



“Camarate case” (concerning death of then Prime Minister and Minister of Defence in a plane crash): the Portuguese courts were not negligent

In today's Chamber judgment in the case **Lacerda Gouveia and Others v. Portugal** (application no. 11868/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The case concerned the criminal proceedings following the plane crash of 4 December 1980 in the Lisbon suburb of Camarate in which the Prime Minister, Mr Sá Carneiro, and the Minister of Defence, Mr Amaro da Costa, lost their lives. It is known in Portugal as the “Camarate case”.

Principal facts

The applicant, Margarida Lacerda Gouveia, Maria Arminda Bernardo de Albuquerque, Maria Manuela Simões Vaz da Silva Pires, Isabel Maria Ferreira Nunes de Matos Sá Carneiro and Manuel Rafael Lopes Amaro da Costa, are five Portuguese nationals who were born in 1949, 1952, 1946, 1937 and 1938 respectively and live in Portugal (in Lisbon, S. Domingos de Rana and Oporto). Close relatives of the applicants died on 4 December 1980 when their light aircraft crashed. The Prime Minister, Mr Sá Carneiro, and the Defence Minister, Mr Amaro da Costa, were on board, travelling from Lisbon to Oporto for an election rally. The plane crashed in Camarate, in the suburbs of Lisbon, and the occupants – the two men, their partners, the Prime Minister's head of staff, the pilot and the co-pilot – were all killed.

The investigation by the directorate-general for civil aviation concluded that the crash had been an accident, caused by a lack of fuel in one of the tanks, although it mentioned the difficulties encountered in examining the crash site because of the crowd that had gathered immediately at the scene. The autopsy conducted the same day as part of the police investigation concluded that the victims had burned to death. The final police report in 1981 ruled out any criminal act, in particular on the part of L.R., against whom suspicions had been raised. After seeking expert advice from the United States agency responsible for investigating civil aviation accidents, from British pathologists and from other Portuguese experts, the Attorney General decided in 1983 to suspend the criminal investigation pending possible new evidence.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

On two occasions, in 1990 and 1991, the prosecuting authorities, after examining the conclusions of parliamentary commissions of inquiry², decided to discontinue the criminal proceedings. This decision was upheld in 1992. In 1995, following the findings of the fifth parliamentary commission, the public prosecutor decided to re-open the proceedings. The victims' bodies were then exhumed for the second time and the forensic report found that there had probably not been an explosion on board the aircraft, although that possibility could not be ruled out. J.E., a former member of the armed forces with links to the far right who had apparently claimed to have blown up the aircraft, was questioned, before the prosecutor decided to terminate the proceedings.

The applicants, three of whom had applied to join the proceedings as assistants of the prosecuting authority (*assistentes*), commenced a private prosecution against four individuals, including L.R. and J.E., whom they accused of organising and carrying out a criminal attack on the Prime Minister and the Minister of Defence. In an order issued in 1996 – against which the applicants appealed unsuccessfully – the prosecution was declared time-barred. However, the order did not concern L.R. who, according to the applicants, was still being detained in Brazil in connection with another set of proceedings. The criminal proceedings against L.R. could therefore be continued, as the 15-year limitation period was suspended. The applicants submitted their accusations in final form in December 1996. In 1998 the judge of the Loures District Court discontinued the proceedings, reaffirming that the case file suggested that the crash had been an accident rather than a criminal act. On 1 June 2000 the Court of Appeal, in a judgment running to 803 pages, upheld the decision to discontinue the proceedings after examining all the evidence.

In 2001 a request to have the case re-opened was lodged by the applicants, who considered that there was new evidence incriminating L.R. Their request was refused on the ground that the Court of Appeal judgment had terminated the proceedings. The applicants appealed unsuccessfully, the Court of Appeal ruling that the proceedings were in any case time-barred. The Supreme Court dismissed an appeal on points of law by the applicants in May 2006 and refused a subsequent request for clarification.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing, right of access to a court), the applicants complained of a lack of diligence on the part of the Portuguese authorities, which in their view was the reason why the prosecution had been declared time-barred. They further complained of the omission of certain evidence during the proceedings and of the failure to assess some of the evidence properly.

The application was lodged with the European Court of Human Rights on 14 March 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Giorgio **Malinverni** (Switzerland),
 Işıl **Karakaş** (Turkey),
 Guido **Raimondi** (Italy), *judges*,
 Fernanda **Martins Xavier e Nunes** (Portugal), *ad hoc Judge*,

² Between 1982 and 2004 Parliament set up eight commissions of inquiry into the "Camarate case". At least seven of these commissions – made up of Members of Parliament assisted by representatives of the victims' families – produced reports on the causes of the crash, after hearing evidence from numerous witnesses and examining the findings of several scientific and medical expert reports.

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 6 § 1

Access to a court

The Court noted that the applicants had joined the criminal proceedings in question as *assistentes* and had not unequivocally waived their civil rights. Article 6 § 1 was therefore applicable in their case in so far as it concerned the issue of whether their right of access to a court for determination of their civil rights had been infringed because the prosecution had been declared time-barred.

The applicants did not dispute the time-limits for prosecution as such, but complained of omissions on the part of the prosecuting authorities and other judicial authorities in failing to act on their requests, and in particular on the request to commit for trial the individuals against whom they had brought a private prosecution. The Court had to ascertain whether the decisions taken by the competent authorities amounted to “negligence”³.

The Court took note of the overriding importance to Portuguese society of the tragic events at Camarate. That episode in the country’s history had marked it profoundly and continued to be the subject of public debate 30 years later. While the length of the proceedings (25 years) might appear excessive at first sight, it was readily explained by the considerable complexity of the case. A huge number of procedural steps and forensic examinations had been carried out and numerous witnesses and experts had given evidence. There had been no substantial delays at the various stages of the proceedings which could be attributed to the authorities, who had granted the vast majority of the applicants’ requests. The three decisions discontinuing the proceedings had all been upheld by the courts dealing with the case and the decisions to re-open the case had been taken following examination of the reports of the parliamentary commissions of inquiry, which had not altered the courts’ conclusions. Hence, there was no appearance of negligence on the part of the authorities.

Furthermore, at least in the case of one applicant, when the Lisbon Court of Appeal had upheld the order discontinuing the proceedings on 1 June 2000, the time-limit for prosecution had not yet expired. The Court of Appeal had held, in a detailed 803-page ruling for which ample reasons had been given, that there was no evidence of any criminal act; moreover, at the time the prosecution became time-barred several courts had already ruled that the criminal proceedings should be discontinued⁴.

While the Court understood the applicants’ distress, it held that the substance of their right of access to a court had not been impaired by any negligence or failure to act on the part of the competent authorities.

Taking of evidence

The Court reiterated that it was not its function to deal on errors of fact or law allegedly made by a national court, except where they might have infringed rights and freedoms protected by the Convention. While Article 6 guaranteed the right to a fair hearing, it did

³ As in [Anagnostopoulos v. Greece](#) (3 April 2003).

⁴ Unlike in the cases of *Anagnostopoulos v. Greece*, *Gousis v. Greece* (no. 8863/03) and *Atanasova v. Bulgaria* (no. 72001/01).

not lay down rules on the admissibility or assessment of evidence as such, which were a matter for the national courts.

The applicants had had complete freedom throughout the proceedings to submit their arguments to the competent authorities. Although the authorities had not granted all their requests for the taking of evidence, they had always given reasons for their decisions in that regard.

This complaint was therefore rejected as being manifestly ill-founded.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.