



No violation of right to fair trial for former chair of Banco Espírito Santo bank

In today's **Chamber judgment**¹ in the case of [Espírito Santo Silva Salgado v. Portugal](#) (application no. 30970/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 2 (right to a fair trial / presumption of innocence) of the European Convention on Human Rights

The case concerned an application lodged by the former chair of the board of directors of the Banco Espírito Santo ("BES"), one of the most important private banks in Portugal, the collapse of which had been the subject of resolution action and had attracted considerable media attention. In the present case, the applicant complained about the administrative proceedings that had been brought against him by the Bank of Portugal, alleging that various public statements made by the governor of that bank at the relevant time had impaired his right to an independent and impartial tribunal and his right to be presumed innocent.

As to the Bank of Portugal's alleged lack of impartiality, the Court took the view that the relevant question was whether the decision taken by that administrative authority had been reviewed by a judicial body with full jurisdiction. In that regard, it found that the applicant had been afforded the benefit of judicial scrutiny of sufficient scope for the purposes of Article 6 § 1 of the Convention. It further found that the statements made by the governor of the Bank of Portugal had not impaired the applicant's right to be presumed innocent under Article 6 § 2 of the Convention.

Principal facts

The applicant, Ricardo Espírito Santo Silva Salgado, is a Portuguese national who was born in 1944. Until July 2014 he was the chair of the board of directors of the private bank Banco Espírito Santo ("BES") and of the Espírito Santo Financial Group S.A. ("ESFG").

In August 2014 the BES recorded a loss of 3 577 million euros on account of its exposure to debt in a Luxembourg-based company (Espírito Santo Group), to which it belonged.

On 3 August 2014 the Bank of Portugal decided to take resolution action in respect of the BES, a fact which it announced during a press conference held by five members of its board of directors, which was broadcast live on television and on a number of the country's radio stations.

During the press conference, certain statements were made by the then governor of the Bank of Portugal, C.C. He subsequently gave three interviews in 2016, two with the weekly *Expresso* newspaper and one with the *Público* daily.

Meanwhile, between 2014 and 2015, the board of directors of the Bank of Portugal had launched two investigations into the BES, the ESFG, the applicant and three other senior executives of the BES for fraudulent acts of financial mismanagement, unjustified failure to comply with instructions from the Bank of Portugal and breach of conflict-of-interest rules in connection with events that had occurred between 2009 and 2014. Those investigations were subsequently joined.

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.

In 2018 the Bank of Portugal's investigators made their submissions, which were made known to the applicant, who requested, in particular, the withdrawal from the proceedings of all the members of the Bank of Portugal's board of directors. Basing his request on the statements C.C. had made during the press conference and his interviews with the media, the applicant alleged that there were grounds to believe that the impartiality of the members of the Bank of Portugal's board of directors could not be ensured. His request was rejected.

Ultimately, on 8 September 2020, the Bank of Portugal's board of directors imposed an administrative fine of a total of four million euros on the applicant, along with two additional sanctions. The applicant challenged that decision before the Court for Competition, Regulation and Supervision ("CCRS") and requested the withdrawal of C.C. in his capacity as governor of the Bank of Portugal. The court dismissed this request, noting that, his term of office having expired in July 2020, C.C. was no longer the governor of the Bank of Portugal. In addition, the court upheld the administrative fine and ancillary penalties that had been imposed on the applicant. The applicant lodged an appeal against that decision with the Lisbon Court of Appeal, but it was dismissed. He also applied to the Constitutional Court, but his application was declared inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, the applicant argued that, in the light of the statements made by the then governor of the Bank of Portugal, he had not received a fair hearing by an independent and impartial tribunal, since the allegations against him had been mentioned in those statements.

Relying on Article 6 § 2 of the Convention, he further alleged that the statements made by C.C. before and during the administrative proceedings had impaired his right to be presumed innocent.

The application was lodged with the European Court of Human Rights on 5 June 2019.

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

Lado **Chanturia** (Georgia), *President*,
 Faris **Vehabović** (Bosnia and Herzegovina),
 Tim **Eicke** (the United Kingdom),
 Lorraine **Schembri Orland** (Malta),
 Ana Maria **Guerra Martins** (Portugal),
 Anne Louise **Bormann** (Denmark),
 Sebastian **Rădulețu** (Romania),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1 (right to a fair trial)

For the following reasons, the Court did not consider it necessary to ascertain whether, in view of C.C.'s statements to the press, the Bank of Portugal had been impartial, or whether the applicant's fears in that regard were objectively justified. First, C.C. had not been involved in adopting the resolution of the Bank of Portugal's board of directors on 8 September 2020 dealing with the allegations against the applicant, since his term of office as governor had expired on 20 July 2020. Second, the Bank of Portugal was not a judicial body or, in other words, a "tribunal" within the meaning of Article 6 § 1 of the Convention.

Moreover, the Court considered that the question in the present case was whether the Bank of Portugal's decision had been reviewed by a judicial body with full jurisdiction.

In this connection, the Court noted that the applicant had been able to challenge the Bank of Portugal's decision before the CCRS, which had ruled on both the facts and the law, after examining all the evidence on which that decision had been based. That court had held several hearings in the course of which it had heard the applicant and witnesses. The CCRS's supervision, therefore, had not consisted simply in a review of lawfulness, but had indeed been conducted by a court with full jurisdiction, which had afforded the applicant an examination of both the merits of the finding against him and the proportionality of the sanctions imposed by the Bank of Portugal. In addition, the applicant had been able to pursue a second remedy before the Lisbon Court of Appeal, which had ruled on points of law. Furthermore, the applicant had not called into question the impartiality of the judicial bodies that had ruled on his appeals against the Bank of Portugal's decision. Their decisions, moreover, appeared to have been duly reasoned, including the decision on the applicant's recusal request, wherein the CCRS had addressed all the issues he had raised.

The Court concluded that, with regard to the decision delivered by the Bank of Portugal, the applicant had been afforded the benefit of judicial scrutiny of sufficient scope for the purposes of Article 6 § 1 of the Convention. **There had therefore been no violation of that Article.**

Article 6 § 2 (presumption of innocence)

The Court noted that C.C.'s statements had been made in a context where the collapse of one of the most important private banks in the country, against which resolution action had just been taken, was receiving extensive media coverage. It also considered that it had been foreseeable that, as the former chair of the board of directors of the BES, the applicant would be of interest to the media and the general public, in particular in connection with the proceedings initiated against him by the Bank of Portugal. It found, moreover, that the statements complained of had not been made by a judge, but by the governor of the Bank of Portugal, namely, the representative of a public authority.

Regarding the statements made prior to the opening of the administrative proceedings: the Court noted that they had been made during a press conference held by the Bank of Portugal to announce the resolution action it had just taken against BES. They had thus been made two months prior to the laying of "charges" within the meaning of Article 6 § 1 of the Convention. Moreover, the words used had not been those of C.C. himself, but those contained in the Bank of Portugal's decision concerning the resolution action taken in respect of BES. Furthermore, the statements complained of had nowhere mentioned the applicant specifically and had instead concerned the general situation of the BES, since their purpose had been to inform the public of resolution action that had just been taken against it and of the reasons that had prompted such action. In the Court's view, at the time when they had been made, those statements had not been liable to sway public opinion into believing that the applicant had committed the administrative offences in question.

As to the statements made after the opening of the administrative proceedings, the Court observed that C.C. had not mentioned the ongoing administrative proceedings against the applicant before the Bank of Portugal in any of the interviews in question.

Consequently, the Court found that the statements made by C.C. in his capacity as governor of the Bank of Portugal had not impaired the applicant's entitlement to the presumption of innocence in the proceedings initiated against him by the Bank of Portugal. **There had therefore been no violation of Article 6 § 2 of the Convention.**

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.