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

FOURTH SECTION

DECISION

Application no. 29358/18
Ana Cláudia RODRIGUES RUSSO
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 30 May 2023 as a Committee composed of:

Armen Harutyunyan, *President*,
Anja Seibert-Fohr,
Ana Maria Guerra Martins, *judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 29358/18) 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") on 15 June 2018 by a Portuguese national, Ms Ana Cláudia Rodrigues Russo ("the applicant"), who was born in 1985, lives in Valbom-Gondomar and was represented by Ms R.S. Alves, a lawyer practising in Lisbon;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is a judge. The case concerns proceedings brought by her in connection with her professional appraisal following a routine inspection by the High Council of the Judiciary (*Conselho Superior da Magistratura*, hereafter "the CSM"). Relying on Article 6 § 1 of the Convention, she complained of the limited extent of the Supreme Court's review of the CSM's decisions in that respect.

2. On 7 February 2017 the CSM, acting in its permanent composition (*Conselho Permanente*), decided on foot of a recommendation made by a judicial inspector to assign the applicant a rating of "adequate" in respect of the work performed by her between 2 September 2015 and 31 August 2016. The applicant lodged a complaint against that decision with the plenary composition of the CSM (*Conselho Plenário*). In order to gather evidence to

substantiate her complaint, she requested documents from the District Court where she had worked during the appraisal period, in particular concerning the workload and performance of other judges. That request was sent to the President of the relevant District Court, who refused it on 30 March 2017. The applicant appealed against that decision to the CSM. On 11 July 2017 the CSM found the appeal devoid of purpose on account of the fact that, acting in its plenary composition on 6 June 2017, it had already confirmed the decision of 7 February 2017 regarding the rating of the applicant.

3. Meanwhile, on 4 April 2017 the CSM had dismissed an ancillary complaint that had been lodged by the applicant seeking the removal of the judicial inspector who had carried out the routine inspection of her service (see paragraph 2 above). The applicant applied for judicial review of that decision to the Judicial Division of the Supreme Court (*Secção do Contencioso Administrativo do Supremo Tribunal de Justiça*), submitting documents and witness evidence and requesting a hearing. On 28 February 2018 the Supreme Court rejected the application.

4. The applicant applied to the Judicial Division of the Supreme Court for judicial review of the decisions of the CSM of 6 June and 11 July 2017 concerning respectively the rating and the request for documents.

5. In her application for judicial review of the CSM's decision of 6 June 2017 (see paragraph 2 above), the applicant alleged a lack of impartiality on the part of the judicial inspector whose removal she had sought (see paragraph 3 above). She complained of the contradictory terms of that decision and of errors in the reasoning and also alleged that she had not the opportunity to challenge the comparison between her performance and that of her colleagues contained in the CSM's decision, or to adduce any additional evidence in that respect. She proposed to submit documents and witness evidence in support of her appeal. On 23 January 2018 the Supreme Court dismissed the application for judicial review. It considered that the CSM's decision had not been vitiated by any of the alleged flaws pointed to by the applicant and that the rating assigned to her was in accordance with the objective and adequate evidence produced. Concerning the proposed production of further evidence, the Supreme Court considered that it was not necessary to admit all the evidence proposed by the applicant, but only the evidence reasonably required to evaluate her work in accordance with the applicable criteria. It added that there was no objective reason, either apparent or suggested by the applicant, to produce the evidence mentioned by her and that to do so would be pointless considering the evidence already available in the file and the nature of the inspection proceedings, within which it made no sense, in general terms, to admit witness evidence.

6. In her application for judicial review of the decision of 11 July 2017 (see paragraph 2 above), the applicant argued that it had been based on erroneous factual assumptions and had violated the good faith principle. On 28 February 2018 the Supreme Court rejected the application.

7. Relying on Article 6 § 1 of the Convention, the applicant alleged a breach of her right to a fair trial in the various proceedings subsequent to the awarding of her professional rating. She contended that by refusing to review the facts that the CSM had considered established, the Judicial Division of the Supreme Court had deprived her of effective access to a court with full jurisdiction, resulting in an inequality of arms, since the applicant had not been in a position to challenge those facts. She also complained of the fact that she had been prevented from adducing further evidence before the Judicial Division of the Supreme Court in so far as she was not allowed to have access to it.

THE COURT'S ASSESSMENT

8. At the outset, the Court notes that the proceedings seeking the removal of the judicial inspector and access to documents from the District Court where the applicant had worked during the appraisal period (see paragraphs 2-3 above) are of an ancillary nature and thus outside the scope of Article 6 of the Convention (see *Schreiber and Boetsch v. France* (dec.), no. 58751/00, ECHR 2003-XII). Therefore, the complaints concerning those two sets of proceedings are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must thus be rejected in accordance with Article 35 § 4.

9. The Court is not convinced that Article 6 of the Convention is applicable in the instant case. However, it will not decide on this issue since the case is inadmissible in any event for the following reasons.

10. The Court refers to the principles set out in the case of *Ramos Nunes de Carvalho e Sá v. Portugal* ([GC], nos. 55391/13 and 2 others, §§ 176-86, 6 November 2018) as regards the extent of the judicial review performed by the Supreme Court. In the present case, the Court notes that the applicant requested the Supreme Court to set aside the CSM's decision of 6 June 2017 (see paragraphs 2 and 5 above) on the basis of various alleged flaws, and that the Supreme Court ruled on each of the alleged flaws before dismissing the application.

11. Regarding in particular the question of evidence, the Supreme Court stated that it was not necessary to admit all the evidence requested by a judge whose work had been inspected, but only the evidence reasonably needed to evaluate his or her performance in accordance with the applicable criteria; it added that there was no objective necessity, either apparent or suggested by the applicant, to produce the evidence requested by her (see paragraph 5 above).

12. The Court does not discern any sign of arbitrariness or manifest unreasonableness in the Supreme Court's approach concerning the relevance and admissibility of evidence in connection with the questions raised by the applicant, taking into account the subject matter, namely the appraisal and

rating of the applicant following a routine inspection. Additionally, the Court notes that the Supreme Court gave sufficient reasons for its conclusions that producing the witness evidence requested by the applicant was not appropriate and that the relevant facts needed to make a proper evaluation of her performance during the period in question had been duly established.

13. In view of the foregoing, the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 June 2023.

Crina Kaufman Acting Deputy Registrar	Armen Harutyunyan President