



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

**CASE OF CLUBE DE FUTEBOL UNIÃO DE COIMBRA
v. PORTUGAL**

(105/1997/889/1101)

JUDGMENT

STRASBOURG

30 July 1998

In the case of Clube de Futebol União de Coimbra 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 R. BERNHARDT, *President*,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr J.M. MORENILLA,

Mr M.A. LOPES ROCHA,

Mr J. MAKARCZYK,

Mr P. KŪRIS,

Mr E. LEVITS,

Mr J. CASADEVALL,

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

Having deliberated in private on 21 April and 29 June 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”) and by the Portuguese Government (“the Government”) on 29 October and 1 December 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 27295/95) against the Republic of Portugal lodged with the Commission under Article 25 by a Portuguese sports association, the Clube de Futebol União de Coimbra, on 21 March 1995.

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 105/1997/889/1101. 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 association designated the lawyer, Mr A. Vaz de Castro of the Coimbra Bar, who would represent it (Rule 31). The lawyer was given leave by the President to use the Portuguese language (Rule 28 § 3).

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 28 November 1997, in the presence of the Registrar, the Vice-President of the Court, Mr R. Bernhardt, drew by lot the names of the other seven members, namely Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla, Mr J. Makarczyk, Mr P. Kūris, Mr E. Levits and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Bernhardt replaced Mr Ryssdal, who had died on 18 February 1998, as President of the Chamber (Rule 21 § 6, second sub-paragraph).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Government, Mr A. Henriques Gaspar, counsel for the applicant association and the Delegate of the Commission, Mr I. Cabral Barreto, 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 association's memorials on 23 and 29 January 1998 respectively.

5. On 24 February 1998, with the agreement of the members of the Chamber, Mr Bernhardt decided not to hold a hearing (Rules 27 and 40).

6. After further consultations on the organisation of the proceedings, the President of the Chamber invited the Government and the applicant association's representative to lodge additional memorials.

7. On 11 March 1998 the representative of the applicant association lodged a supplementary memorial. On 13 March 1998 the Agent of the Government lodged his observations on the applicant association's claims under Article 50 of the Convention.

8. On 3 April 1998 the Secretary to the Commission had informed the Registrar that the Delegate did not wish to submit written observations.

9. On 6 April 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

10. Meanwhile, on 6 March 1998, the Government had informed the Registrar that an agreement had been reached with the applicant association.

11. On 21 April 1998, as the applicant association had not reacted, the Chamber asked the parties to inform it before 22 May of the stage the negotiations undertaken with a view to a friendly settlement had reached.

12. On 11 May 1998 Mr J. Pinto Ângelo, a member of the Coimbra Bar, sent the Registrar the text of a friendly settlement between the Government and the applicant association. On 18 May 1998 the association confirmed the terms of the friendly settlement, in a letter that was also signed by

Mr Pinto Ângelo in his capacity as the association's attorney with regard to the friendly settlement.

13. The Delegate of the Commission was consulted on 9 June 1998 and indicated that he had no objection to the settlement.

14. It was definitively confirmed on 18 June 1998 that a friendly settlement had been made, following a further exchange of correspondence between the parties in order to clarify its content.

AS TO THE FACTS

15. On 21 January 1983 an invitation to tender for the grant of a concession to operate bingo halls (*loto public*) was published in the Official Gazette (*Diario da Republica*).

16. On 24 February and 15 March 1983 the Secretary of State for Tourism decided to broaden the scope of the invitation to tender, enabling another bingo hall to be opened that would be reserved for the sports clubs of the towns of Aveiro, Coimbra and Leiria.

17. On 16 and 17 May 1983 the Secretary of State for Tourism, following the recommendation of the Gaming Board, issued two decisions agreeing to the provisional grant of the concession to a sports association other than the applicant association and to a public company.

18. The applicant association, which despite making a tender had not obtained the concession, commenced proceedings on 13 October 1983 in the Administrative Proceedings Division of the Supreme Administrative Court (*Supremo Tribunal Administrativo*) for an order quashing both decisions.

19. On 22 November 1983 State Counsel's Office delivered its opinion on the application.

20. On 16 February 1984 the reporting judge issued a summons for the Secretary of State for Tourism to appear before the court. The Secretary of State filed his pleadings in reply on 17 April 1984.

21. In an order of 10 May 1984, the reporting judge instructed the District Courts of Coimbra and Figueira da Foz to serve summonses on the association and the company which had been awarded the operating concession in question, requiring them to appear.

On 10 July 1984 the reporting judge had requested the registry of the Supreme Administrative Court to insist that the instructions sent to the Coimbra District Court be carried out. On 18 December 1984 the judge of Coimbra District Court replied that the "instructions to summon [one of the successful tenderers] had not yet been executed because the Court was overloaded with work".

The two successful tenderers, which were served with summonses on 22 May 1984 and 16 January 1985, lodged submissions in reply on 25 June 1984 and 15 February 1985 respectively.

22. In an order of 23 April 1985, the reporting judge invited the parties to lodge submissions on the merits of the application. The applicant association filed its submissions on 30 May 1985 and the two successful tenderers filed their submissions on 1 and 16 July 1985.

23. On 7 November 1985 State Counsel's Office gave its opinion on the admissibility and merits of the application, which was that the administrative decisions in question were null and void.

24. On 16 December 1985 and 14 April 1986, the reporting judge invited the parties to give their views on that issue and to lodge additional observations. The applicant association responded to that invitation on 28 April 1986.

25. On 20 June 1986 the reporting judge decided to send the case file to the other members of the Division hearing the case.

26. The Supreme Administrative Court gave its decision on 12 February 1987. It firstly dismissed the objection raised by the Secretary of State for Tourism and by the two successful tenderers that the applicant association had no *locus standi*, holding that the latter had a "direct and personal" interest in the outcome of the case. The Supreme Court went on to accept the applicant association's arguments and quashed the administrative decisions in question.

27. Both the Secretary of State for Tourism and the two successful tenderers lodged an appeal against that decision to the full Administrative Proceedings Division (*pleno da secção*) of the Supreme Administrative Court on 26 February and 2 and 5 March 1987 respectively. The case file was sent to that Division on 30 March 1987.

28. By 6 October 1987, the deadline for submitting grounds of appeal, only the two successful tenderers had done so (on 27 April and 4 May 1987).

29. On 4 November 1987, State Counsel's Office delivered its opinion on the merits of the appeal.

30. On 16 November 1987 the reporting judge decided to send the case file to the other members of the Division hearing the appeal. Owing to transfers and retirements, a number of judges in succession were subsequently appointed reporting judge in the case.

31. On 18 November 1992 the appeal lodged by the Secretary of State for Tourism was ruled to have lapsed (*deserto*), as he had not filed any submissions.

32. In a judgment of 29 September 1994 the full Administrative Proceedings Division of the Supreme Administrative Court dismissed the appeals and upheld the decision appealed against, holding:

“... the impugned decisions of 16 and 17 May 1983 were the final act ... in an invitation for tenders for a concession to operate two bingo halls at Coimbra, including one reserved to sports clubs, which was never issued as the invitation for tender was not formally open under the terms of Regulatory Decree no. 41/82 and paragraph no. 1 of Ministerial Order no. 839/82.

Thus the two above-mentioned instruments by which a concession to operate two bingo halls in Coimbra were granted without the requisite invitation for tenders, which was never lawfully issued, are invalid in their form and consequently null and void.”

33. Pursuant to that decision a new invitation to tender for the concession to operate the bingo hall was issued on 27 November 1994.

34. On 1 October 1997 the applicant association brought an action in the Coimbra District Court seeking compensation for the losses it had sustained as a result of the refusal to grant it the concession.

PROCEEDINGS BEFORE THE COMMISSION

35. The applicant association applied to the Commission on 21 March 1995. It relied on Article 6 § 1 of the Convention, complaining that the length of the proceedings before the Supreme Administrative Court had been unreasonable.

36. The Commission declared the application (no. 27295/95) admissible on 15 January 1997. In its report of 15 September 1997 (Article 31), it expressed the opinion, by twenty-three votes to seven, that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission’s opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment¹.

AS TO THE LAW

37. On 6 March 1998 the Court received a letter from the Agent of the Government in the following terms (see paragraph 10 above):

“In accordance with Rule [51] § 2 of Rules of Court [B], I am pleased to inform you that the Portuguese Government and the applicant [association] have reached an agreement for a friendly settlement of the dispute by way of payment of the sum of PTE 2,500,000 (two million five hundred thousand escudos).

The applicant [association] will also inform the Court of the terms of the friendly settlement that has been reached.

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.

Thus, the Portuguese Government requests that the case be struck out of the list in accordance with Rule [51] § 2 of Rules of Court [B].”

The lawyer acting for the applicant association wrote the following letter, which was received on 11 May 1998 (see paragraph 12 above):

“The Clube de Futebol União de Coimbra informs the Chamber that in accordance with Rule [51] § 2 of Rules of Court [B], it has reached an agreement with the Portuguese State with regard to the dispute between them. Consequently, it requests that the case be struck out of the list.

Under the terms of the agreement, the Portuguese State undertakes to pay the applicant [association] a sum of PTE 2,500,000 (two million five hundred thousand escudos) in compensation for the loss caused to the applicant [association] as a result of the delays in the proceedings before the courts.

That amount does not include any compensation which the applicant [association] may claim in a civil action.”

The applicant association confirmed the terms of the agreement in a letter of 18 May 1998 (see paragraph 12 above).

38. After being consulted in accordance with Rule 51 § 2 of Rules of Court B, the Delegate of the Commission raised no objection (see paragraph 13 above).

39. On 5 June 1998 the Government confirmed that a friendly settlement had been reached, but asked the applicant association to clarify the last sentence of its letter of 11 May 1998 (see paragraph 14 above).

40. In a letter of 15 June 1998 the applicant association said:

“(a) The European Court of Human Rights is called upon to determine whether the Portuguese took too long time to decide the applicant association’s case.

(b) If it finds in favour of the applicant association, the Court must say to what extent the fact that the domestic proceedings were too long caused a loss to the association.

(c) The issue to be decided by the Court is not limited merely to assessing whether the proceedings in Portugal took too long, but also has an effect on the decision on the merits, that is to say on the fact that the relevant domestic court has recognised that the applicant association’s claim is founded.

(d) Clearly that decision is not part of the dispute before the European Court.

(e) However, there also exists damage which resulted from the decision that was challenged in domestic proceedings and which, unless I am mistaken, the European Court has no jurisdiction to determine either.

(f) The applicant association has therefore sustained damage of two types; the first arising out of the excessive length of the proceedings in Portugal, the second resulting from the fact that the Portuguese Government has taken a measure that was detrimental to the interests of the association.

(g) As regards the excessive length of the domestic proceedings, the applicant association has applied to the European Court of Human Rights.

(h) As regards the Government's decision, the relevant domestic court has found in favour of the applicant association; it is therefore at the domestic level that the issue of whether damage has been caused and if so, how much, will be determined.

(i) It follows that the agreement reached by the applicant association and the Portuguese State concerns only the dispute referred to the Court.

(j) Indeed, it could not be otherwise as the determination of liability arising out of the contested measure is within the jurisdiction of the Portuguese courts."

41. On 18 June 1998 the Portuguese Government definitively confirmed the terms of the friendly settlement in question in a letter, saying (see paragraph 14 above):

"The clarification provided by the applicant in [his letter of 15 June 1998] with regard to the agreement reached (case in the European Court concerning the [length of the proceedings before the Portuguese administrative courts]), accords with the interpretation of the agreement proposed by the applicant and which the Government have accepted."

42. The Court takes notice of the friendly settlement reached by the Government and the applicant association. It may nonetheless decide, having regard to its responsibilities under Article 19 of the Convention, to proceed with the consideration of the case if a reason of public policy so requires (Rule 51 §§ 2 and 4 of Rules of Court B). No such reason exists in the present case.

In this connection the Court points out that in a number of earlier cases it has had occasion to consider whether the length of proceedings in the Portuguese administrative courts had been "reasonable" (see the *Baraona* judgment of 8 July 1987, Series A no. 122, and the *Neves e Silva* judgment of 27 April 1989, Series A no. 153-A). In so doing, it clarified the nature and extent of the State's obligations in that regard.

It follows that the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing on 30 July 1998
pursuant to Rule 57 § 2, second sub-paragraph, of Rules of Court B.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar