



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

FOURTH SECTION

**CASE OF MATEUS PEREIRA DA SILVA v. PORTUGAL**

*(Application no. 67081/13)*

JUDGMENT

STRASBOURG

25 July 2017

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



**In the case of Mateus Pereira da Silva v. Portugal,**

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

Egidijus Kūris, *President*,  
Paulo Pinto de Albuquerque,  
Iulia Motoc, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 4 July 2017,

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

**PROCEDURE**

1. The case originated in an application (no. 67081/13) 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, Ms Mateus Pereira da Silva (“the applicant”), on 17 October 2013.

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, Ms M.F. da Graça Carvalho, Deputy Attorney General.

3. On 18 March 2015 the complaint concerning the length of the proceedings and the lack of remedies in that respect were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in Torres Novas.

**A. The eviction proceedings**

5. On 16 February 2004 eviction proceedings were instituted against the applicant’s husband, A.S., before the Court of Torres Novas (domestic proceedings no. 154/04.7TBTNV).

6. On 31 March 2004 A.S. lodged his submissions in reply (*contestação*) and on 6 May 2004 the claimant lodged new submissions (*réplica*).

7. On 22 September 2006 A.S. died.

8. On 7 November 2006 the court suspended the proceedings and on 9 November 2007 it declared the proceedings' interruption as the claimant had not taken the initiative of continuing the proceedings against the defendant's heirs.

9. On 18 December 2007 the claimant applied for leave to continue the proceedings against the defendant's heirs (*incidente de habilitação de herdeiros*).

10. After having faced some difficulties in summoning the heirs, the court managed to summon all of them and on 13 June 2009 the defendant's heirs, including the applicant, were admitted as parties to the proceedings.

11. On 26 June 2009 the court was informed of the claimant's death.

12. On an unknown date one of the claimant's heirs, A.O., applied for leave to continue the proceedings with her and the other claimant's heir as parties.

13. On 22 June 2012 the court admitted the claimant's heirs as parties to the proceedings.

14. On 22 January 2010 the court was informed of the death of one of the defendant's heirs.

15. On an unknown date A.O. applied for leave to continue the proceedings against the heirs of the deceased party. On 4 May 2010 she provided information on those heirs and in July she provided their birth certificates. On 12 July 2011 A.O. provided the heirs' addresses, following which they were summoned.

16. On 30 April 2012 those heirs were admitted as parties to the proceedings.

17. On 14 December 2012 the court gave a preparatory decision setting out the facts that had already been established and those that remained outstanding (*despacho saneador*).

18. On 14 January 2013 the claimant's heirs requested an inspection to the house, which took place on 3 April 2013.

19. On 29 May 2013 the hearing that had been scheduled for that day was postponed as the parties' lawyers were not present.

20. Subsequently, hearings were held on 18 September, 29 October and 17 December 2013.

21. On 14 January 2014 the court adopted a decision with regard to the factual basis (*resposta à matéria de facto*) and on 13 March 2014 it delivered its decision in which it ordered the applicant to vacate the house and to pay rent arrears.

22. On an unknown date the applicant appealed against that decision. The appeal was declared inadmissible for an unknown reason.

## **B. The enforcement proceedings**

23. As the applicant had not complied with the 13 March 2014 decision (see paragraph 21 above), on 19 January 2015 the claimant instituted enforcement proceedings against her before the Santarém Court.

24. According to the latest information received by the Court on 23 November 2015, on that date the enforcement proceedings were still pending at first instance.

## THE LAW

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

25. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. She also complained that she had not had an effective remedy in this respect. She relied on Articles 6 § 1 and 13 of the Convention, which read 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 ...”

## **A. Admissibility**

### *1. The Government’s submissions*

26. The Government argued that the application was inadmissible for non-exhaustion of domestic remedies and as an abuse of the right of petition. In this last respect, they noted that the applicant did not comply with the decision in the eviction proceedings, thus hindering the enforcement proceedings from coming to an end.

### *2. The Court’s assessment*

#### **(a) The Government’s objection of non-exhaustion of domestic remedies**

27. The Court considers that the Government’s objection regarding the non-exhaustion of domestic remedies is closely linked to the applicants’

complaint under Article 13 of the Convention and therefore must be joined to the merits.

**(b) The Government's objection as to the abuse of the right of petition**

28. In relation to the Government's argument that the applicant abused the rights set forth in the Convention within the meaning of Article 35 § 3 (a) of the Convention, the Court reiterates that an application may only be rejected as abusive in extraordinary circumstances, notably when there is persistent use of insulting or provocative language by an applicant (see *Felbab v. Serbia*, no. 14011/07, § 56, 14 April 2009), when the application was knowingly based on untrue facts or when incomplete and thus misleading information concerning the very core of the case was submitted to the Court (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). Having regard to its case-law, the Court considers that the applicant's unwillingness to comply with the decision in the eviction proceedings is not of such a nature that would justify to declare the application inadmissible as an abuse of the right of petition. It follows that the Government's objection as to the alleged abuse of the right of petition must be rejected.

**(c) Other reasons of inadmissibility**

29. The Court observes that the applicant was a defendant in the civil proceedings at issue. It recalls that in civil length of proceedings cases, the enforcement proceedings are usually the second stage of the proceedings (see *Martins Moreira v. Portugal*, 26 October 1988, § 44, Series A no. 143; *Silva Pontes v. Portugal*, 23 March 1994, § 33, Series A no. 286-A; and *Di Pede v. Italy*, 26 September 1996, § 24, *Reports of Judgments and Decisions* 1996-IV).

30. The instant case is nonetheless distinguishable from the cases previously examined by the Court, since the enforcement proceedings at issue did not, to the Court's knowledge, serve to determine important elements of the debt itself (contrast *Silva Pontes*, cited above, § 33), nor was the applicant waiting for his right to become effective (contrast *Di Pede*, cited above, § 22, and *Estima Jorge v. Portugal*, 21 April 1998, § 37, *Reports* 1998-II).

31. Contrary to those cases, in the instant case the Court finds that from the moment in which the decision in the eviction proceedings was adopted (see paragraph 21 above), the applicant was aware of her obligation to comply with it. The enforcement proceedings were instituted because the applicant did not comply with that decision and they were on 23 November 2015 still pending for the same reason. Therefore, a complaint regarding the length of the enforcement proceedings, proceedings which the applicant is actually hindering from coming to an end is unfounded (see paragraph 24

above). The applicant's conduct was the actual and only cause of the existence of the enforcement proceedings.

32. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention as far as the enforcement proceedings are concerned (see, *mutatis mutandis*, *Várzea Tavares v. Portugal* (dec.), no. 57894/10, §§ 18-22, 19 February 2013).

**(d) Conclusion**

33. Having regard to the above, the Court notes that the complaints raised by the applicant under Articles 6 § 1 and 13 of the Convention concerning the eviction proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any grounds. This part of the application must therefore be declared admissible.

**B. Merits**

*1. Alleged violation of Article 13 of the Convention*

34. The applicant complained that in Portugal there was no court to which an application could be made to complain about the excessive length of proceedings.

35. The Government contested those arguments and argued that the applicant had at her disposal an effective remedy (see paragraph 26 above), notably the remedy provided for by Article 12 of Law no. 67/2007 of 31 December 2007, which set out the rules on the non-contractual civil liability of State and public entities (*Lei n° 67/2007, de 31 de Dezembro, que aprovou o Regime da Responsabilidade Civil Extracontratual do Estado e Demais Entidades Públicas*).

36. The Court reiterates 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

37. The Court notes that prior to 27 May 2014 Portuguese practice did not provide for an effective legal remedy allowing a claimant to obtain compensation for excessive length of proceedings (see *Martins Castro and Alves Correia de Castro v. Portugal*, no. 33729/06, §§ 51-57, 10 June 2008, and *Valada Matos das Neves v. Portugal*, no. 73798/13, § 106, 29 October 2015).

38. Having regard to its case-law on the subject (*Nouhaud and Others v. France*, no. 33424/96, §§ 44 and 45, 9 July 2002, and *Valada Matos das Neves*, cited above, §§ 106 and 107, with further references), the Court considers that at the time in which the instant application was lodged,

namely on 17 October 2013 (see paragraph 1 above), the applicant had no effective remedy against the excessive length of the proceedings.

39. Accordingly, the Government's preliminary objection of non-exhaustion of domestic should be dismissed and there has been in the present case a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby, at the time when she lodged her application, the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

## *2. Alleged violation of Article 6 § 1 of the Convention*

### **(a) Period to be taken into consideration**

40. According to the applicant, the length of the eviction proceedings was excessive.

41. The Court observes that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir he or she can complain of the entire length of the proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 220, ECHR 2006-V).

42. In the instant case, the applicant was summoned in the proceedings as heir of A.S (see paragraphs 9-10 above). The period to be taken into consideration thus began on 16 February 2004, when the eviction proceedings were instituted against the latter (see paragraph 5 above) and ended on 13 March 2014, when the decision in the eviction proceedings was delivered (see paragraph 21 above). It therefore lasted ten years and twenty-eight days at one level of jurisdiction.

### **(b) Reasonableness of the length of the proceedings**

43. The Government argued that the length of proceedings had in its main part been attributable to the death of some of the parties to the proceedings, to the lack of the claimant's initiative and to the difficulties in summoning the parties (see paragraphs 8, 10, 14 and 15 above). The Government also claimed that part of the length of the proceedings was attributable to the applicant's conduct, as she did not provide information on some of the heirs, even though they were her descendants.

44. According to the Government, the Portuguese authorities had only been responsible for an initial delay, from 6 May 2004, when the claimant lodged new submissions (see paragraph 6 above), to 7 November 2006, when the court suspended the proceedings (see paragraph 8 above).



45. 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, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

46. The Court notes the proceedings at issue were not of particular complexity.

47. In so far as the applicant's conduct is concerned, the Court notes that she took no steps which could have significantly contributed to the delay of the proceedings.

48. Turning to the conduct of the authorities, the Court observes some periods of inactivity on the part of the Torres Novas Civil Court for which the Government provided no explanation, and notably:

- between 6 May 2004, when the claimant lodged new submissions (see paragraph 6 above), and 7 November 2006, when the court decided to suspend the proceedings (see paragraph 8 above);
- between 30 April 2012, when some heirs were admitted as parties to the proceedings (see paragraph 16 above), and 14 December 2012, when the court gave a preparatory decision setting out the facts that had already been established and those that remained outstanding (see paragraph 17 above).

49. It is true that the proceedings were pending twice waiting for the claimant's initiative in summoning the defendant's heirs (see paragraphs 8 and 15 above). Nonetheless, in this context, the Court reiterates that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II), and avoid or reduce to the minimum the protraction of proceedings.

50. In the light of the foregoing, the Court concludes that the State authorities bear the primary responsibility for the excessive length of the proceedings in question. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

51. There has accordingly been a breach of Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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**

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

54. The Government contested the claim.

55. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 6,400 under that head.

### **B. Costs and expenses**

56. The applicant also claimed EUR 3,050 for the costs and expenses incurred before the Court.

57. The Government contested the claim.

58. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before it.

### **C. Default interest**

59. 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 concerning the eviction proceedings and the remainder of the application inadmissible;
2. *Joins* to the merits the Government’s objection of non-exhaustion of domestic remedies and *dismisses* it;
3. *Holds* that there has been a violation of Articles 13 and 6 § 1 of the Convention as far as the eviction proceedings are concerned;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the following amounts:

- (i) EUR 6,400 (six thousand four hundred 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;

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

Done in English, and notified in writing on 25 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti  
Deputy Registrar

Egidijus Kūris  
President