



Sexual abuse of children at the “Casa Pia”: criminal proceedings gave rise to a violation for refusal to admit evidence on appeal

In today’s Chamber judgment¹ in the case of [Pereira Cruz and Others v. Portugal](#) (application no. 56396/12) the European Court of Human Rights held:

unanimously, with regard to Mr Carlos Pereira Cruz and Mr João Alberto Ferreira Diniz, that there had been **no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to examine witnesses) on account of the inability to cross-examine the victims on the content of their statements during the investigation;**

unanimously, with regard to Mr João Alberto Ferreira Diniz, Mr Jorge Marques Leitão Ritto and Mr Manuel José Abrantes, that there had been **no violation of Article 6 §§ 1 and 3 (a) and (b) on account of amendments to the facts alleged against them;**

by four votes to three, with regard to Mr Carlos Pereira Cruz, that there had been a **violation of Article 6 §§ 1 and 3 (d) owing to the refusal by the Lisbon Court of Appeal to admit evidence in his favour in the appeal proceedings.**

The case concerned the existence of a paedophile ring at the Casa Pia, a public institution responsible for the education of children from deprived backgrounds.

In the Court’s opinion, the fact that witnesses had retracted their initial statements during questioning at a public hearing could not alter the finding that the applicants had had a proper and adequate opportunity to examine or have examined those witnesses during the trial.

It also noted that the method of the indirect questioning of the *assistentes* (or prosecution witnesses) and the civil parties applied both to the prosecution and to the defence, equality of arms thus being respected. It observed next that the applicants had had the opportunity to challenge, in adversarial proceedings, the amendments to the facts of the case by adducing supplementary evidence with regard to those changes.

However, the Court observed that the Lisbon Court of Appeal had ruled in the present case that it could not examine evidence that had not been seen by the court of first instance and on which, consequently, its judgment had not been based. Accordingly, it held that the Court of Appeal had deprived the applicant of an examination of statements that had been retracted in respect of certain acts and had thus deprived him of a fair trial.

The Court held, lastly, that the proceedings, overall and in view of their extreme complexity, had been conducted with sufficient diligence and that their length could not be considered excessive.

Principal facts

The applicants, Mr Carlos Pereira Cruz, Mr João Alberto Ferreira Diniz, Mr Jorge Marques Leitão Ritto and Mr Manuel José Abrantes are Portuguese nationals who were born in 1942, 1954, 1936 and 1954 and live in Alcabideche, Lisbon, Cascais and Massamá (Portugal) respectively. The case

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.

concerned a paedophile ring in the Casa Pia, a public institution responsible for the education of children from deprived backgrounds.

At the relevant time Mr Pereira Cruz was a television producer and one of the most popular presenters in Portugal; Mr João Alberto Ferreira Diniz was a doctor in Lisbon; Mr Jorge Marques Leitão Ritto was a retired Portuguese ambassador and Mr Manuel José Abrantes was chairman of the institution Casa Pia in Lisbon² (“the Casa Pia”) after having been deputy chairman for five years.

In 2002 the *Expresso*, a Portuguese national weekly, denounced the existence of a paedophile ring in the Casa Pia. Following a number of press articles, a criminal investigation was instituted against 10 people, including the applicants and CS, the Casa Pia’s chauffeur and linchpin of the ring. A very wide-ranging investigation was carried out, consisting of forensic medical examinations, psychological tests and taking evidence from the victims, co-defendants and 600 witnesses.

The trial began in the Lisbon Court on 25 November 2004. The applicants submitted that the case against them had been collectively fabricated. Following oral submissions in 2009, the court amended a number of the alleged facts. The amendments concerned the place or date of the alleged offences.

On 3 September 2010 the court gave judgment dismissing the allegation of fabrication. The applicants were all four given prison sentences ranging from approximately 5 to 7 years. The Lisbon Court of Appeal upheld the judgment.

On 23 February 2012 the Lisbon Court of Appeal remitted part of the case – concerning the offences allegedly committed by Mr Pereira Cruz in the town of Elvas – to the Lisbon Court, on account of facts alleged against him being amended without his being able to make submissions in that regard. The applicants unsuccessfully lodged various appeals on grounds of unconstitutionality with the Constitutional Court.

On 24 April 2014 the Lisbon Court of Appeal gave judgment in respect of the part of the case concerning the offences allegedly committed in Elvas.

The applicants, after having started serving their sentences, have either been released on licence or are under house arrest on health grounds.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (right to a fair trial/right to examine witnesses), the applicants complained that the domestic courts had denied them their right to a fair trial. They also complained that the length of the proceedings was excessive.

The applications were lodged with the European Court of Human Rights on 20 August 2012 and 6 and 7 August 2013.

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

Ganna **Yudkivska** (Ukraine), *President*,
Vincent A. **De Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Péter **Paczolay** (Hungary),

². The Casa Pia, located in Lisbon, is a public institution responsible for running schools, training centres and boarding schools for children and teenagers from deprived backgrounds. At the relevant time there were approximately 4,500 pupils there, of whom 500 were boarding.

and also Andrea Tamietti, Deputy Section Registrar.

Decision of the Court

Article 6 §§ 1 and 3 (fair trial)

Having regard to the similarity of the applications, the Court decided that they should be joined.

Applicants' inability to cross-examine the victims on the content of their statements

The applicants complained that during the proceedings before the Lisbon Court they had been unable to cross-examine the victims on the statements they had given prior to the trial because the victims had refused to give their agreement to this.

The Court observed that the Lisbon Court had held, in an order of 22 October 2008, that the accused had already had an opportunity to challenge the credibility of the victims and that their cross-examination was therefore unnecessary. The latter had also appeared in person before the Lisbon Court and given evidence. It was undeniable that they had been examined and cross-examined by the applicants during the successive hearings before the court. Furthermore, the Court observed that expert psychologist's reports and second expert reports had been obtained on the victims' personality with a view to assessing their ability to give evidence and their credibility.

In the Court's view, the applicants could not be said to have been prevented from challenging the credibility of the victims merely because they had been unable to cross-examine them with regard to the statements they had made to the police. The fact that the witnesses in question had retracted their initial statements during their examination at a public hearing could not alter the finding that the applicants had had a proper and adequate opportunity to examine or have examined those witnesses during the trial.

Accordingly, there had been no violation of Article 6 §§ 1 and 3 (d).

Alleged inability of Mr João Alberto Ferreira Diniz to question the prosecution witnesses directly

Mr João Alberto Ferreira Diniz complained that the examination of the victims during the hearings before the Lisbon Court had been done indirectly, through the President of the Chamber hearing the case, and that the victims had not come to the witness stand, but had been in a separate room from the hearing room.

The Court noted that the method of indirect questioning of the *assistentes* (or prosecution witnesses) and the civil parties had applied both to the prosecution and to the defence, equality of arms thus being respected. Further, Mr João Alberto Ferreira Diniz had not substantiated his allegation that that method of questioning had prevented him from asking the witnesses certain questions and had not specified how certain questions had been filtered by the court. His allegations were therefore manifestly ill-founded.

Amendment of facts appearing in the committal order

The Court noted that the applicants had not complained about the reclassification of the offences but about amendments by the Lisbon Court to facts on the basis of which they had been charged. Those amendments had mainly concerned the date and place of the alleged acts of which the applicants had been accused.

The Court considered first of all that the applicants could not be said to have been taken by surprise when the Lisbon Court informed them that it envisaged amending the description of the facts alleged against them. They had taken part in the proceedings during which the facts specified in the committal order had been examined. Furthermore, the facts dated back to between 1997 and 2000, when the victims had still been aged under 18. The particular vulnerability of the victims at the

material time could, moreover, explain their difficulties in remembering the circumstances in question before the court. Consequently, an amendment of the facts at the end of the trial was largely foreseeable.

The Court observed next that the applicants had been informed at the hearings of 23 November and 14 December 2009 that the court envisaged amending the description of some of the facts specified in the committal order. They had been given twenty-five days in which to submit their defence. The Court noted that, upholding their requests in part, the court had reiterated the amendments while specifying the evidential basis for doing so and had given the applicants 20 days in which to submit their defence.

The Court therefore noted that the applicants had indeed had the opportunity to challenge the amendments in adversarial proceedings by adducing supplementary evidence with regard to those changes. It concluded that Mr João Alberto Ferreira Diniz, Mr Jorge Marques Leitão Ritto and Mr Manuel José Abrantes had had the necessary time and facilities for the preparation of their defence regarding all the aspects of the offences for which they had been prosecuted and finally convicted.

There had therefore been no violation of Article 6 §§ 1 and 3 (a) and (b).

Refusal by the Lisbon Court of Appeal to admit evidence in favour of the accused in the appeal proceedings

The Court noted that, while his appeal was pending, Mr Carlos Pereira Cruz had made three applications to the Lisbon Court of Appeal for leave to adduce certain evidence in his favour. He had also requested that certain persons be heard, arguing that the evidence in question constituted proof that the persons concerned had lied during the trial.

The Court observed that the Lisbon Court of Appeal had dismissed the three applications in question, ruling that it could not examine evidence that had not been seen by the court of first instance and on which, consequently, its judgment had not been based.

The Court found that the Court of Appeal had been confronted with evidence liable to cast doubt on the judgment delivered by the Lisbon Court and that it would have benefitted from examining new versions of the facts. The Court of Appeal had deprived the applicant of an examination of statements that had been retracted in respect of certain acts and had thus deprived him of a fair trial. The Court concluded that Mr Carlos Pereira Cruz's rights of defence had been curtailed in a manner incompatible with the requirements of a fair trial.

There had therefore been a violation of Article 6 §§ 1 and 3 (d) with regard to Mr Carlos Pereira Cruz.

[Article 6 § 1 \(length of proceedings\)](#)

The applicants complained that the length of the proceedings had not complied with the reasonable time requirement under the Convention.

The Court considered that the extreme complexity of the case was undeniable, having regard to the seriousness and number of crimes complained of and the number of persons involved. The investigation had lasted approximately eleven months, the committal proceedings had been concluded within six months and the trial before the Lisbon Court had lasted approximately six years.

Whilst the trial before the Lisbon Court might appear long, the Court noted that there had been 32 victims and that the alleged offences had been committed at different places in Lisbon and in Elvas. The court had heard 920 witnesses, 19 consultants, 18 experts, 32 victims and seven accused, and had analysed 64,000 pages of documents produced by the parties to the proceedings.

In the light of those findings, the Court considered that the proceedings had, overall, been conducted with sufficient diligence and that their length could not be considered excessive.

Just satisfaction (Article 41)

The Court held that a finding of a violation of Article 6 §§ 1 and 3 (d) constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage sustained by Mr Carlos Pereira Cruz.

Separate opinion

Judges Yudkivska, Motoc and Paczolay expressed a joint dissenting opinion annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.