art. 6 of the European Convention on Human Rights and article 1 of the Protocol no. 1, according to which anyone has the right to have their case heard within a reasonable time by a court. The Court concluded that the decision was made within a reasonable time, absolving the State.

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### Relation of the case to the EU Charter

As mentioned, the ECHR was used, namely the provisions of § 1 of art. 6 of the European Convention on Human Rights, according to which anyone has the right to have their case heard within a reasonable time by a court.

It follows from the decision that the ECHR was used not only as a legally binding parameter but also to support the reasoning. In fact, the court makes use of the ECHR because, precisely, it also states that, being a convention of which Portugal is a party, it binds the Portuguese State

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### Relation between the EU Charter and ECHR

Not applicable.

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### Use of Judicial Interaction technique(s)

The Court has made a consistent interpretation between article 20 (4), of the Portuguese Constitution, and article 6, paragraph 1, of the ECHR.

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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)

The technique used by the court (consistent interpretation) aimed to safeguard a fundamental right recognized by the Portuguese Constitution, namely in the aforementioned article 20, paragraph 4: the right of access to justice

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### Impact on Legislation / Policy

Regarding access to justice, Portugal is still trying to solve a long-term problem concerning the efficiency of its judicial system. Bearing in mind Article 6 of the ECHR, it should be noted that this State is under the supervision of the Committee of Ministers of the Council of Europe due to successive (and excessive) delays in the trials that take place in the civil and administrative jurisdictions. In fact, and looking at the 2021 EU Justice Scoreboard, we observe that, despite registering since 2012 a decrease in the time needed to decide a dispute of an administrative nature, Portugal, by reference to 2019, continued to be part of the group of Member States where the decision time in these cases is longer (p. 11). Even so, there are positive data that deserve to be highlighted: (i) pending civil and commercial proceedings visibly dropped (p. 13), following a trend that is constant and gradual and (ii) the time estimated for the resolution of civil and commercial proceedings in the three instances is among the 10 lowest in the EU and the proceeding resolution rates in the court of first instance are among the highest (p. 10).

Portugal has undertaken several reforms with the aim of simultaneously increasing the efficiency of its judicial system and thus promoting effective access to justice. Thus, and for example, (i) there are procedural rules that allow the use of digital technology in civil, commercial, administrative, and criminal courts; (ii) administrative arbitration centres are being reinforced, in order to provide an alternative to administrative and tax courts (EU2021JS, p. 25); (iii) Portugal continues to rank highly with regard to secure electronic communication channels (EU2021JS, pp. 34-35); and (iv) in the context of the national Recovery and Resilience Plan, Portugal has presented reforms and investment projects aiming at increasing the efficiency of the justice system.

Even so, the challenge persists. Proof of this is the recent decision of the ECHR which recognises that the formalism in the decisions of the Constitutional Court regarding the admission of appeals of constitutionality may violate article 6(1) of the Convention as regards the right of access to a Court (equivalent to article 20(1) of the Portuguese Constitution) - see *Dos Santos Calado et al. v. Portugal* (Application no. 5597/14), available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-202123%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202123%22]}).

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

Not applicable.

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

Not applicable.

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(Link to) full text

<https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:TCAS:2010:04902.09.4E>

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