



Differing interpretations by the Supreme Court on the admissibility of an action against the State for civil liability

In today's **Chamber** judgment¹ in the case of **Ferreira Santos Pardal v. Portugal** (application no. 30123/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the dismissal of an action for civil liability brought by the applicant against the State, a dismissal which was contrary to the Supreme Court's settled case-law in the matter.

The Court found in particular that the uncertainty in the case-law which had led to the dismissal of the action brought by Mr Ferreira Santos Pardal, taken together with the absence of a mechanism within the Supreme Court for ensuring consistency in its case-law, had had the effect of depriving the applicant of the possibility of having his action against the State examined, although this right had been made available to other persons in a similar situation.

Principal facts

The applicant, Jose Luis Ferreira Santos Pardal, is a Portuguese national who was born in 1955 and lives in Braga (Portugal).

In October 1997 Mr Ferreira Santos Pardal was involved in a road accident as a passenger in his own vehicle. His insurance company reimbursed his hospitalisation and medical expenses until the end of 1998. The insurance company then informed him that he was considered to have recovered and stated that he had a partial permanent occupational disability.

Mr Ferreira Santos Pardal brought proceedings for civil liability against his insurance company before the Santo Tirso Court. The court dismissed his claim. Mr Ferreira Santos Pardal then lodged an appeal with the Porto Court of Appeal, asking that a question for a preliminary ruling be referred to the Court of Justice of the European Communities (CJEC), subsequently the Court of Justice of the European Union (CJEU). The issue was whether the European Union Directive 90/232/EEC of 14 May 1990 had extended cover for civil liability insurance to personal injuries sustained by the policy holder if he or she was a passenger in his or her own vehicle at the time of an accident. The Porto Court of Appeal rejected the appeal and upheld the Santo Tirso Court's judgment. It held that it was not necessary to refer the question for a preliminary ruling to the CJEC, on the ground that Portuguese legislation had incorporated the relevant directive and that the court had no doubts regarding the matter.

Mr Ferreira Santos Pardal lodged an appeal on points of law with the Supreme Court, again requesting that a preliminary ruling be sought from the CJEC with regard to the interpretation to be given to the directive in question. The Supreme Court dismissed Mr Ferreira Santos Pardal's appeal.

In December 2007 Mr Ferreira Santos Pardal brought proceedings to establish non-contractual civil liability against the State before the Braga Court, alleging a judicial error arising, in his view, from the

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.

proceedings brought against the insurance company. He complained of an incorrect interpretation of the above-mentioned directive. The Braga Court dismissed his claim. Mr Ferreira Santos Pardal appealed, and the Guimarães Court of Appeal partly upheld his claim, finding that the Supreme Court had failed to discharge its obligation to refer the question to the CJEC for a preliminary ruling, thus committing a serious and clear error, in breach of Community law. In consequence, it held that the State's non-contractual civil liability in the exercise of its judicial functions had been established.

The State Counsel's Office lodged an appeal on points of law with the Supreme Court. On 3 December 2009 the Supreme Court upheld that appeal. It quashed and annulled all the operative provisions of the Guimarães Court of Appeal's judgment, upholding the Braga Court's judgment.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant considered that the interpretation of the domestic law with regard to the State's civil liability when exercising its judicial functions, as given by the Supreme Court in its judgment of 3 December 2009, had been contrary to its consistent case-law and in breach of the principles of legal certainty and the right to a fair hearing.

The application was lodged with the European Court of Human Rights on 24 May 2010.

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

Isabelle Berro (Monaco), *President*,
Elisabeth Steiner (Austria),
Khanlar Hajiyev (Azerbaijan),
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),
Julia Laffranque (Estonia),
Paulo Pinto de Albuquerque (Portugal),
Dmitry Dedov (Russia),

and also Søren Nielsen, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that the Government had not disputed that the domestic case-law allowed for the possibility of bringing a civil liability action against the State for damage arising from a judicial error. It noted, however, that the Supreme Court had held in its judgment of 3 December 2009 that this possibility was not available at the relevant time. It was thus the Supreme Court's judgment which had given rise to the conflicting case-law complained of by Mr Ferreira Santos Pardal.

The Court reiterated that divergences in case-law were an inherent consequence of any judicial system which was based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. The Court emphasised, however, that the role of a supreme court was precisely to resolve such conflicts. If divergent practice developed within one of the country's highest judicial authorities, this court became a source of legal uncertainty, thereby undermining the principle of legal certainty and reducing public confidence in the judicial system.

The Court noted that the Supreme Court had adopted a diametrically opposite conclusion to that reached in the settled domestic case-law. It noted that its decision had not represented a departure from precedent based on a new interpretation of the law, since the Supreme Court had subsequently reverted to its established case-law in other proceedings.

With regard to the remedies available to Mr Ferreira Santos Pardal to correct this situation, the President of the Supreme Court did not submit the situation to the plenary court of his own motion in order to ensure uniform case-law, although – under the Code of Civil Procedure – he should have done so. With regard to the extraordinary appeal seeking harmonisation of the case-law, the Court noted that this was not applicable at the relevant time.

The Court concluded that the uncertainty in the case-law which had resulted in dismissal of the action brought by Mr Ferreira Santos Pardal, taken together with the absence of a mechanism within the Supreme Court for ensuring consistency in its case-law, had had the effect of depriving the applicant of the possibility of having his action against the State examined, although this right had been made available to other persons in a similar situation. There had therefore been a violation of Article 6 § 1.

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.