Portugal, Southern Central Administrative Court, Decision of 12 February 2015

Member State
Portugal

Topic
Accountability, efficiency of the justice system

Deciding Court Original Language
Tribunal Central Administrativo do Sul

Deciding Court English translation
Southern Central Administrative Court

Registration N
09309/12

Date Decision
2015

ECLI (if available)
ECLI:PT:TCAS:2015:09309.12.6F

National Follow Up Of (when relevant)
Not applicable.

EU legal sources and CJEU jurisprudence
Not applicable.

ECtHR Jurisprudence
Not applicable.

Subject Matter

Access to Justice; Right to Fair Trial

Legal issue(s)

When does the lack of efficiency of the judiciary, and the ability to decide in a reasonable amount of time compromise access to justice and the right to fair trial as enshrined in Article 6 of the ECHR?

Request for expedited/PPU procedures

Not applicable.

Interim Relief

Not applicable.

National Law Sources

Article 20 (4) of the Portuguese Constitution.

Facts of the case

A person suffered a car accident, and as a consequence filled for property and moral damages. In order to be compensated, it was necessary that the Institute of Forensic Medicine perform a certain medical exam. However, the applicant was only examined 10 years later - delaying the court's ability to make a decision on damages and compensation in due time.

As a consequence, the applicant filed a lawsuit in court against the Portuguese State. The State ended up having to compensate the applicant, but even so, it appealed the decision.

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

The Southern Central Administrative Court confirmed the decision declaring that the delay violated the right to a decision within a reasonable time, guaranteed by article 20, paragraph 4 of the Portuguese Constitution and article 6, paragraph 1 of the ECHR. It considered that inefficiency constituted an unlawful act, giving rise to civil liability of the State.

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)

In this case, the court directly applies the ECHR and ensures consistent interpretation. In fact, the court often cites Article 6 of the ECHR throughout the judgement, precisely because it understands that the State's action called into question the right that citizens have to a fair trial, within a reasonable period if time, which is enshrined both in ECHR and the Portuguese Constitution.

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 court makes use of both decisions of the Supreme Court of Justice and the European Court of Human Rights. Both of these decisions concern the densification of the concept of a fair trial, for the purposes of Article 6 of the ECHR.

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

This decision aimed to guarantee a fundamental right of citizens, namely that provided for in article 20 (4) of the Portuguese Constitution - the right to a fair and equitable process. In addition, it combined the provision of the Constitution with Article 6 of the ECHR, with the aim of effecting a consistent interpretation between the Constitution and the ECHR.

It should be noted that Portugal has repeatedly been found to be in violation of Article 6 of the ECHR in terms of failure to comply with the "reasonable time" for a decision. For example, see these recent decisions:

Albertina Carvalho e Filhos Lda v. Portugal, of 4 July 2017

The applicant company has its registered office in Valongo, Portugal.

On 18 July 2005 the applicant company brought enforcement proceedings against M.C. before the Valongo Court, seeking payment of an alleged debt of 32,992.99 euros (EUR) plus EUR 18,413.35 in interest it considered to be due up to that date, amounting to a total sum of EUR 51,406. It also sought the payment of the interest accrued until the date of repayment of the debt in full.

This process would only come to an end in 2014.

The Court notes that the proceedings in the instant case lasted more than nine years for two levels of jurisdiction and were not of particular complexity.

Regarding the applicant company’s conduct, it appears from the case-file that on 14 January 2011

the Valongo Court could not contact the applicant company at the address it had provided to that court. The Court admits that this might have caused some delays in the proceedings. However, there is nothing therein to allow the Court to conclude that this caused a one-year delay, nor can the exact delay that might have been caused be determined.

As regards the conduct of the national authorities, the Court considers that the Government did not provide any explanation for some periods of inactivity on the part of the Valongo Court.

There has accordingly been a breach of Article 6 § 1.

Austin and Budiartini v. Portugal, of 25 July 2017

The applicants are husband and wife.

On 10 April 2007 Mr and Mrs G. initiated civil proceedings against the applicants before the Monção Court with a view to obtaining recognition of their ownership of a property and a declaration that the applicants had no right of way (servidão de passagem) over that property.

On 14 May 2007 the applicants were summonsed. On the same day the court was informed of the death of Mr G. and the proceedings were consequently suspended.

On an unknown date Mr G.'s eight heirs were admitted as parties to the proceedings (habilitação de herdeiros). The proceedings restarted on 19 June 2007.

Due to various circumstances, this process would only come to an end in May 2013.

Having examined all the material submitted to it, the Court considers that the case does not appear to have been particularly complex. Although the applicants were responsible for minor delays, the Court considers that the bulk of the delay occurred as a result of the manner in which the Monção Court handled the case. In particular, the Court notes that the first-instance judgment was issued on 3 March 2012 four years and ten months after the claim against the applicants had been lodged. The Court also notes, inter alia, that it took six months for the Monção Court to notify the applicants that they had failed to register their counterclaim with the Land Registry Office, and at least seven months to hold the videoconference.

Having examined all the material submitted, and having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

Accordingly, there has been a breach of Article 6 § 1.

Mateus Pereira da Silva v. Portugal, of 25 July 2017

In this case, we are talking about an inheritance case that began in 2004, in the Civil Court of Torres Novas, and ended in 2014. Due to this excessive time, the apllicant - Mateus Pereira da Silva - filed an application with the ECHR against the Portuguese Republic for (not only, but also)

violation of Article 6.

The Court notes the proceedings at issue were not of particular complexity.

In so far as the applicant’s conduct is concerned, the Court notes that she took no steps which could have significantly contributed to the delay of the proceedings.

Turning to the conduct of the authorities, the Court observes some periods of inactivity on the part of the Torres Novas Civil Court for which the Government provided no explanation.

It is true that the proceedings were pending twice waiting for the claimant’s initiative in summoning the defendant’s heirs (see paragraphs 8 and 15 above). Nonetheless, in this context, the Court reiterates that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements and avoid or reduce to the minimum the protraction of proceedings.

In the light of the foregoing, the Court concludes that the State authorities bear the primary responsibility for the excessive length of the proceedings in question. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

Oliveira Modesto and others v. Portugal, of 29 January 2019

In this case, we are dealing with insolvency proceedings, which, according to the ECHR's accounts, have lasted for 17 years and 11 months.

The Government argued that the length of the proceedings was mostly due to the fact that the Aveiro Court had accepted to act in the applicants’ interest at their request. They also argued that the insolvency proceedings had been delayed by the tax enforcement proceedings, as they were an obstacle to the sale procedure.

However, turning to the proceedings to liquidate the assets of company F., the Court observes that on 12 December 1997 former employees of company F., including some of the applicants, requested that the Aveiro Court wait for the approval of a site division and urban development plan that had been drawn up by the municipality of Aveiro before ordering the sale of company F.’s assets, hoping that the plan would lead to a rise in the value of the land and thus increase their prospects of recovering their debts. That request led the Aveiro Court to authorise the suspension of the sale of company F.’s assets on 7 November 2000. The proceedings could not be resumed until 29 July 2009, when the body of creditors, including the applicants, concluded an agreement with the Aveiro municipality and companies F. and G.

The Court accepts that this stage of the proceedings was of some complexity, owing to the number of parties involved. However, the Court considers that this element alone cannot explain

the length of the proceedings.

In respect of the applicants' conduct, the Court considers that they cannot be deemed responsible for any delays encountered since 30 July 2009.

Turning to the conduct of the national authorities, the Court notes that there were some periods of inactivity on the part of the judicial liquidator for which the Government have provided no explanation.

Even assuming that the liquidator enjoyed a considerable amount of operational and institutional independence and did not act as a State agent, thus not rendering the respondent State directly responsible for his acts, it cannot be overlooked that the domestic courts were responsible for ensuring that he complied with the relevant rules. Indeed, the liquidator was working in the context of judicial proceedings, supervised by a court which remained responsible for the preparation and speedy conduct of the trial.

The Court reiterates that it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of Article 6 § 1 of the Convention, and the Court finds that no convincing arguments have been adduced by the Government to show that the length of the proceedings complained of was reasonable as required by that provision.

The Court concludes that the State authorities bear primary responsibility for the excessive length of the proceedings in question from 30 July 2009 until 21 May 2018. There has accordingly been a breach of Article 6 § 1 of the Convention.

It is also worth mentioning this decision:

Dos Santos Calado and Other v. Portugal, of 31st March 2020

The cases concerned Portuguese nationals who complained about their appeals to the Constitutional Court being declared inadmissible.

The applicant had raised two issues in her appeal to the Constitutional Court; the first concerned the unconstitutionality of a legal rule while the second related to the unlawfulness of the rule in

question. In both cases the applicant had relied on the same subsection of section 70(1) of the Institutional Law on the Constitutional Court (“the LOTC”) forming the basis for the Constitutional Court’s jurisdiction to hear appeals. The Court noted that the Constitutional Court had declared inadmissible the part of the applicant’s appeal relating to the unlawfulness of the legal rule, on the grounds that she had relied in her memorial on the incorrect subsection of the LOTC provision. The Court considered that the requirement to specify which subsection was being relied upon was lawful, as it was provided for by the same Law. Furthermore, it pursued the legitimate aim of ensuring respect for the rule of law and the proper administration of constitutional justice. The Court therefore had to ascertain whether the restriction had been proportionate in the present case. It noted that the Constitutional Court had been able to identify the two grounds of appeal submitted by the applicant. The inadmissibility decision had thus been based solely on the drafting error, as the ground of appeal had been clear from the applicant’s memorial and had been identified by the judges. Consequently, and in accordance with its case-law, the Court held that the approach taken by the Constitutional Court had been excessively formalistic, having deprived the applicant of a remedy afforded by domestic law in respect of the matter at issue.

In the alternative, the Court noted that the Constitutional Court could have requested the applicant to rectify the error, as provided for by the LOTC, given that the ground of appeal had been clear from her memorial.

Impact on Legislation / Policy

The constant condemnations of Portugal in the ECHR led to a judicial reform with the main objective of procedural speed. In other words, the main concern underlying these changes was precisely to speed up the courts' decisions and, consequently, to reduce the excessive time taken to render a decision, thus complying with the "reasonable time" requirement such as defined by the ECHR.

Thus, and recently, the following should be highlighted:

Law 118/2019, of 17 September, which modifies procedural regimes within the scope of administrative and tax jurisdiction, making several legislative amendments

From the explanatory memorandum included in the proposal sent by the Government to the Portuguese Parliament, still in 2018, the following should be highlighted: "Thus, the analysis of the available statistical data reveals the existence of a worrying bottleneck phenomenon registered in administrative and tax courts, whose response capacity has not been able to keep up with the growth of litigation in this area, which is associated with an increase in response times of the courts and a tendency to accumulate pendency.

It is therefore critical to increase the efficiency, speed and responsiveness of administrative and tax jurisdiction, in order to reduce the difficulties resulting from the functioning of the justice system, which constitute an obstacle to effective judicial protection and economic and social development".

This Law, in turn, not only establishes the mandatory electronic processing of judicial proceedings in the administrative and tax courts, but also approves a set of cross-cutting measures to simplify procedures.

Law No. 114/2019, of 12 September, amending the Statute of the Administrative and Fiscal Courts

From the explanatory memorandum included in the proposal sent by the Government to the Portuguese Parliament, still in 2018, the following should be highlighted: “The proposed changes to the scope of jurisdiction and competence of the administrative and tax courts should also be highlighted. The need to clarify certain regimes, which give rise to unusual interpretative difficulties and conflicts of jurisdiction, increasing entropy and slowness, determined the changes introduced in the scope of jurisdiction”.

Decree-Law No. 97/2019, of 26 July, which amends the Civil Procedure Code, altering the system of electronic processing of judicial proceedings

From the preamble of the decree-law, the following should be noted: “New measures are also planned to streamline and promote the speed and quality of procedural information, such as automatically obtaining information on the parties or other parties contained in public databases (allowing the court to learn more quickly of the death of a party, the dissolution of a legal entity or changes in the professional domicile of representatives), or changing the system for identifying parties who are legal entities, ensuring the unequivocal identification of these parties and allowing the adoption of a new system for identifying them, the dissolution of a legal entity or the change in the professional domicile of attorneys), or the change in the identification system for parties who are legal entities, which guarantees the univocal identification of these parties and allows the adoption of a set of automatisms that contribute to simplifying and speeding up the work of the judicial secretariats”.

The legislative changes are all aimed at the growing concern to make its judicial system run more efficiently.

Despite such efforts the last European Comission 2020 Rule of Law Report states that Portugal still faces some challenges regarding the efficiency of the justice system, without prejudice to value all the reforms that have been made so far.

These challenges that are pointed out by the Report are in line with the 2020 EU Justice Scoreboard that demonstrates the same the Report concludes: despite the existence of some improvements as a result of reforms that have been apprehended in the meantime, there are still difficulties that should be overcome (figures 5-15).

As to the 2021 EU Justice Scoreboard, we see 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).

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.

Connected national caselaw / templates

It is worth mentioning the Central Administrative Court Decision of 29th April 2010 (Central Administrative Court)

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 difficulties that occurred, especially the one 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.

The Court of Appeal came to the same conclusion. Indeed, and also using 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.

It follows from the decision that the ECHR was used not only as a legally binding parameter but also to support the reasoning. 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. Bearing this in mind, the Court has made a consistent interpretation between article 20 (4), of the Portuguese Constitution, and article 6, paragraph 1, of the ECHR.

(Link to) full text

https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:TCAS:2015:09309.12.6F
