

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

FIRST SECTION

# CASE OF SANTOS SILVA v. PORTUGAL

*(Application no. 52246/12)*

JUDGMENT

STRASBOURG

30 April 2015

*This judgment is final but it may be subject to editorial revision.*



**In the case of Santos Silva v. Portugal,**

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Mirjana Lazarova Trajkovska, *President,*
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 7 April 2015,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 52246/12) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Portuguese national, Mr José António Oliveira Santos Silva ("the applicant"), on 31 July 2012.

2. The applicant was represented by Mr J. J. Ferreira Alves, a lawyer practising in Matosinhos. The Portuguese Government ("the Government") were represented by their Agent, Mrs M. F. da Graça Carvalho, Deputy-Attorney General.

3. On 4 March 2014 the application was communicated to the Government.

# THE FACTS

## THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Louredo, Santa Maria da Feira.

5. On 19 December 2005 the applicant lodged an action with the Santa Maria da Feira Court (domestic proceedings no. 9835/05.7TBVFR) against different defendants regarding the right to use a water channel.

6. On 3 January 2006 applicant rectified the initial application upon request.

7. On 19 February 2006 the defendant I. lodged her submissions in reply (*contestação*) and informed the court that defendant A., her husband, had died in May 2005.

8. On 15 February 2006 defendant J. informed the Santa Maria da Feira Court that defendant A. J. had died in 1973 and that his heirs were living in Brazil.

9. On 5 May 2006 the Santa Maria da Feira Court stayed the proceedings, pending the outcome of the inheritance proceedings in relation to the deceased defendants, after having given the applicant a deadline to submit to the case-file the death certificates of the deceased.

10. On 27 November 2006 the applicant applied to the Santa Maria da Feira Court for leave to continue the proceedings against the heirs of the deceased defendants (*incidente de habilitação de herdeiros*). He submitted the relevant documents supporting his request on 9 January 2007, after being notified by the Santa Maria da Feira Court.

11. On 2 July 2007 the Santa Maria da Feira Court admitted the heirs of the concerned defendants as parties to the proceedings.

12. On an unknown date the court, taking into account its decision of 2 July 2007, resumed the main proceedings.

13. On 23 April 2008 the applicant was notified of the failure of the Santa Maria da Feira Court to summon defendant A. G.

14. On 27 January 2010 the Santa Maria da Feira Court interrupted the proceedings for lack of action from the parties.

15. On 26 January 2011 the applicant informed the court about the new address of defendant A.'s heir.

16. On an unknown date the proceedings were resumed.

17. On 24 November 2011 the Santa Maria da Feira Court adopted a decision dismissing the applicant's claim for being time-barred.

18. On 6 December 2011 the applicant appealed against the decision to the Porto Court of Appeal (*Tribunal da Relação do Porto*).

19. On 4 June 2013 the Porto Court of Appeal quashed the first instance decision and ordered a new trial.

20. The proceedings are still pending at first instance.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

21. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement. He also complained that he had not had an effective remedy in this respect. He relied on Articles Article 6 § 1 and 13 of the Convention, which reads as follows in the relevant parts:

**Article 6 § 1**

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

**Article 13**

"Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority ..."

22. The Government contested that argument.

23. The period to be taken into consideration began on 19 December 2005 and has not yet ended. It has thus lasted nine years and one month for two levels of jurisdiction.

## A. Admissibility

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The alleged violation of Article 6 § 1 of the Convention*

25. The Government acknowledged that the proceedings had to date been subject to a delay and that their length had exceeded what would legitimately be expected. Nevertheless, the Government were of the opinion that the length of the proceedings in the present case had been caused by the applicant's behaviour and could not been attributable to the domestic courts.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

27. The Court firstly notes that the proceedings have already lasted more than nine years for two levels of jurisdiction.

28. The Court then notes that the case is not particularly complex. Although the applicant can be deemed responsible for some delays encountered, it appears to the Court that the protractedness of the proceedings resulted mainly from the relevant authorities.

29. In particular, the Court observes that the proceedings came to a standstill for approximately three years between 23 April 2008 and 2011, when the Santa Maria da Feira Court remained inactive awaiting for the applicant to provide information on one of the defendant's address, causing

the domestic court to interrupt the proceedings (see §§ 13 -16, above). In this regard, the Court recalls that even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial requirement by Article 6 § 1 (see *Pafitis and Others v. Greece*, 26 February 1998, § 93, *Reports of Judgments and Decisions* 1998-I; *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII).

30. The Court lastly notes that the proceedings lasted almost one year and half before the Porto Court of Appeal and have been pending for more than one year at first instance awaiting a new trial.

31. Having examined all the material to it, the Court finds no justification – nor has any been put forward by the Government – for such delays, which amount to approximately three years and are attributable to the national authorities (see *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II).

32. In the light of the above, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

33. There has accordingly been a breach of Article 6 § 1 of the Convention.

*2. The alleged violation of Article 13 of the Convention*

34. The applicant further complained of the fact that in Portugal there was no court to which an application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

35. The Government contested that argument.

36. The Court recalls that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 for a case to be heard within a reasonable time (*Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

37. Having regard to its case-law in the subject (see *Martins Castro and Alves Correia de Castro v. Portugal*, no. 33729/06, 10 June 2008) and the fact that the Government have not submitted any arguments which would require it to depart from the findings in the present case, the Court considers that the applicant had had no effective remedy against the excessive length of the proceedings.

38. Therefore, there has been a breach of Article 13 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

40. The applicant claimed 16,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government contested the claim.

42. The Court considers that the applicant must have sustained non pecuniary damage. Ruling on an equitable basis, the Court awards the applicant EUR 3,640 under that head.

### B. Costs and expenses

43. The applicant also claimed EUR 3,450 for the costs and expenses incurred before the Court.

44. The Government contested the claim.

45. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant the sum of EUR 1,000 for the proceedings before the Court

### C. Default interest

46. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 3,640 (three thousand six hundred forty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President