



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

COURT (CHAMBER)

**CASE OF MOREIRA DE AZEVEDO v. PORTUGAL (ARTICLE 50)**

*(Application no. 11296/84)*

JUDGMENT

STRASBOURG

28 August 1991

**In the case of Moreira de Azevedo v. Portugal\*,**

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 R. RYSSDAL, *President*,

Mr J. CREMONA,

Mr J. PINHEIRO FARINHA,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr S.K. MARTENS,

Mrs E. PALM,

and also of Mr M.-A. EISSEN, *Registrar*,

Having deliberated in private on 27 August 1991,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 October 1989. It originated in an application (no. 11296/84) against the Republic of Portugal lodged with the Commission by Mr Manuel Moreira de Azevedo, a Portuguese national, on 16 November 1984.

2. In a judgment of 23 October 1990 ("the principal judgment", Series A no. 189) the Court found that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention because the "reasonable time" had been exceeded (pp. 18-19 and 20, paras. 71-75 of the reasons and point 2 of the operative provisions). The only outstanding matter to be settled is the question of the application of Article 50 (art. 50).

3. In his claims dated 11 May 1990 the applicant asked for 8,000,000 escudos in respect of pecuniary damage and 2,000,000 escudos for non-pecuniary damage. He also sought reimbursement of costs and expenses referable to the European proceedings, namely 500,000 escudos for lawyers' fees and 72,000 escudos for travel and subsistence expenses (*ibid.*, pp. 19-20, paras. 77-78).

---

\* The case is numbered 22/1989/182/240. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

4. In the principal judgment the Court reserved the said question, considering it not to be ready for decision; it invited the Portuguese Government ("the Government") and the applicant to submit to it in writing within three months their observations on the matter, and in particular to communicate to it any agreement reached between them (*ibid.*, p. 20, para. 79 of the reasons and point 3 of the operative provisions).

5. All attempts at reaching such an agreement having failed, the Registrar received the observations and supplementary observations of the Government and the applicant respectively on various dates during the period from 21 January to 12 March 1991.

In a letter received on 15 April 1991, the Delegate of the Commission referred to his statements, at the hearing of 23 May 1990, with reference to the applicant's claims.

On 29 April 1991 the Government produced various documents which the Court had asked for.

6. The Court decided that in the circumstances there was no need to hold a hearing.

## AS TO THE FACTS

7. For the facts of the case the Court refers to the principal judgment (pp. 8-11, paras. 11-50) and will merely bring it up to date here.

8. On 21 March 1988 Mr Moreira de Azevedo brought an action for damages in the Vila Nova de Famalicão Court of First Instance against Mr Bernardo Gonçalves de Sousa, the defendant in the criminal proceedings for assault whose duration, according to the principal judgment, had exceeded the "reasonable time". On 30 June 1988 the court held that the applicant's right to compensation was statute-barred, and this decision (*despacho saneador*) was upheld by the Oporto Court of Appeal (*tribunal de relação*) on 6 July 1989.

9. Mr Moreira de Azevedo lodged an appeal (*revista*) and the Supreme Court (*Supremo Tribunal de Justiça*) quashed the Court of Appeal's decision on 24 January 1991, holding that the said right was not statute-barred and ordering the case to be proceeded with.

In a letter of 28 June 1991 the Government informed the Registrar that this decision had not yet become final, as Mr Gonçalves de Sousa had applied for a declaration of nullity (Article 732 of the Code of Civil Procedure).

## AS TO THE LAW

### 10. Under Article 50 (art. 50) of the Convention,

"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."

## I. DAMAGE

11. The applicant in the first place claimed 10,000,000 escudos as compensation, to wit, 8,000,000 escudos for pecuniary damage and 2,000,000 escudos for non-pecuniary damage.

The Government accepted that he was entitled to monetary compensation for non-pecuniary damage, but for nothing more, and assessed this at 600,000 escudos. They expressed their regret that Mr Moreira de Azevedo was claiming a sum considerably higher than that (4,100,000 escudos) which he had asked for in the Vila Nova de Famalicão Court.

At the hearing on 23 May 1990 the Delegate of the Commission said that he was in favour of awarding a sum in respect of non-pecuniary damage, but did not give any figure.

12. The Court observes that, pending the final decision of the Supreme Court (see paragraph 9 above), it is still uncertain whether Mr Moreira de Azevedo's right against Mr Gonçalves de Sousa is statute-barred or not, and if not, what the amount of his damages would be. Be that as it may, the excessive length of the criminal proceedings must have caused the applicant pecuniary damage, and definitely caused him non-pecuniary damage.

Taking its decision on an equitable basis as required by Article 50 (art. 50), the Court awards him 4,000,000 escudos on this count.

## II. COSTS AND EXPENSES

13. The applicant sought reimbursement of costs and expenses relating to the European proceedings, namely 500,000 escudos for lawyers' fees and 446,800 escudos for travel and subsistence expenses and faxes.

The Government considered that all these items had already been covered by the legal aid granted by the Commission and Court.

14. The Court does not regard the amounts claimed as excessive, but the amount of FRF 20,153.90 paid as legal aid should be deducted therefrom.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the respondent State is to pay the applicant within the next three months 4,000,000 (four million) escudos in respect of damage and 946,800 (nine hundred and forty-six thousand eight hundred) escudos for costs and expenses, less FRF 20,153.90 (twenty thousand one hundred and fifty-three French francs and ninety centimes);
2. Dismisses the remainder of the claim for just satisfaction.

Done in French and in English, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 28 August 1991.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar