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THE POLITICAL CONTEXT OF THE REVOLUTIONARY PERIOD IN PORTUGAL:

THE ACCESSION TO THE COUNCIL OF EUROPE IN 1976 AND THE RATIFICATION OF THE ECHR IN 1978. COMMENTS OF A JUDICIAL DECISION[1]

O CONTEXTO POLÍTICO DO PERÍODO REVOLUCIONÁRIO EM PORTUGAL:

A ADESÃO AO CONSELHO DA EUROPA EM 1976 E A RATIFICAÇÃO DA CONVENÇÃO EUROPEIA DOS DIREITOS DO HOMEM EM 1978. COMENTÁRIOS SOBRE UMA DECISÃO JUDICIAL

José Francisco Lynce Zagallo Pavia
Associate Professor at Lusíada University of Lisbon and Porto – Portugal
Visiting Professor at Sciences Po Grenoble, France
ORCID: 0000-0001-9059-8795
pavia.jose@gmail.com

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1 Paper presented at the XXII Academic Meeting "International Academy of Human Rights – XXII Summer Meeting" organized by the LAW FACULTY OF ISTANBUL KULTUR UNIVERSITY. 10th to 13th September 2019. Izmir – Turkey

Abstract: Comments and framework of a due (or lack off) process of law. Article 6 of the European Convention of Human Rights. (Right to a Fair Trial)

AFFAIRE COMPANHIA AGRÍCOLA DE PENHA GARCIA, S.A. ET 16 AUTRES AFFAIRES «RÉFORME AGRAIRE» C. PORTUGAL. ECTHR 19/12/2016 (Définitif 19/03/2007), application no. 1999/04.

The interesting part of this case-law that was filed against the Portuguese State is that it was the author´s family, among others, that moved this case-law. We will describe the social, political and economic context that gave rise to the facts and comment on the court´s decision and its framework. The Portuguese State lost this case-law and was condemned to pay more fair compensation for economic and moral damages. This case-law can serve as a future example in which similar situations occur, emphasizing the fact that it is always worth fighting for our rights, even if the other side is much more powerful.

Keywords: Article 6 ECHR; Agrarian Reform; Portugal; Fair compensation

Resumo: Comentário e contextualização de um processo judicial. Art.º 6º da Convenção Europeia dos Direitos Humanos (Direito a um julgamento justo). AFFAIRE COMPANHIA AGRÍCOLA DE PENHA GARCIA, S.A. ET 16 AUTRES AFFAIRES «RÉFORME AGRAIRE» C. PORTUGAL. ECTHR 19/12/2016 (Définitif 19/03/2007), application no. 1999/04.

O interesse deste processo judicial reside no facto de ter sido a família, entre outras, do autor destas linhas que moveu a acção contra o Estado português. Será descrito o contexto político, económico e social em Portugal, que deu origem a esta acção e, também, a decisão judicial será comentada. O Estado português perdeu esta acção e foi condenado a pagar uma compensação mais justa por danos morais e materiais. Este processo poderá servir de exemplo para situações similares que possam ocorrer, enfatizando-se o facto de que vale sempre a pena lutar pelos direitos, mesmo que a outra parte seja muito mais poderosa.

Palavras-chave: Artigo 6º da Convenção Europeia dos Direitos do Homem; Reforma agrária; Portugal; Compensação justa.

Outline: 1. Political, Economic and Social context after the 25 April 1974; **2.** The agrarian reform process; **3.** Portugal´s accession to the Council of Europe in 1976 and the ratification of the ECHR in 1978; **4.** The case file nº 1999/04 against the Portuguese State; **5.** The decision. Comments on judicial and political aspects; **6.** Conclusions; References

1. Political, Economic and Social context after the 25 April 1974

Following April 25, 1974, Portugal went through a period of two years (until the 1976 constitution came into force), which became known as the Revolutionary Process in Progress.[1] During this period there was enormous government instability, the independence of the former colonies in Africa in 1975, and an attempt to install in Portugal a regime similar to those in the former eastern bloc. There were political persecutions, economic structures were nationalized, and the military seized political power. All this unrest was accompanied by major social upheavals, such as strikes, rallies, riots, and military pronouncements, which had serious economic and financial consequences. In addition to these facts, following the independence of the territories in Africa, hundreds of thousands of people returned to Portugal leaving in the newly independent countries all their assets and economies. Given the existence of communist ministers in the government (and the Portuguese Communist Party was clearly under the influence of Moscow), Portugal was even suspended from the NATO military committee; many European countries even considered that Portugal could become a new Cuba on European soil.

2. The agrarian reform process

Accompanying all this situation just described, the process that became known as the Agrarian Reform began to be implemented - especially in the south of the country. The argument that gave rise to this case was based on the fact that much of the south of the country consisted of large estates, which their owners

1 Pavia, José Francisco (2012) "Is it possible that the general malaise along with the economic crisis lead to situations of political collapse? The case of a European democracy: Portugal", In: *Revista Polis* (*Polis Journal*), nº 18-21, pp. 101-114.

left behind, or that exploited their respective workers. Of course, ideological arguments were also present, which had to do with the socialization of property, with the collective appropriation of the means of production, and with the slogan - much in vogue at the time - that land should be for those who work it.

In this framework many workers formed cooperatives and, often with the help or alienation of police forces, occupied the properties and expelled their rightful owners. This process was in some cases violent in shape, as many landlords simply refused to abandon their property. Governments then did nothing to counteract this process and often even encouraged it.

By the end of 1975, most of the farms in the south of the country were in the hands of agricultural cooperatives, which had simply taken over the properties, depleting their rightful owners of their property.

3. Portugal´s accession to the Council of Europe in 1976 and the ratification of the ECHR in 1978

The 1976 constitution will finally bring about the normalization of the regime and the full insertion of Portugal in the club of modern western European democracies.[2] In the same year of 1976, Portugal will apply for membership of the Council of Europe, and the consequent ratification of the ECHR will take place in 1978. During this same period, the Portuguese government also applied for membership of the then European Economic Community, which would join - after a long period of negotiations - in 1986. By joining these bodies, the Portuguese State began to accept the ECHR jurisdiction, with all its consequences, from 1978 onwards. Portuguese citizens, who somehow feel adversely affected by decisions of the Portuguese courts, in particular the rights protected by the Convention and its protocols - and having exhausted all stages of domestic appeal - may now bring actions against the Portuguese State on the basis of the articles (Protocol No 11) of the aforementioned convention.[3] This is precisely what has happened since then. The Portuguese State has been successively condemned for the slowness of justice; by decisions that jeopardize freedom of expression, by trampling on property rights and fixing ridiculous damages, etc. International jurisdiction has managed, in some cases, to restore justice, which would otherwise be called into question by unfair decisions by the Portuguese courts.

2 Pavia, José Francisco (2014) "Lessons Learned from the political modernization in Portugal: A role model elsewhere?". Paper presented in the international seminar: "On the Path to Reform", organized by the Ministry of Foreign Affairs of the Kingdom of Thailand, in Bangkok, on 3 December 2014. In: http://www.mfa.go.th/main/en/media-center/28/51883-Seminar-%22On-the-Path-to-Reform%22.html (Accessed 03/03/2019).

3 European Court of Human Rights. In: https://echr.coe.int/Pages/home.aspx?p=court&c= (Accessed 04/09/2019).

4. The case file nº 1999/04 against the Portuguese State

The return of properties that had been illegally occupied only took place in 1980/1981 and even then, in some cases, only some parts were returned. The author's family was one of those affected by this process. The return of the properties only took place in 1981. When the properties were returned, they were in a ruinous state; destroyed houses, stolen cattle, abandoned farm facilities and damaged or missing farm machinery. The author's family, as well as others, as soon as the conditions allowed, appealed to the court bringing legal action against the Portuguese State. These actions took years to be judged before finally the Portuguese State recognized its responsibilities. However, it set ridiculous compensations in view of the very high financial and moral damage to which the complaints had suffered. Appeals to the highest courts took a few more years without the Portuguese State assuming the payment of fairer compensation. That is why, in 2004, after exhausting all internal judicial proceedings, it was decided to bring the case before the European Court of Human Rights.[4]

5. The decision. Comments on judicial and political aspects

The Portuguese State lost the legal action and was ordered to pay fairer compensation in the light of what happened and the years that had passed in the meantime. The revolutionary period in which the facts occurred and political-ideological considerations did not exempt the Portuguese State from its responsibilities, namely in the protection of property rights and the right to a fair and timely trial and compensation for financial and moral damages. The fact that the Portuguese State was convicted and obliged to pay greater compensation was not, however, very rewarding. The total damage suffered was much greater and, after all, the moral damage is never properly repaired. In addition, the time period for calculating the compensation also began only from 1978 - the year of the ratification by Portugal of the European Convention of Human Rights - and the occupation of the properties took place in early 1975. Furthermore, the interest rate used to calculate the compensation was ridiculous low and the devaluation of the currency (the then Portuguese escudo) was not properly taking into account. The Portuguese state also tried to use the argument that the occupations had been expropriations and nationalizations. However, all national and international laws - including Article 1 of ECHR Protocol 1[5] - state that expropriations must be accompanied by fair compensation, which in this situation

4 Affaire Companhia Agrícola de Penha Garcia, S.A. Et 16 Autres Affaires «RÉFORME AGRAIRE» C. PORTUGAL. In: http://hudoc.echr.coe.int/eng?i=001-78640 (Accessed 04/09/2019).

5 Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights (Protection of Property). In: https://echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf (Accessed 09/08/2019).

was not the case. Finally, all the expropriations must be justified by the public interest - which, in certain situations, must override the private interest – which was clearly not the case, since what happened was a pure and simple depletion of rights of property.

6. Conclusions

This case-law can serve as a future example in which similar situations occur, emphasizing the fact that it is always worth fighting for our rights, even if the other side is much more powerful. The importance of the ECHR is unquestionable although it can raise questions like access to the courts and full exercise of all defense guarantees. We should be well aware that not everyone can hire expensive lawyers and pay very high court costs, so we may be facing a situation of unequal opportunities; namely if the result is a justice for the rich and one for the poor and underprivileged. Regarding the specific situation analyzed in this article, it was the result of a turbulent historical period, which, as it should be, had very negative results. However, the responsibilities of States remain, even as governments change, notably with regard to fundamental rights, freedoms and guarantees, such as property rights, the right to fair compensation and the right to a free, fair and timely trial.

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