[TRANSLATION]

...

THE FACTS

The applicant, Mr Joaquim Moreira Barbosa, is a Portuguese national who was born in 1942 and lives in Maia (Portugal). He was represented before the Court by Mr J.J.F. Alves, a lawyer practising in Matosinhos.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 2 January 1996 the applicant lodged a criminal complaint against a certain F.P.S. with the Matosinhos public prosecutor's office, accusing him of having issued a bad cheque.

On 9 February 1996 the accused gave evidence to the public prosecutor's office. On 6 March 1996 the public prosecutor dealing with the case filed his submissions.

On 11 April 1996 the applicant brought an action for damages.

In an order of 14 June 1996 a judge of the Matosinhos Criminal Court, to which the case had been referred, set it down for hearing on 14 April 1997.

On that day the hearing was adjourned until 5 February 1998 because the defendant was not present. The defendant subsequently produced a medical certificate, which the judge accepted in an order of 24 April 1997.

On 5 February 1998, noting that the defendant was again absent, the judge adjourned the hearing until 18 May 1998 and issued a warrant for him to be brought before the court. On the appointed day, however, the defendant did not appear. The judge adjourned the hearing until 20 October 1998 and renewed the warrant.

On 20 May 1998 the Republican National Guard indicated that the defendant had not been found at the address given. In an order of 4 June 1998 the judge asked the police to search for the defendant's possible new address.

On 20 October 1998, as the defendant had again failed to appear, the hearing was adjourned until 28 January 1999. For the same reason, it was then adjourned until 4 March 1999 and subsequently *sine die*.

On 24 April 1999 the judge made an order for the defendant to be tried *in absentia*.

In an order of 20 September 1999 he decided that the defendant should be given the opportunity to appear voluntarily within six months.

On 28 January 2000 the applicant applied to the Supreme Council of the Judiciary under Articles 108 and 109 of the Code of Criminal Procedure for an order to expedite the proceedings.

In a decision of 8 February 2000 the Supreme Council of the Judiciary refused his application, holding that, in view of the judge's order of

20 September 1999, it was unable to issue an order to expedite the proceedings.

On 18 February 2000 the judge, at the request of the public prosecutor's office, ordered the registry to make enquiries to the tax and social-security authorities with a view to ascertaining the defendant's whereabouts.

On 29 April 2000 the Republican National Guard informed the court of the defendant's new address.

In an order of 30 May 2000 the judge set the case down for hearing on 30 June 2000 or, if the hearing could not take place on that date, on 20 October 2000.

The defendant did not appear in court. He was accordingly tried *in absentia* at a hearing on 11 December 2000.

In a judgment of 14 December 2000 he was found guilty and fined 150,000 Portuguese escudos (PTE). He was also ordered to pay the applicant PTE 1,500,000 in damages, together with interest.

On 30 January 2001 the applicant brought proceedings in the Matosinhos Criminal Court for the enforcement of the judgment in so far as it concerned the payment of the damages awarded.

On 6 February 2001 the judge ordered the attachment of the debtor's property. The attachment was carried out on 22 November 2001.

On 7 May 2002 the judge ordered the sale by the court of the property in question.

The enforcement proceedings are still pending.

COMPLAINT

Relying on Article 6 § 1 of the Convention, the applicant complained of the length of the proceedings.

THE LAW

The applicant complained of the length of the proceedings. He relied on Article 6 § 1 of the Convention, which provides, *inter alia*:

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

A. Exhaustion of domestic remedies

The Government objected that the applicant had failed to exhaust domestic remedies.

They submitted, firstly, that the State incurred non-contractual liability for an infringement of the right to obtain a decision within a reasonable time and was therefore under an obligation to pay compensation to victims. To that end, the applicant could avail himself of an action to establish non-contractual liability, as provided for in Legislative Decree no. 48051 of 21 November 1967, which was an accessible, sufficient and effective means of remedying the situation he complained of.

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The applicant submitted that none of the remedies referred to by the Government provided effective or sufficient redress in respect of his complaint. The action to establish non-contractual liability provided for in Legislative Decree no. 48051 did not have a sufficient degree of legal certainty to be used for the purposes of Article 35 § 1 of the Convention. As regards the order for the defendant to be tried *in absentia*, it had been lawful and any remedy was therefore bound to fail.

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... the Court observes that Articles 108 and 109 of the Portuguese Code of Criminal Procedure afford defendants the opportunity to apply for an order to expedite the proceedings. It points out that such an application has been held to be a remedy that must be used in respect of the length of criminal proceedings (see *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

The Court notes that in the instant case the applicant made such an application but without success. It remains to be determined whether he should also have brought an action to establish non-contractual liability on the part of the State. Such an action has likewise been held to be a remedy that must be used in respect of the length of proceedings (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

The Court reiterates in this connection that applicants must have made normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Wójcik v. Poland*, no. 26757/95, Commission decision of 7 July 1997, Decisions and Reports 90, p. 24, and *Günaydin v. Turkey* (dec.), no. 27526/95, 25 April 2002).

Having regard to the circumstances of the case, the Court considers that it would be unreasonable to argue that the applicant should have brought an action of the kind referred to by the Government, seeing that in the course of the proceedings he availed himself of a remedy – an application for an order to expedite the proceedings – which the Court has previously found to be adequate and sufficient (see *Quiles Gonzalez v. Spain* (dec.), no. 71752/01, 7 October 2003).

The Court therefore dismisses this limb of the Government's objection.

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