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

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Portuguese Football League's complaint against the tax authorities declared inadmissible

In its decision in the case of Liga Portuguesa de Futebol Profissional v. Portugal (application no. 49639/09) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The Liga Portuguesa de Futebol Profissional complained that in a case against the Portuguese tax authorities, it had not been provided with the opinion of the prosecution service. Finding that the applicant had not suffered any significant disadvantage on the ground that that opinion contained no new elements, the Court declared the complaint inadmissible.

Principal facts

The applicant, the Liga Portuguesa de Futebol Profissional ("La Liga Portuguesa"), is a Portuguese private law association with its headquarters in Porto.

The Liga Portuguesa organises professional football championships in Portugal. Its members are the sports clubs and societies which participate in those professional championships.

Following a lengthy period during which the professional football clubs had not been paying the tax authorities the amounts for which they were liable, on 30 July 1997 the Liga Portuguesa was authorised by its members to negotiate an agreement with the tax authorities concerning the recovery of those tax liabilities.

On 25 February 1999 an agreement was signed between the tax authorities, the Liga Portuguesa and the Portuguese Football Federation ("the Federation"). That agreement provided, firstly, that the clubs would agree to pay a portion of their future receipts to offset the contributions owed and, secondly, that if the amounts paid to the tax authorities by the clubs were insufficient to cover half the amounts owed, the Liga Portuguesa and the Federation would be liable for any outstanding amount due.

Relying on that last provision of the agreement, on 17 December 2004 the tax authorities notified the Liga Portuguesa that it was liable to pay 19,957,145 euros.

On 4 April 2005 the applicant took action in the North Central Administrative Court for annulment of the clause in the agreement obliging it to pay the outstanding amount due. By a judgment of 23 November 2006 the central court dismissed the applicant's claims, referring in particular to an opinion on the matter at issue of the advisory board of the office of the Attorney-General.

On 9 January 2007 the applicant lodged an appeal against that judgment with the Supreme Administrative Court. On 20 March 2007 the agent of the prosecution service at the Supreme Administrative Court submitted his opinion which concluded that the appeal was ill-founded. Without informing the applicant of that opinion, the Supreme Administrative Court rejected the appeal by a judgment of 23 May 2007.

Learning of the existence of the opinion of the prosecution service upon reading the judgment, the applicant, submitting that there had been a violation of the principle of a

fair trial, lodged an application for the judgment to be set aside. That application was rejected by a judgment of 19 September 2007.

On 10 October 2007 the applicant lodged an appeal with the Constitutional Court which was rejected by a judgment of 8 July 2009. The Constitutional Court considered that the fact that the prosecution service had issued an opinion had not disadvantaged the applicant procedurally since that opinion had not raised any new issue.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 September 2009.

Relying firstly on Articles 6 § 1 and 13 of the Convention, the applicant complained that it had not been provided with the prosecution service's opinion. Relying secondly on Article 1 of Protocol No. 1, the applicant complained that it had unjustifiably been obliged to settle tax liabilities.

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

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal)*, Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar.*

Decision of the Court

Articles 6 § 1 and 13

Under Article 35 § 3 (b) (admissibility criteria), the Court shall declare inadmissible any individual application if it considers that the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

The Court pointed out that the purpose of the new admissibility criterion was to enable more rapid disposal by the Court of unmeritorious cases and thus to allow it to concentrate on its central mission of providing legal protection, at European level, of the human rights secured by the Convention and the Protocols thereto. That new admissibility criterion referred to the notion that a violation of a right, however real from a purely legal point of view, had to attain a minimum level of severity to warrant consideration by an international court.

In order to verify whether the violation of a right reached the minimum level of seriousness, the nature of the right alleged to have been violated had to be taken into account along with the seriousness of the impact of the alleged violation on the exercise of that right and/or the potential consequences of the violation on the applicant's personal circumstances.

In this case, the applicant complained of a violation of the adversarial principle on the ground that it had not been provided with the opinion of the agent of the prosecution service at the Supreme Administrative Court.

However, the Court found that that opinion – which was only a few lines long – merely considered that the decision at issue had correctly interpreted the applicable law and that no new issue that might call for comments by the Liga Portuguesa had been raised. The Court also found that the party concerned had not, for its part, been able to demonstrate that it would have been able to provide any new and relevant elements in response to that opinion for the purposes of consideration of the case and, moreover, that the issue of the interpretation of the opinion had already been discussed before the first instance court. Lastly, it observed that the Supreme Administrative Court had not specifically relied on the opinion at issue in order to reject the applicant's appeal.

The Court therefore considered that in this case, the applicant had not suffered a "significant disadvantage" in the exercise of his right to participate adequately in the proceedings at issue. It stated on this occasion that given the circumstances of the case, the sum of approximately 20 million euros claimed by the tax authorities and giving rise to the proceedings could not be treated in the same way as a "disadvantage" within the meaning of Article 35 § 3 (b). The question was whether the failure to communicate the opinion of the agent of the prosecution service at the Supreme Administrative Court could cause the applicant a potential significant disadvantage. That was not established.

Consequently, and after having found that respect for the human rights secured by the Convention did not require an examination of the application on the merits and that the applicant's case had been examined on the merits at first instance and on appeal, the Court declared the complaint inadmissible.

Article 1 of Protocol No.1

The applicant also complained that it had unjustifiably been obliged to settle tax liabilities, in its opinion, imposed without any legal framework.

The Court observed that while it was doubtful that there had been any interference in the rights of the Liga Portuguesa, since as at the date on which the application had been lodged, the latter had not yet paid the amounts claimed by the tax authorities, it appeared that the Liga Portuguesa was complaining of the provisions of an agreement that it had freely signed. There was no evidence to suggest that the applicant had not signed the agreement in full knowledge of the facts.

The Court therefore declared the complaint ill-founded.

The decision 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.