



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

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FOURTH SECTION

Application no. 21565/23
Bruno Miguel RODRIGUES DA SILVA
against Portugal
lodged on 23 May 2023
communicated on 26 August 2026

SUBJECT MATTER OF THE CASE

The application concerns the alleged unfairness of the applicant's trial and conviction *in absentia* as well as the lack of an effective defence.

On an unspecified date, criminal proceedings were instituted against the applicant for domestic violence against M., who was his girlfriend at the relevant time.

On 22 October 2020 he was constituted as a defendant.

On 2 March 2021 the applicant was informed that J.R. had been appointed by the Criminal Court of Cascais to represent him in the proceedings.

The case was committed to trial before the Criminal Court of Cascais. The applicant and his defence lawyer were summoned to the hearing on 7 June 2021.

On 5 June 2021 the applicant requested the appointment of a new defence lawyer and the setting of a new date for the hearing arguing that he was absent from Portugal, and that he had had contact with his lawyer only a few days before the hearing.

On 7 June 2021, neither the applicant nor J.R. attended the hearing. A new lawyer was appointed, and the trial hearing proceeded in the applicant's absence.

On 22 June 2021, the applicant was sentenced to four years' imprisonment for aggravated domestic violence. He was also ordered to pay the victim 5,000 euros in damages.

RODRIGUES DA SILVA v. PORTUGAL – SUBJECT MATTER OF THE CASE AND
QUESTIONS

On 8 February 2022, the applicant appealed to the Lisbon Court of Appeal requesting a retrial. The appeal and request for a retrial were dismissed on 24 January 2023.

Invoking Article 6 of the Convention, the applicant complains that the proceedings in which he was convicted *in absentia* were unfair. He claims that his absence, coupled with his defence lawyer's failure to submit his defence pleadings and evidence, and the seriousness of the domestic violence charges against him, should have prompted the domestic court to ensure his presence and uphold the adversarial principle.

QUESTIONS TO THE PARTIES

1. Having regard to the general principles concerning trial *in absentia* established by the Court (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 82 and 84, 1 March 2006; *Shkalla v. Albania*, no. 26866/05, §§ 66 et seq., 10 May 2011; and *Topi v. Albania*, no. 14816/08, §§ 53 et seq., 22 May 2018), did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular:

(a) Did the applicant unequivocally waive his right to appear at the trial and defend himself?

(b) Did the applicant have the opportunity to obtain, after his conviction *in absentia*, a fresh determination of the merits of the charges against him, in respect of both law and fact?

2. Did the applicant receive a practical and effective legal assistance during the proceedings conducted in his absence, as required by Article 6 § 3 (c) of the Convention, having regard to the fact that he did not participate in the trial? In particular, did the relevant authorities take steps to ensure practical and effective respect for the applicant's right to due process (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168; *Daud v. Portugal*, 21 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II; and *Czekalla v. Portugal*, no. 38830/97, §§ 60 and 65-71, ECHR 2002-VIII)?