



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF GUINCHO v. PORTUGAL

(Application no. 8990/80)

JUDGMENT

STRASBOURG

10 July 1984

In the Guincho case,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. J. CREMONA,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. F. GÖLCÜKLÜ,
Mr. J. PINHEIRO FARINHA,
Mr. E. GARCÍA DE ENTERRÍA,
Mr. J. GERSING,

and also Mr. M.-A. EISSEN, Registrar, and Mr. H. PETZOLD, Deputy Registrar,

Having deliberated in private on 30 March and 23 June 1984,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was brought before the Court by the European Commission of Human Rights ("the Commission") and the Portuguese Government ("the Government"). The case originated in an application (No. 8990/80) against that State lodged with the Commission by a Portuguese national, Mr. Manuel dos Santos Guincho, on 20 May 1980 in accordance with Article 25 (art. 25) of the Convention.

2. The Commission's request and the Government's application were lodged with the registry of the Court on 18 July and 26 September 1983 respectively, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47) of the Convention. The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Republic of Portugal recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The application referred to Article 48 (art. 48). The purpose of the request and the application was to obtain a decision as to whether or not the reasonable time requirement laid down in Article 6 para. 1 (art. 6-1) of the Convention had been complied with.

3. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the

* Note by the registry: The revised Rules of Court, which entered into force on 1 January 1983, are applicable to the present case.

proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. J. Pinheiro Farinha, the elected judge of Portuguese nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b) of the Rules of Court). On 21 September 1983, the President of the Court drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. W. Ganshof van der Meersch, Mr. L. Liesch, Mr. F. Gölcüklü and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Mr. E. García de Enterría, substitute judge, subsequently replaced Mr. Liesch, who was prevented from taking further part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 para. 5), consulted, through the Registrar, the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant regarding the need for a written procedure (Rule 37 para. 1). He directed on 6 October 1983 that the Agent and the lawyer should have until 6 January 1984 to file a memorial and that the Delegate should be entitled to file a memorial in reply within two months from the date of the transmission to him by the Registrar of whichever of the aforesaid documents should last be filed. The lawyer for Mr. Guincho waived this right in a letter received at the registry on 11 October 1983.

On 7 October 1983, the Registrar, acting on the instructions of the President, invited the Commission and the Government to produce certain documents; he received them on 18 October and 10 November respectively. The Government filed their memorial with the registry on 3 January 1984; on 27 January, the Secretary to the Commission informed the Registrar that the Delegate would be presenting his observations at the hearings.

6. On 6 February, the President, after consulting, through the Registrar, the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant, directed that the hearings should open on 28 March (Rule 38). He also authorised the Agent and lawyer to use the Portuguese language (Rule 27 paras. 2 and 3).

On 27 February, the lawyer for Mr. Guincho transmitted to the Court his client's claims under Article 50 (art. 50) of the Convention; on 26 March, he replied in writing to various questions that the Registrar had put to him on the instructions of the President.

7. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately beforehand, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. J.N. DA CUNHA RODRIGUES, Deputy Procurador-Geral, *Agent*;

Mr. A.V. COELHO, Judge

on the Supreme Court and Vice-Chairman of the Supreme
Council of the Judiciary,

Mr. J.A. SACADURA GARCIA MARQUES, Secretary General

of the Ministry of Justice and Director General of the
Judicial Services,

Counsel;

- for the Commission

Mr. J.C. SOYER,

Delegate;

- for the applicant

Mr. J.A. PIRES DE LIMA, advogado,

Counsel.

The Court heard addresses by Mr. da Cunha Rodrigues and Mr. Sacadura Garcia Marques for the Government, Mr. Soyer for the Commission and Mr. Pires de Lima for the applicant, as well as their replies to its questions. During the hearings, the Government produced a document to the Court.

On 9 April and 21 May 1984, the registry received supplementary answers from the applicant and then comments thereon from the Government.

THE FACTS

8. The applicant is a Portuguese citizen, born in 1949. He works as an electrician and resides in Lisbon.

On 18 August 1976, he was travelling in a car with Mr. Domingos Lopes, who was the owner and driver of the car, and with the latter's brother, Mr. José Carlos Lopes. At Alverca, the car entered into collision with a vehicle belonging to the Canalux Company of Lisbon and driven by Mr. Antonio Rodrigues Baptista Dinis. Mr. Guincho was injured and lost the use of his left eye; on 18 May 1977, he was certified as having a permanent partial disability.

9. After being notified of the accident by the local police, the public prosecutor's department at the Vila Franca de Xira Regional Court instituted criminal proceedings against the drivers of both vehicles for causing unintentional bodily harm.

On 20 January 1977, the applicant learnt that the file on the case had been closed as a result of an amnesty granted under a Legislative Decree.

10. On 7 December 1978, Mr. Guincho and Mr. D. Lopes ("the plaintiffs") commenced a civil action in the Vila Franca de Xira Regional Court against Mr. Dinis, the Canalux Company and the "Tranquilidade" Insurance Company ("the defendants"). The applicant claimed damages of 350,000 Escudos.

Under Article 68 of the Road Traffic Code, civil liability actions in road traffic matters must be conducted in accordance with summary procedure.

Under the Code of Civil Procedure (Articles 783 to 800), this procedure is characterised, *inter alia*, by the reduction of certain time-limits.

11. On 9 December 1978, the judge of the second chamber (2º juízo) of the Vila Franca de Xira Regional Court granted the plaintiffs legal aid and ordered service of the writ on the defendants. In this connection, the judge issued a request for service (*ofício precatório*) in Lisbon, the defendants' place of residence.

In principle, when such a request is received at a court the registry has two days in which to submit it to the judge. The latter must then order the writ to be dispatched for service within five days, following which the relevant registry official is bound to execute the request for service within a similar five-day interval unless he has a justifiable excuse (Articles 159 and 167 of the Code of Civil Procedure).

On 30 January, 28 February, 2 April, 4 May and 11 June 1979, the judge of the first chamber of the Vila Franca de Xira Regional Court, replacing the judge of the second chamber (whose post was vacant), insisted that the request for service of the writ be given effect. However, this was not done until 18 June.

12. The "Tranquilidade" Insurance Company filed its defence (*contestação*) on 27 June contesting the plaintiffs' claims. It applied to have a third party, Mr. José Lopes (see paragraph 8 above), joined in the proceedings (*intervenção principal*).

On 2 July 1979, Mr. Dinis and the Canalux Company filed their defence. They indicated that at the appropriate moment they would be seeking to have a medical examination of the plaintiffs.

13. The registry of the Vila Franca de Xira Regional Court transmitted the file to the judge on 4 July.

On 28 January 1981, the judge directed that the defence pleadings be communicated to the plaintiffs and that they are allowed five days to reply to the interlocutory application by the "Tranquilidade" Insurance Company.

In their reply filed on 9 February 1981, the plaintiffs took issue with the other side's submissions and claimed that the interlocutory application was a delaying tactic as Mr. José Lopes, who was the brother of Mr. Domingos Lopes, had suffered no prejudice and had expressly waived his right to claim damages. In addition, they complained that they had not been notified until January 1981 of defence pleadings dating back to June and July 1979, and informed the Regional Court that Mr. Guincho had lodged a petition with the European Commission of Human Rights in connection with the length of the proceedings. The registry of the Regional Court did not transmit this reply to the judge until 26 March 1981.

14. In the meantime on 10 February 1981, the judge had declared the interlocutory application admissible on the ground that no objection had been raised against it, and he directed that a summons be served on Mr. José

Lopes, who resided in Loures. A request for service in that jurisdiction was issued on the same day and service was effected on 26 February.

On 27 March 1981, the above-mentioned judge, having received late notice of the objection to the application, decided nonetheless to maintain his decision of 10 February 1981. In a preliminary decision (*despacho saneador*) taken on the same day, he declared the main action admissible and drew up a list of uncontested facts (*especificação*) and a list of facts that had to be clarified at the hearing (*questionário*).

15. The parties did not enter an appeal (*agravo*) against this decision. On 29 April, 30 April and 5 May 1981, they filed in the registry the list of witnesses they proposed to call.

Mr. Guincho and Mr. D. Lopes asked that one of their witnesses, Maria do Sacramento Peixoto Silva, be heard at Almada, the seat of the Regional Court within whose jurisdiction she was said by them to reside. The judge consented on 18 May 1981 and a request for evidence on commission (*carta precatoria*) was issued on 1 June.

On 8 June, the Almada Regional Court set the hearing down for 9 July 1981. However, the Court discovered soon afterwards that Mrs. Silva did not reside within its jurisdiction; on 12 June, it forwarded the request to the Seixal Regional Court, the competent court in this respect.

16. On 26 June, the judge of the Seixal Regional Court issued a direction to the effect that he would hear the witness on 12 October. On 9 October, the lawyer representing the first two defendants sent the judge a telegram saying that he could not be present because of illness.

Mrs. Silva failed to appear on 12 October. The same day, the judge fined her and directed that she be heard on 17 November 1981. However, the lawyer once more notified the judge by telegram that he was still unwell, and the witness did not attend.

The judge thereupon adjourned the hearing of the witness until 10 February 1982; Mrs. Silva was finally examined on that date.

17. The evidence taken on commission was sent to the Vila Franca de Xira Regional Court. The judge dealing with the case received it on 16 February 1982. The following day, he submitted the file to the two other judges of the full Court who certified it on 18 February. On 19 February, he directed that the hearings be held on 12 March 1982.

The hearings could not be held on that day because of the absence of the lawyer representing the first two defendants and of two other persons, namely Fernanda do Carmo Oliveira, in respect of whom the summons as requested by the "Tranquilidade" Insurance Company indicated an address where she was not known, and a witness called by the plaintiffs, the police officer Adriano da Cruz Surreira. The latter witness had drawn up the report on the accident (see paragraphs 8 and 9 above) but had subsequently been transferred to Oporto.

The judge therefore adjourned the hearings until 16 June and then until 15 December 1982. He also issued a request for the evidence of the latter witness to be taken on commission in Oporto, as he had been asked to do by counsel for Mr. Guincho and Mr. Lopes.

18. The Oporto Regional Court summoned Mr. Surreira to appear on 14 May 1982, but on that day neither he nor the lawyers representing the plaintiffs and the first two defendants attended and the hearing was deferred until 3 June. However on 18 May, the judge was informed that the witness had again changed his residence and was serving in Montalegre; the request for evidence on commission was therefore forwarded to the Regional Court of that town.

The Montalegre Regional Court set the hearings down for 1 June 1982. On that day, Mr. Surreira's superiors gave notice that the demands of public service (*razoes inadiaveis de servico publico*) prevented his attendance. Counsel on both sides also failed to appear.

Examination of the witness took place finally on 17 June 1982 and the evidence on commission was remitted to the Vila Franca de Xira Regional Court.

19. On 29 July 1982, because of the impending court vacation, the competent judge decided to bring the hearings forward to 20 October 1982. The hearings were duly held on that day.

Judgment was given on 25 October 1982. The Regional Court found for the plaintiffs; it held that they were entitled to damages from the defendants within the limits of the statement of claim but subject to the proviso that the liability of the "Tranquilidade" Insurance Company could not exceed 200,000 Escudos. The Regional Court awarded Mr. D. Lopes, compensation for repairs to the car and for pecuniary and non-pecuniary prejudice. In the case of Mr. Guincho, on the other hand, it considered that the amount of the award could not yet be assessed, and it reserved the decision on quantum for the procedure for "execution" of the judgment (*liquidacao en execucao de sentenca*) in accordance with Article 661 para. 2 of the Code of Civil Procedure. The judgment was notified in writing to the applicant on 3 November.

The Regional Court subsequently liquidated the costs and expenses, having varied its decision with regard to this point in December 1982. The applicant was given notification thereof on 9 December 1982 and then on 17 January 1983.

None of the parties appealed.

20. On 22 September 1983, Mr. Guincho sought "execution" of the judgment in the Vila Franca de Xira Regional Court. Prior to that, he had received from the "Tranquilidade" Insurance Company part of the sum claimed.

According to the evidence adduced before the Court, the Vila Franca de Xira Regional Court has not yet fixed the quantum of compensation to be awarded to the applicant.

The socio-political situation

21. The Government stressed that at the relevant time the Portuguese legal system had to operate under exceptional circumstances on account of the restoration of democracy in April 1974, the need to consolidate the newly set up institutions and the repatriation of almost a million people from the former colonies. The domestic courts had to be reorganised in a period of serious economic recession. From 1974 to 1979, the volume of litigation almost doubled.

On 25 April 1974, there were only 336 judges in office, that is approximately four times fewer judges per inhabitant than the European average; by the end of 1983, the number had risen to 952. In 1976, court administration posts totalled 2,844, including 20 per cent vacant; currently, on the other hand, 5,566 of the 5,714 existing posts are filled.

After the Constitution was published in 1976, several measures relating to the administration of justice were taken. Notably, access to legal aid was improved, Acts governing the judiciary, the Supreme Council of the Judiciary and the office of the Procurador-Geral were passed, a judicial reorganisation of the territory was carried out and a Centre of Judicial Studies (Centro de Estudos Judiciarios) was set up to train judges and judicial officers.

Situation at the Vila Franca de Xira Regional Court

22. Against this general background, the population of Vila Franca de Xira increased by nearly one quarter between 1978 and 1984, partly because of the privileged position of the town on an important main road and partly because of the influx of people repatriated from the former colonies.

According to the statistics supplied by the Government, the number of cases, both civil and criminal, before the chambers of the Vila Franca de Xira Regional Court increased sharply: 2,377 in 1976, 2,705 in 1977, 4,079 in 1978, 4,175 in 1979 and 5,485 in 1980. As far as civil actions were concerned, the following figures were cited:

1978 - first chamber: 206 second chamber: 199

1979 - first chamber: 457 second chamber: 337

1980 - first chamber: 579 second chamber: 508

23. The established posts of judge in the second and first chambers of the Vila Franca de Xira Regional Court remained vacant for more than five months (from 7 January 1979 to 26 June 1979) and nine months (21 June 1979 - 8 April 1980), respectively. On each occasion, the judge sitting in the other chamber was obliged to deputise during the period of vacancy; in particular, the judge of the first chamber acted in this way in the applicant's case (see paragraph 11 above).

24. According to uncontested information furnished by Mr. Guincho's representative, the lawyers in Vila Franca de Xira met on 14 December 1979 and drew the attention of the Supreme Council of the Judiciary and the Minister of Justice to the "chaotic" situation of the Regional Court and asked for urgent measures to be taken, in particular the appointment of another permanent judge, three seconded assistant judges, an investigating judge, a registrar and six court officials whose posts were then vacant.

On 18 February 1980, they raised the matter again with the Minister of Justice. On 29 May, they sent a telegram to the Supreme Council of the Judiciary once more urging the appointment of judges and emphasising that it was "humanly impossible" for the two judges in office to cope with the backlog of cases. On 27 February 1981, they made further representations to the Minister and the Supreme Council.

On 19 March 1981, the judge of the second chamber himself requested the relevant department of the Ministry of Justice to recruit a number of court officials as a matter of urgency.

Steps taken by the Government

25. The Government pointed out that from 1 October 1980 to 19 February 1981; the four judges sitting on the Vila Franca de Xira Regional Court were aided by a seconded assistant judge. Furthermore, as from March 1981, the Supreme Council of the Judiciary decided that three judges from Lisbon should work on a part-time basis in in the Vila Franca de Xira Regional Court.

The number of court officials varied as follows:

1977: 14 out of 17 posts filled; 1978: 15 out of 23 posts filled; 1979: 27 out of 33 posts filled; 1980: 24 out of 27 posts filled; 1981: 23 out of 26 posts filled; 1984: 33 posts, all filled.

According to the Government, the Supreme Council of the Judiciary recommended especial speediness in the conduct of the applicant's case.

PROCEEDINGS BEFORE THE COMMISSION

26. In his application of 20 May 1980 to the Commission (no. 8990/80), Mr. Guincho complained of the length of civil proceedings he had instituted on 7 December 1978 in the Vila Franca de Xira Regional Court and relied on Article 6 para. 1 (art. 6-1) of the Convention.

27. The Commission declared the application admissible on 6 July 1982. In its report of 10 March 1983 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to the present judgment. *

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

28. The applicant complained of the length of the civil proceedings brought by himself and Mr. Lopes in the Vila Franca de Xira Regional Court. He invoked Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

The civil character of the litigation being clear and undisputed, the sole issue to be decided in the present case is whether the "reasonable time" requirement was complied with. In the Commission's opinion, it was not, whereas the Government argued that there had been no violation.

A. Period to be taken into account

29. The starting point of the relevant period - likewise a matter on which there was no dispute - was 7 December 1978, the date proceedings were instituted before the Vila Franca de Xira Regional Court (see paragraph 10 above).

In the submission of the Government, the relevant "time" came to a close on 25 October 1982 with the judgment which held that Mr. Guincho was entitled to damages but reserved the assessment of the quantum for the procedure for "execution" of the ruling (see paragraph 19 above).

The Court, like the Commission, finds that this judgment did not constitute the final decision since the Regional Court had not yet assessed the damages to be awarded to Mr. Guincho (see paragraph 65 of the report). The Court notes that the action fell into two phases, the first one lasting until 25 October 1982 and the second one, as yet uncompleted, being the "execution" procedure. The latter procedure, which was entirely dependent upon the initiative being taken by the applicant, was not commenced until 23 September 1983 that is after approximately eleven months (see paragraph 20 above); on the basis of the evidence adduced before the Court, it cannot be open to any criticism. The Court will consequently confine its examination to the first phase, which ran from 7 December 1978 until 25 October 1982 (three years, ten months and eighteen days).

30. Such a lapse of time would at first sight seem unreasonable for a single jurisdictional level (see, *mutatis mutandis*, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, para. 23), especially considering that the judgment in question concerned solely the first phase of the action and did not constitute the final decision on the

applicant's claims. It thus calls for close examination under Article 6 para. 1 (art. 6-1).

B. Criteria applicable

31. The reasonableness of the length of proceedings is to be assessed in each case according to the particular circumstances and having regard to the criteria laid down in the Court's case-law (see, *inter alia*, the above-mentioned *Zimmermann and Steiner* judgment, *ibid.*, p. 11, para. 24).

32. In Portugal, the Government pointed out, civil procedure is governed by the so-called "principle of determination": the power of initiative rests with the parties (Article 264 para. 1 of the Code of Civil Procedure) who must take all appropriate steps to further the expeditious conduct of the litigation. In the opinion of the Court, this principle does not however dispense the courts from ensuring the expeditious trial of the action as required by Article 6 (art. 6) (see the *Buchholz* judgment of 6 May 1981, Series A no. 42, p. 16, para. 50). Moreover, Portuguese law places judges under a duty to show diligence (Article 266 of the said Code); in addition, Article 68 of the Road Traffic Code provides that cases such as Mr. Guincho's should be dealt with under the summary procedure which is characterised by, amongst other things, reduction of some time-limits (see paragraph 10 above).

1. Complexity of the case

33. The Government acknowledged that the case was not complex in substance. They nonetheless contended that the case became complex through the behaviour of the parties, in particular as a result of the interlocutory application by the insurance company and the failure of witnesses and lawyers to appear (see paragraphs 12, 15-16 and 18 above). In the opinion of the Commission, on the other hand, the proceedings did not entail any particular difficulty.

The Court agrees with the latter view: the circumstances adverted to by the Government did not complicate the conduct of the proceedings in a manner unusual for such litigation.

2. Conduct of the applicant

34. According to the Government, Mr. Guincho could have accelerated the progress of the proceedings by addressing a complaint to the Supreme Council of the Judiciary. In addition, various delays, for example with regard to the appearance of the witnesses Maria Silva and Adriano da Cruz Surreira, were said to be as much the responsibility of the applicant as of the other parties. At the very least, so the Government maintained, no blame

could be laid at the door of the Portuguese authorities for the period subsequent to 25 October 1982.

The Court has already given its ruling on this latter point (see paragraph 29 above). With regard to the remaining arguments, the Court would firstly note that the applicant was under no duty to refer the matter to the Supreme Council of the Judiciary. Furthermore, the taking of such a step would not have shortened the duration of the procedure, since at most the Supreme Council could have imposed disciplinary sanctions, if appropriate, on any judges or officials at fault. Next, although the furnishing by Mr. Guincho of an incorrect address may have somewhat delayed the hearing of Mrs. Silva (see paragraphs 15 and 16 above), the period of time involved is insignificant in comparison with the total length of the proceedings. The other circumstances set out by the Government, and in particular the failure to appear of witnesses and of lawyers for the defendants, cannot, in the Court's view, be held against the applicant.

In sum, the dilatory nature of the proceedings cannot be attributed to the applicant.

3. Conduct of the Portuguese authorities

35. From the evidence adduced, it can be seen that on two occasions the case remained dormant: from 9 December 1978 until 18 June 1979, that is more than six months, for the execution of a request sent to Lisbon for service of the writ on the defendants, and then from 4 July 1979 until 28 January 1981, that is more than a year and a half, for the transmission of the defence pleadings to the plaintiffs (see paragraphs 11 and 13 above).

The Government acknowledged that matters were held up to a certain extent during the two periods mentioned above, but they drew a distinction between the rhythm at which the action proceeded and its overall length; in the Government's submission, the latter factor alone was material for the purposes of Article 6 para. 1 (art. 6-1) and, in the particular circumstances, the overall length of the action was acceptable.

The applicant contended that the existence of a total cessation of activity during two years adversely affected the proceedings as a whole.

36. The Court concurs in principle with the latter view. It would also note that the two periods of almost total inactivity related to the performance of procedural acts of a purely routine character, such as the service of the writ on the defendants and the transmission of the defence pleadings to the plaintiffs. These periods could thus have been justified only by very exceptional circumstances (see, *mutatis mutandis*, the above-mentioned Zimmermann and Steiner judgment, Series A no. 66, p. 12, para. 27 in fine).

37. According to the Government, the abnormalities in the proceedings before both the Vila Franca de Xira Regional Court and the Lisbon Regional

Court resulted from the disruption of institutions that accompanied Portugal's return to democracy (see paragraph 21 above).

At the same time, the Government contended, the country was confronted with a sudden and unforeseen increase in the volume of litigation. In consequence, judges with little experience were called on to administer justice in overburdened courts. Nonetheless, the competent authorities, and notably the Supreme Council of the Judiciary, did what they could to take the necessary remedial action (see paragraph 25 above).

38. The Court recognises the value of the first argument. It cannot overlook that the restoration of democracy as from April 1974 led Portugal to carry out an overhaul of its judicial system in troubled circumstances which were without equivalent in most of the other European countries and which were rendered more difficult by the process of decolonisation as well as by the economic crisis (see paragraph 21 above). Nor does the Court in any way underestimate the efforts taken to improve the citizen's access to justice and the administration of the courts, in particular after the promulgation of the Constitution in 1976 (see paragraph 21 above).

Nonetheless, the Court must on this issue concur with the views of the Commission and the applicant. In ratifying the Convention, Portugal guaranteed to "secure to everyone within [its] jurisdiction the rights and freedoms defined in Section I" (Article 1) (art. 1). In particular, Portugal undertook the obligation of organising its legal system so as to ensure compliance with the requirements of Article 6 para. 1 (art. 6-1), including that of trial within a "reasonable time" (see the above-mentioned *Zimmermann and Steiner* judgment, Series A no. 66, p. 12, para. 29). The Court would once more draw attention to the extreme importance of this requirement for the proper administration of justice.

39. Furthermore, and without ignoring the general background outlined above, the Court would point out that its task is confined in principle to the examination of the particular case before it, which essentially concerns one specific court.

At the Vila Franca de Xira Regional Court, for more than a year a single judge had to deal with the business of two chambers because of an unfilled vacancy: the post of judge was vacant in the second chamber from 7 January until 26 June 1979 and then in the first chamber from 21 June 1979 until 8 April 1980. At the same time, there was a sharp rise in the number of pending cases, which more than doubled between 1976 and 1980 (see paragraphs 22 and 23 above).

In order to eliminate the accumulated backlog, the competent authorities decided in October 1980 to appoint an assistant judge; in March 1981, they dispatched from Lisbon three judges to work in Vila Franca de Xira on a part-time basis; the staff of the registry was also greatly increased (see paragraph 25 above).

40. According to the established case-law of the Court, a temporary backlog of court business does not engage the international responsibility of the State concerned under the Convention provided that the State takes effective remedial action with the requisite promptness (see, as the most recent authority, the above-mentioned Zimmermann and Steiner judgment, p. 12, para. 29).

In the present case, the Court notes, as did the Commission, that the growth in the burden of work was spread over several years. The Court would recall that following the promulgation of the Constitution in 1976, various measures were introduced with a view to improving the citizen's access to justice, at a time when nearly a million persons repatriated from the former colonies were being resettled in Portugal (see paragraphs 21 and 38 above). In these conditions, an appreciable expansion in the volume of litigation was to be expected. In addition, by December 1979 the lawyers practising at Vila Franca de Xira had brought the matter to the attention of the Supreme Council of the Judiciary and the Minister of Justice (see paragraph 24 above).

However, in the face of a state of affairs that had developed into one of structural organisation, the steps taken in October 1980 and March 1981 were evidently insufficient and belated. Although reflecting the will to tackle the problem, they were, by their very nature, incapable of achieving satisfactory results (see, *mutatis mutandis*, the above-mentioned Zimmermann and Steiner judgment, Series A no. 66, p. 13, para. 31).

41. Having regard to all the circumstances of the case, the Court concludes that the exceptional difficulties encountered in Portugal were not such as to deprive the applicant of his entitlement to a judicial determination within "a reasonable time" (*ibid.*, p. 13, para. 32). There has accordingly been a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

42. Article 50 (art. 50) reads as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

In his written comments of 27 February 1984, Mr. Guincho sought under the head of just satisfaction the interest that he would have earned in two years on the damages - had they been recovered - of 350,000 Escudos claimed in his civil action.

43. The Government stated that Portuguese case-law already allows account to be taken of inflation and monetary erosion. The applicant's lawyer had, it was said, raised to 700,000 Escudos his client's claims when replying on 9 February 1981 to the defence pleadings (see paragraph 13 above); yet, in the procedure for "execution" of the judgment, the lawyer had limited himself to the initial sum specified.

Mr. Guincho contended, on the other hand, that inflation rates and interest due on account of the inordinate length of proceedings constitute two different things and that in any event he had been obliged to curtail his claims since the sum covered by the insurance policy was subject to a maximum ceiling of 200,000 Escudos.

44. The Court would recall that the failure to ensure trial within a "reasonable time" stemmed directly from two periods of almost total inactivity on the part of the Regional Courts of Vila Franca de Xira and Lisbon (see paragraph 35 above); these periods total more than two years. The resultant lapse of time, which was additional to the normal length of the proceedings, delayed to a corresponding extent the completion of the litigation. Not only did it reduce the effectiveness of the action brought, but it also placed the applicant in a state of uncertainty which still persists and in such a position that even a final decision in his favour will not be able to provide compensation for the lost interest.

Accordingly, the Court awards Mr. Guincho the sum of 150,000 Escudos by way of just satisfaction for the purposes of Article 50 (art. 50).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay the applicant one hundred and fifty thousand (150,000) Escudos under Article 50 (art. 50).

Done in English and in French at the Human Rights Building, Strasbourg, this tenth day of July, one thousand nine hundred and eighty-four.

For the President
Walter GANSHOF VAN DER MEERSCH
Judge

For the Registrar
Herbert PETZOLD
Deputy Registrar