



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

CASE OF ESTIMA JORGE v. PORTUGAL

(16/1997/800/1003)

JUDGMENT

STRASBOURG

21 April 1998

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SUMMARY¹

Judgment delivered by a Chamber

Portugal – length of enforcement proceedings

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability of Article 6 § 1

Recapitulation of Court's case-law.

Proceedings in issue did not concern a judgment, but a notarial deed providing security for a specific debt – irrespective of whether authority to execute took the form of a judgment or a notarial deed, Portuguese law provided that it was to be enforced through courts, procedure to be followed being same in each case – that procedure had been decisive for effective exercise of applicant's right.

Conclusion: applicability (unanimously).**B. Compliance with Article 6 § 1***1. Period to be taken into consideration*

Starting-point: institution of proceedings in Lisbon Court of First Instance.

End: payment of an amount to applicant.

Total: thirteen years.

2. Reasonableness of length of proceedings

Competent authorities had been responsible for number of delays – above all, in light of circumstances of case, to be assessed as a whole, Court considered that period of thirteen years to obtain final decision on basis of an authority to execute could not be said to have been reasonable.

Conclusion: violation (unanimously).

1. This summary by the registry does not bind the Court.

II. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary damage: sum awarded on an equitable basis (seven votes to two).

Non-pecuniary damage: award of amount claimed (unanimously).

B. Costs and expenses: reimbursement on an equitable basis.

Conclusion: respondent State to pay applicant specified sums.

COURT'S CASE-LAW REFERRED TO

26.10.1988, Martins Moreira v. Portugal; 23.10.1990, Moreira de Azevedo v. Portugal;
23.3.1994, Silva Pontes v. Portugal; 26.9.1996, Di Pede v. Italy; 26.9.1996, Zappia v. Italy;
19.3.1997, Hornsby v. Greece; 23.9.1997, Robins v. the United Kingdom

In the case of Estima Jorge v. Portugal¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,

Mr F. GÖLCÜKLÜ,

Mr J. DE MEYER,

Mrs E. PALM,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr B. REPIK,

Mr J. CASADEVALL,

Mr M. VOICU,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 27 January and 23 March 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 22 January 1997 and by the Government of the Republic of Portugal (“the Government”) on 3 April 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24550/94) against Portugal lodged with the Commission under Article 25 by a Portuguese national, Mrs Amélia Alves Estima Jorge, on 27 October 1993.

The Government’s application and the Commission’s request referred to Articles 44 and 48 and to the declaration whereby Portugal recognised the compulsory jurisdiction of the Court (Article 46). The object of the application and of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 16/1997/800/1003. 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.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that she wished to take part in the proceedings and designated the lawyer, Mrs N. Neves Anacleto of the Lisbon Bar, who would represent her (Rule 31).

3. The Chamber to be constituted included *ex officio* Mr M.A. Lopes Rocha, the elected judge of Portuguese nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 23 February 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr J. De Meyer, Mrs E. Palm, Mr A.B. Baka, Mr B. Repik and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, Mr A. Henriques Gaspar, the applicant's lawyer and the Delegate of the Commission, Mr J.-C. Soyer, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 30 June and 25 July 1997 respectively.

5. Having regard to the opinions expressed by the applicant, the Government and the Delegate of the Commission and having satisfied itself that the condition for derogation from its usual procedure had been met (Rules 27 and 40), the Chamber decided to dispense with a hearing in the case and Mr Ryssdal gave the applicant's representative and the Government leave to file observations on the content of each other's memorial.

6. On 11 December 1997 the Registrar received the Government's observations on the applicant's claims under Article 50 of the Convention; on 15 December counsel for the applicant informed the Registrar that she did not wish to file an additional memorial. On 6 January 1998 the Secretary to the Commission informed the Registrar that the Delegate did not wish to file written observations.

7. Meanwhile, on 1 December 1997 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 7 January 1998 Mr Thór Vilhjálmsson replaced Mr Ryssdal, who was unable to take part in the further consideration of the case, as President of the Chamber (Rule 21 § 6). Mr M. Voicu, substitute judge, replaced him as a member of the Chamber (Rule 22 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mrs Amélia Alves Estima Jorge, a Portuguese national, lives at Loures in Portugal

A. Background to the case

10. By a notarial deed dated 19 December 1978 the applicant and A.P. jointly agreed to lend to Mr and Mrs O. a total of 1,360,000 escudos (PTE), to be repaid within six months, which period was renewable as often as the parties agreed. The loan bore interest at the rate of 8% per annum if repaid during the term and 12% if repaid late. The borrowers undertook to bear the costs incurred in securing and enforcing the debt. The capital and interest and other costs were secured by a mortgage over a property in Carcavelos (jurisdiction of Cascais). On 22 December 1978 Mrs Estima Jorge advanced the borrowers the portion of the capital she had undertaken to lend, namely PTE 390,000; A.P. paid the balance (PTE 970,000) on 27 December 1978. The borrowers failed to repay either capital or interest.

B. The enforcement proceedings

11. On 27 November 1981, as no voluntary repayment had been made, the lenders brought enforcement proceedings in the Fourth Civil Division of the Lisbon Court of First Instance (*tribunal cível da comarca de Lisboa*) against Mr and Mrs O. for repayment of the mortgage. Mrs Estima Jorge claimed PTE 553,800 (comprising the capital plus PTE 163,800 in interest she considered to be due for the period from 19 December 1978 to 19 June 1981); A.P. claimed PTE 1,377,400. They also sought an order for payment of accrued interest at the date of repayment of the loan in full and of costs and expenses.

12. On 8 January 1982 the Lisbon Court of First Instance requested the Cascais Court of First Instance (*tribunal judicial da comarca de Cascais*) to serve a demand on the debtors. On 1 and 7 October 1982 the Cascais Court of First Instance served notice on the debtors requiring them, within ten days, to repay the debt or to draw up a list of property that could be seized. The Cascais Court of First Instance returned the executed request on 22 October 1982.

13. As the sum concerned was not repaid within the time allowed, the Lisbon Court of First Instance made a possession order in respect of the mortgaged property and requested the Cascais Court of First Instance to enforce it. The Cascais Court of First Instance executed the order on 14 February 1983 and returned the executed request on 4 March 1983.

14. After notice to other creditors had been published in newspapers carrying official announcements, the applicant applied on 19 March 1984 for an order for sale of the property by the court.

15. On 6 December 1984 the Lisbon Court of First Instance drew up a list of creditors classified as to rank (*sentença de graduação de créditos*).

16. The auction was held at Cascais on 20 March 1985. However, on 26 March 1985, State Counsel's Office acting on behalf of the Bank for Official Deposits (*Caixa Geral de Depósitos*), sought an order for annulment of the auction, which the Cascais Court of First Instance made on 6 May 1985. On 28 October 1985 the purchaser of the property appealed against that decision to the Lisbon Court of Appeal (*Tribunal da Relação*), which upheld the impugned decision on 27 October 1988. On 31 January 1989 the case file was transferred to the Lisbon Court of First Instance.

17. An order was made for a fresh auction to be held on 16 May 1989. However, Mrs Estima Jorge learned in the meantime that the property in question had already been sold on 13 February 1989 in enforcement proceedings brought by the Carcavelos Finance Department in connection with unpaid taxes. On 26 May 1989 she applied for an attachment over the balance of the proceeds of that sale.

18. On 5 June 1989 the Lisbon Court of First Instance granted her application and requested the Cascais Court of First Instance to attach the balance. On 6 November 1989 the latter court was informed that the case file concerning the enforcement proceedings brought by the Carcavelos Finance Department had been sent to the Third Chamber of the Lisbon Tax Court of First Instance (*tribunal tributário de 1ª instância*). On 2 February 1990 the Lisbon Court of First Instance advised the applicant of that development and asked her to provide information about those enforcement proceedings. On 14 February 1990 the applicant's lawyer provided the necessary details.

19. On 12 March, 12 October 1990 and 14 February 1991 the Lisbon Court of First Instance asked the Lisbon Tax Court to carry out the attachment in question.

20. On 22 April 1992 Mrs Estima Jorge renewed her application for an attachment.

21. On 8 January 1993 the Lisbon Tax Court attached the balance of the proceeds of sale.

22. On 18 January 1994 the applicant received a financial statement which, on 24 January 1994, she asked to be rectified after discovering that her claim had been recorded in the name of another person.

23. An order for rectification was made on 11 March 1994.

24. On 29 November 1994 the Bank for Official Deposits delivered a cheque for PTE 722,135 to Mrs Estima Jorge.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure

25. Set out below is a translation of the main provisions of the Code of Civil Procedure in force at the material time.

Article 1

“No one shall be entitled to use force to assert or protect his rights other than in the circumstances and within the limits prescribed by law.”

Article 2

“For each right, except as otherwise provided by law, there is a corresponding action whose purpose is to secure judicial recognition of the right in question or to enforce it through coercion and such measures as shall be necessary to preserve the effectiveness of the action.”

Article 4

“1. There are two types of action: declaratory actions (*declarativas*) and enforcement actions (*executivas*).

2. ...

3. Enforcement actions are those by which the plaintiff seeks adequate measures to secure effective reparation for a right that has been infringed.”

Article 45 § 1

“Execution must be levied on the basis of an authority to execute, which shall serve to determine the aim and scope of the enforcement proceedings.”

Article 46

“Enforcement proceedings may be brought only on the basis of:

(a) a court judgment; or

(b) a document produced or authenticated by a notary;

...”

Article 50 § 1

“Documents produced or authenticated by a notary shall be enforceable provided that they establish the existence of an obligation.”

Article 802

“No enforcement measures may be taken until the obligation has become indisputable and due if it is not clear from the authority to execute that that condition is satisfied.”

Article 811 § 1

“The creditor must request that a demand be served on the debtor requiring him, within ten days, to make payment or to draw up a list of attachable property.”

Article 836

“1. The right to draw up a list of attachable property may be exercised by the creditor, irrespective of any decision, where:

- (a) the debtor has not drawn up such a list within the statutory time-limit;
- (b) the debtor has failed to comply with the provisions of Article 834 when drawing up the list; or
- (c) some of the property on the list is missing.

2. Once the attachment has been carried out in accordance with a list drawn up by either the debtor or the creditor, the creditor may add other property to the list where:

- (a) it is obvious that the listed goods are insufficient;
- (b) the listed property is not free and clear of encumbrances, whereas the debtor has other property that is;
- (c) a third-party contests the attachment;
- (d) the creditor releases the attachment in accordance with Article 871 § 3.”

Article 872

“Payment may be made in cash, by auction of the attached property, or by payment into court of the income from such property or the proceeds of its sale.”

B. The Civil Code

26. Article 806 of the Civil Code is worded as follows:

“1. In cases concerning a pecuniary obligation, compensation shall take the form of interest from the date the payment becomes overdue.

2. Interest shall be payable at the statutory rate unless, before the payment becomes overdue, the parties have agreed on a higher rate of interest or on the payment of default interest at a rate different from the statutory rate.

3. However, in cases concerning liability for unlawful acts or under an aleatory contract, creditors shall be entitled to show that the delay has caused them loss exceeding the amount of interest referred to in the preceding paragraphs and to require additional compensation for such additional loss.”

PROCEEDINGS BEFORE THE COMMISSION

27. Mrs Estima Jorge applied to the Commission on 27 October 1993. She complained that the enforcement proceedings she had brought in the Lisbon Court of First Instance on 27 November 1981 had been unduly protracted, contrary to Article 6 § 1 of the Convention.

28. The Commission declared the application (no. 24550/94) admissible on 14 May 1996. In its report of 5 December 1996 (Article 31), it expressed the opinion that there had been a violation of Article 6 § 1 (eighteen votes to eight). The full text of the Commission’s opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

29. In their memorial, the Government requested the Court to hold

“(1) that the enforcement proceedings, as referred to in the present case, did not concern a decision in a dispute (*contestation*) over civil rights and obligations within the scope of Article 6 § 1 of the Convention as that provision must be interpreted;

(2) consequently, the Court has no jurisdiction in the instant case to determine whether there has been a violation (of the reasonable time requirement) of Article 6 § 1 of the Convention, which is not applicable.”

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission’s report is obtainable from the registry.

30. The applicant asked the Court to hold that there had been a violation of Article 6 § 1 and to order the State to pay her compensation.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant complained of the length of the enforcement proceedings that she and A.P. had brought in the Lisbon Court of First Instance; she relied on Article 6 § 1 of the Convention, the relevant part of 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 Government considered that Article 6 § 1 was not applicable.

A. Applicability of Article 6 § 1

32. In Mrs Estima Jorge’s submission, the spirit and objectives of the Convention, which was intended to secure effective – not merely theoretical or illusory – protection of rights, meant that Article 6 § 1 was applicable to enforcement proceedings brought in the courts on the basis of an authority to execute. The guarantees afforded to citizens under the Convention could not be confined to citizens’ merely having their rights determined without being able to enforce them, as otherwise a purely theoretical and ineffective system would be created. It would be incomprehensible if, having acknowledged an obligation to ensure that declaratory actions were heard within a reasonable time, the Contracting States were not obliged to afford people having a recognised right the possibility of exercising it within that time-scale in cases where enforcement proceedings were the only available means of rendering the right in question effective. No other method for recovery of her debt had been open to the applicant. An enforcement action as provided for and prescribed by Portuguese law had been the only possible way of asserting her right.

33. The Government submitted that enforcement proceedings under the Portuguese civil procedural system were, by their nature, beyond the scope of Article 6 of the Convention. Enforcement proceedings, based on an authority to execute, were designed to make the State machinery available to those who sought to enforce their rights. Such proceedings presupposed that the right had previously been established and was definite and they did not, therefore, concern a “dispute”. In the instant case, the applicant’s claim

and the existence of her right had already been established by an authority to execute, namely the notarial deed of mortgage. That deed meant that Mrs Estima Jorge's claim was indisputable, of a fixed amount and immediately enforceable. The proceedings in issue had been brought solely to enable the goods over which execution could be levied to be identified and sold and Mrs Estima Jorge to be paid out of the proceeds. In short, there had been no dispute over the validity of her claim, its amount or the method of payment. The fact that in the Portuguese system enforcement proceedings were, in a formal sense, judicial, did not alter the true nature of execution, which, being a practical, not legal procedure, could be conducted by a court or, as in other legal systems, by administrative authorities.

34. In its report, the Commission concluded that Article 6 was applicable. For so long as the enforcement proceedings were under way, the applicant's case could not be deemed to have been determined. The effectiveness of the applicant's claim (see the *Zappia v. Italy* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1411–12, §§ 18 and 20), and thus its determination, had been in the balance for so long as those proceedings had lasted. The Commission saw no substantial difference between the *Zappia* case and the present one, at least as regards the weight to be given in each case to the authority to execute that served as the basis for the enforcement proceedings.

35. The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the “determination of ... civil rights and obligations”, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see the *Robins v. the United Kingdom* judgment of 23 September 1997, *Reports* 1997-V, p. 1809 § 28). Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, pp. 510–11, § 40).

36. The Court notes that the present case is distinguishable from the cases previously before it (see, in addition to the cases cited above, the *Martins Moreira v. Portugal* judgment of 26 October 1988, Series A no. 143, and the *Silva Pontes v. Portugal* judgment of 23 March 1994, Series A no. 286-A), since what was being enforced was not a judgment, but another form of authority to execute, namely a notarial deed providing security for a specific debt. The sole object of the proceedings was recovery of the debt.

37. Conformity with the spirit of the Convention requires that the word “*contestation*” (dispute) should not be construed too technically and that it should be given a substantive rather than a formal meaning. Besides it has no counterpart in the English text of Article 6 § 1 (see the *Moreira de Azevedo v. Portugal* judgment of 23 October 1990, Series A no. 189, p. 17, § 66). Thus, the Court has previously held that determination of a civil right is constituted at the moment when the right asserted actually became effective (see the *Di Pede v. Italy* judgment of 26 September 1996, *Reports*

1996-IV, p. 1384, § 22, and the Zappia judgment cited above, p. 1411, § 18).

38. Irrespective of whether the authority to execute takes the form of a judgment or a notarial deed, Portuguese law provides that it is to be enforced through the courts, the procedure to be followed being the same in each case.

That enforcement procedure was decisive for the effective exercise of the applicant's right.

Consequently, Article 6 § 1 is applicable.

B. Compliance with Article 6 § 1

39. It remains to be determined whether the proceedings were unreasonably long. The Commission and the applicant both considered that they were. Before the Court, the Government expressed no view.

40. The period to be taken into consideration began on 27 November 1981, when proceedings were issued in the Lisbon Court of First Instance, and ended on 29 November 1994, when Mrs Estima Jorge obtained a payment. It therefore lasted thirteen years.

41. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the Di Pede judgment cited above, p. 1385, § 27).

42. In the applicant's submission, the proceedings had been unduly protracted because the procedure had been strictly regulated (and had paralysed domestic laws in force at the time) and there had been numerous inordinate delays by the registry and a lack of co-ordination and cooperation between the various State organs, in particular the Cascais and Carcavelos Finance Departments, the Third Chamber of the Lisbon Tax Court of First Instance and the Fourth Civil Division of the Lisbon Court of First Instance. The applicant added that she had not unjustifiably contributed to the delays.

43. Before the Commission the Government conceded that there had been delays in the proceedings owing to the relevant authorities' conduct, but said that the applicant was also partly responsible for holding up the proceedings.

44. Like the Commission, the Court finds that the relevant authorities were responsible for a number of delays. Mrs Estima Jorge's application for an attachment on 26 May 1989 (see paragraph 17 above) was not executed until 8 January 1993 (see paragraph 21 above), that is to say three years and seven months after it was made. In addition, the financial statement (see paragraph 22 above) was not sent to the applicant until a year later.

45. Above all, in the light of the circumstances of the case, which are to be assessed as a whole, the Court considers that a period of thirteen years to obtain a final decision on the basis of an authority to execute cannot be said to have been reasonable.

There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

46. Article 50 of the Convention provides:

“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.”

A. Damage

1. *Pecuniary damage*

47. The applicant claimed PTE 2,327,516 for loss sustained through inflation over the course of the proceedings. When on 27 November 1981 she had brought enforcement proceedings in the Lisbon Civil Court of First Instance her claim came to PTE 553,800. On 29 November 1994 she was given a cheque for PTE 722,135 for the amount of the claim plus interest. That amount, which she had received thirteen years after the proceedings had begun, was far less than the sum actually claimed if inflation over the period was taken into account. On the basis of the consumer price index published by the National Institute of Statistics, the amount of PTE 553,800 was equivalent to PTE 3,049,651. As she had received PTE 722,135, her loss had therefore been PTE 2,327,516, that being the difference between the indexed value of her claim and the sum received after thirteen years of proceedings.

48. The Government denied that any pecuniary damage had been sustained. The asserted damage had not at all been made out. Any compensation due had already been furnished in the domestic proceedings through an award of interest; such an award raised a rebuttable presumption that the creditor had been compensated for any delay in the satisfaction of a pecuniary obligation. A claim for additional damage had to be expressly pleaded and proved in domestic proceedings. No such proceedings had been instituted by Mrs Estima Jorge.

49. The Delegate of the Commission did not express a view.

50. The Court notes that on 27 November 1981 the applicant issued proceedings in the Fourth Division of the Lisbon Civil Court of First

Instance for the recovery of PTE 553,800, being the amount of capital she had lent to Mr and Mrs O. (PTE 390,000) plus PTE 163,800 allegedly due in interest calculated at the contractual rate of 12% (see paragraph 10 above) for the period running from 19 December 1978 to 19 June 1981. She also claimed future interest accruing due until payment was made in full. On 29 November 1994 the Bank for Official Deposits remitted PTE 722,135 to the applicant as payment of the claim plus interest. No indication was given as to how that sum had been calculated.

51. Having regard to the small difference between the sum initially claimed (PTE 553,800) and the sum awarded after thirteen years of proceedings (PTE 722,135), the Court considers that Mrs Estima Jorge has sustained actual pecuniary damage as a result of the violation referred to in paragraph 45 above.

Consequently, making its assessment on an equitable basis, it awards the applicant the sum of PTE 1,000,000.

2. *Non-pecuniary damage*

52. The applicant claimed PTE 1,000,000 for non-pecuniary damage. The fact that her loan had not been repaid for thirteen years had meant that she had had to put up with hardship that had become increasingly difficult to bear the older she got. The fact that she had had to wait so long had caused anxiety and bouts of depression.

53. The Government maintained that the non-pecuniary damage should be assessed *ex aequo et bono* in accordance with the criteria laid down in the Court's case-law.

54. The Delegate of the Commission expressed no view.

55. The Court considers that a finding that there has been a violation of the Convention cannot by itself compensate the applicant for the non-pecuniary damage she has sustained. It decides therefore to award her the amount claimed, namely PTE 1,000,000.

B. **Costs and expenses**

56. Mrs Estima Jorge sought PTE 110,000 for the procedural costs she had incurred as a result of the delay in obtaining payment of the sum claimed, PTE 106,400 for the costs incurred before the Commission and an unquantified sum for expenses and lawyer's fees in the proceedings before the Court.

57. Neither the Government nor the Delegate of the Commission expressed a view.

58. Making its assessment on an equitable basis and in accordance with the criteria laid down in its case-law, the Court awards the applicant a total sum of PTE 200,000 in addition to the 3,600 French francs paid to her by the Council of Europe in legal aid in the proceedings before the Court.

C. Default interest

59. According to the information available to the Court, the statutory rate of interest applicable in Portugal at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that Article 6 § 1 of the Convention was applicable to the proceedings in issue and has been infringed;
2. *Holds* by seven votes to two that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) escudos for pecuniary damage;
3. *Holds* unanimously that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) escudos for non-pecuniary damage and 200,000 (two hundred thousand) escudos for costs and expenses;
4. *Holds* unanimously that simple interest at an annual rate of 10% shall be payable on the above sums from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* by eight votes to one the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 April 1998.

Signed: THÓR VILHJÁLMSOHN
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr De Meyer;
- (b) partly dissenting opinion of Mrs Palm; and
- (c) partly dissenting opinion of Mr Repik.

Initialled: T. V.

Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(*Translation*)

The amount awarded to the applicant for pecuniary damage is greater than that obtained from a calculation of interest accrued due at the contractual rate of 12% up to the date of payment in full, but does not appear sufficiently to compensate for the loss caused by thirteen years of inflation¹.

For this reason I was unable to approve point 5 of the operative provisions.

1. See, *mutatis mutandis*, the Akkuş v. Turkey judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1310, §§ 30–31, and p. 1311, §§ 35–36.

PARTLY DISSENTING OPINION OF JUDGE PALM

(Translation)

I consider that the question of the application of Article 50 of the Convention as regards pecuniary damage is not ready for determination. Consequently, I voted against point 2 of the operative provisions.

PARTLY DISSENTING OPINION OF JUDGE REPIK

(*Translation*)

I voted with the majority on all the points of the judgment except that concerning the award of 1,000,000 escudos to the applicant for pecuniary damage.

Paragraphs 47 to 51 of the judgment suggest that the award was made on the basis of two different premises: firstly, the claim had depreciated through inflation and, secondly, there was a small difference between the sum claimed and the sum awarded to the applicant which could not be accounted for by reference to the contractual interest rate of 12% for the thirteen years the proceedings lasted.

As to the latter ground, the sum of 722,135 escudos awarded to the applicant is equal to the balance of the proceeds of sale of the property securing the loan that was repossessed during the enforcement proceedings (see paragraphs 17, 18 and 21 of the judgment). The fact that the applicant was not repaid in full had, therefore, nothing to do with the length of the proceedings and I do not see why the State should be liable for the debtors' inability to repay their debt.

With regard to the depreciation of the claim through inflation, the present case is entirely different from that of *Akkuş v. Turkey* (*Akkuş v. Turkey* judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV), in which the Court took that factor into account. The instant case concerned a commercial transaction between individuals and account should have been taken of the risk of inflation when contracting the loan. The State should be held liable for the effects of inflation only in exceptional circumstances such as those that existed in the *Akkuş* case.