



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

FOURTH SECTION

DECISION

Application no. 40283/19
Gabriela Adelaide AZEVEDO DA SILVA BARBOSA
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 29 September 2026 as a Committee composed of:

Anne Louise Bormann, *President*,

Ana Maria Guerra Martins,

Sebastian Rădulețu, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 40283/19) 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”) on 19 July 2019 by a Portuguese national, Ms Gabriela Adelaide Azevedo da Silva Barbosa (“the applicant”), who was born in 1972, lives in Santo Tirso and was represented by Mr J. Ribeiro, a lawyer practising in Porto;

the decision to give notice of the complaints under Article 6 § 1 of the Convention concerning the impossibility for the applicant to challenge her evaluator’s alleged lack of impartiality, the lack of a public hearing and the alleged failure of the High Council of the Judiciary to comply with the requirements of an independent and impartial tribunal to the Portuguese Government (“the Government”), represented by their Agents, Mr R. Matos and Mr M. Aires Magriço, Public Prosecutors, and Ms H. de Carvalho Martins Leitão, Deputy Attorney General, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the periodic professional appraisal of the applicant, a judge, that led to her receiving a lower mark than in previous appraisals.

Relying on Article 6 § 1 of the Convention, the applicant complained of the unfairness of the appraisal process and of the subsequent judicial proceedings.

2. In 2017 an ordinary inspection (*inspeção ordinária*) was conducted to assess the professional performance of the applicant, who at the material time was a judge at the Guimarães Central Criminal Court (*Juízo Central Criminal de Guimarães*). During the inspection, the applicant was interviewed by the inspector.

3. On 12 December 2017, on the basis of the inspector's report, the permanent council (*conselho permanente*) of the High Council of the Judiciary (*Conselho Superior da Magistratura* – hereinafter “the CSM”) rated the applicant's professional performance as “good”, which corresponded to a two-mark decrease compared to her prior rating (“very good”).

4. On 12 June 2018 the plenary of the CSM dismissed an objection lodged by the applicant and confirmed the decision of the permanent council of the CSM. On the same date, it also rejected several requests by the applicant after lodging her objection, including one to have an oral and public hearing.

5. Owing to the result of the appraisal, the applicant was no longer eligible to be placed at a central criminal court (section 181(1) and (5) of the Organic Law on the Judiciary, *Lei Orgânica do Sistema Judiciário*). Consequently, in accordance with the decision of the plenary of the CSM of 11 July 2018 regarding the 2018 judicial appointments, the applicant was placed at the Cascais Local Criminal Court. The decision was published on 31 August 2018. Accordingly, from September 2019 onwards her salary was reduced (section 184(1) and (2) of the Organic Law on the Judiciary).

6. The applicant lodged an appeal against the CSM's decision regarding her appraisal (see paragraph 4 above) with the Judicial Division of the Supreme Court under section 168 of Law no. 21/85 on the Status of Judges, alleging, *inter alia*, errors in the assessment of the facts, a lack of sufficient reasoning, and breaches of the principles of impartiality, participation and proportionality. She argued that the proceedings had had an impact on her rights to keep her professional position, to remuneration and to career progression, and further relied on judges' security of tenure. While the applicant contested the CSM's rejection of her requests for evidence to be gathered, it does not appear that she specifically complained about the absence of a public hearing or requested to be heard in person at this stage.

7. On 22 January 2019 the Judicial Division of the Supreme Court dismissed the appeal. Taking note of the Court's case-law, it assessed all the claims made by the applicant, including those regarding the facts. It held that the facts had been properly established, notably as there had been a repeated pattern of behaviour whereby the applicant had not delivered judgments in accordance with the applicable legal requirements on the dates indicated by her in the corresponding documents. It also held that the claims of a lack of

impartiality on the part of the CSM had not been established. While noting the CSM's margin of discretion within the context of professional appraisals, the court held that the impugned decision had been consistent with the information gathered in the proceedings. It emphasised that the CSM's decision had been adequately, consistently and clearly reasoned and that the fact that the applicant had obtained a higher mark in the past did not create a legitimate expectation that her mark would stay the same if the quality of her professional performance dropped. The Judicial Division of the Supreme Court also held, *inter alia*, that the applicant's requests for evidence to be gathered (particularly her requests to be granted access to the appraisals of colleagues in certain posts, to hear witnesses and to have expert examinations of documents and digital files carried out – all of which had been rejected by the CSM) had been either unjustified or unconnected to any relevant facts. With regard to the applicant's consequent change of post, the court held that judges' security of tenure was not absolute and that, in that context, the applicant's change of post had been directly connected with the need to ensure quality in the administration of justice. It further noted that such a change of post was not equivalent to a transfer resulting from a disciplinary decision.

8. Relying on Article 6 § 1 of the Convention, the applicant complained of the unfairness of the proceedings before the CSM and the Supreme Court owing to (i) the practical impossibility of challenging the evaluator's lack of impartiality, on account of the CSM's refusal of her requests for evidence to be gathered; (ii) the lack of a public hearing before both the CSM and the Supreme Court; and (iii) the CSM's failure to comply with the requirements of an "independent and impartial tribunal", on account of its composition.

THE COURT'S ASSESSMENT

9. The Government contested the applicability of Article 6 § 1 of the Convention in the present case. They argued that the appraisal process was administrative in nature, intended to assess the professional performance of judges, and could not directly impact civil rights or obligations. They further argued that the applicant's right to pursue a professional activity had not been directly at issue. The applicant disagreed with those arguments.

10. The Court does not consider it necessary to rule separately on the objection raised by the Government, given that the applicant's complaint is in any case manifestly ill-founded for the reasons set out below.

11. The issues raised by the applicant, notably the fairness of proceedings in respect of the periodical appraisal of judges in Portugal, have been analysed in detail in *Salvador Coutinho dos Santos Amado v. Portugal* (no. 44794/19, 3 February 2026).

12. In so far as the decision of the CSM could be appealed against before the Judicial Division of the Supreme Court under section 168 of Law no. 21/85 on the Status of Judges (as it was by the applicant, see paragraph 5 above), the Court does not find it necessary to assess the complaint raised by the applicant as to the CSM's lack of impartiality. It will therefore focus on the applicant's complaints concerning the alleged unfairness of the proceedings before the Judicial Division of the Supreme Court (compare *Salvador Coutinho dos Santos Amado*, cited above, § 58).

13. As to the lack of a public hearing, the Court observes that in the proceedings before the Supreme Court the applicant failed to clearly and unequivocally complain about the absence of a public hearing before the CSM or to request that one be held before it (see paragraph 6 above). It may therefore reasonably be considered that she had waived her right to be heard in person (compare *Marcolino de Jesus v. Portugal* (dec.), no. 2388/15, § 49, 1 June 2021). In any case, the Court notes that the professional appraisal was fundamentally based on documentary evidence and that no issues regarding the credibility of the applicant were decisive in determining its result (see paragraph 5 above). Furthermore, the applicant had participated in the inspection (see paragraph 2 above). As such, the Court considers that the Judicial Division of the Supreme Court had access to a complete file, and accepts that a public hearing was not, in any event, necessary in the circumstances of the case (see *Salvador Coutinho dos Santos Amado*, cited above, §§ 66-67 and 71, and the references therein).

14. In its assessment of the case, the Judicial Division of the Supreme Court took note of the Court's relevant case-law, adopting an interpretation of its jurisdiction that allowed it to assess factual elements of the case. In particular, the Court observes that the applicant was able to present her arguments and that the Judicial Division of the Supreme Court addressed all the complaints raised by her (including those regarding the gathering of evidence), reaching reasoned decisions that do not appear to be arbitrary or manifestly unreasonable (see paragraph 7 above; see also *Salvador Coutinho dos Santos Amado*, cited above, §§ 64-65 and 72-73).

15. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

AZEVEDO DA SILVA BARBOSA v. PORTUGAL DECISION

Done in English and notified in writing on 22 October 2026.

Simeon Petrovski
Deputy Registrar

Anne Louise Bormann
President