



## Statutory prohibition on terminating a long lease did not violate the owner's right to protection of property

In today's Chamber judgment in the case of [Almeida Ferreira and Melo Ferreira v. Portugal](#) (application no. 41696/07), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**No violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights

The case concerned the statutory restriction on the applicants' right to terminate a lease of property which they sought to recover for their son and his family but had been let for more than 20 years.

### Principal facts

The applicants, Mario Almeida Ferreira and his wife, Maria da Conceição Quadros Pereira de Melo Ferreira, are Portuguese nationals who were born in 1925 and 1926 respectively and live in Oliveira de Azeméis (Portugal).

In 1980 they rented out property of which they are the life tenants and which will revert to their son Paulo on their deaths. In 2002, as they needed the property in order to house their son Paulo and his growing family, they applied to the courts to have the lease terminated.

On 4 June 2002 the Oliveira de Azeméis District Court refused their request by automatically applying a Law of 1979 that prevented the owner from terminating a lease in any circumstances where the tenant had been living in the property for 20 years or more. On 23 January 2003 the Porto Court of Appeal upheld the judgment. On 21 March 2007 the Constitutional Court dismissed an appeal by the applicants. It found, among other things, that the Law of 1979 had already been in force when they had first rented out the property and considered that the application of the Law, which aimed to provide social protection, was not contrary to their right of property.

### Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1, the applicants complained that the automatic application of the exception in question under the legislation on residential leases had infringed their right of property.

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

The application was lodged with the European Court of Human Rights on 18 September 2007.

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

Françoise **Tulkens** (Belgium), *President*,  
Ireneu **Cabral Barreto** (Portugal),  
Danutė **Jočienė** (Lithuania),  
Dragoljub **Popović** (Serbia),  
András **Sajó** (Hungary),  
Işıl **Karakaş** (Turkey),  
Guido **Raimondi** (Italy), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

## Decision of the Court

The Court had to examine whether the interference with the applicants' right of property was justified.

It observed that the State, which had a wide margin of appreciation in that area, might wish to afford broader protection to the interests of tenants having longer and more secure contracts. In that case the legislature merely enacted measures that it considered appropriate for regulating the housing market – which in modern societies was a central concern of social and economic policies – with the aim of providing increased protection to certain categories of tenants. The Court could not call into question that sort of political choice by the legislature, as it was a measure that served the general interest and did not appear manifestly unreasonable.

Admittedly, the Portuguese courts had not been able to weigh up the respective interests of the property owners and the tenant, as the restriction on the owners' right had been applied automatically in accordance with the law. However, the absolute character of a law was not, in itself, incompatible with the Convention (such rules aimed in particular to promote legal certainty and avoid inconsistencies).

The Court also gave decisive weight to the fact that the restriction in question had already been in force (since 1979) when the applicants had signed the lease in question (1980). They had therefore already known at that time that, under Portuguese law, they could request termination of the lease if they or their children needed housing, but that if the lease were to extend beyond a period of 20 years, they would be debarred from doing so by the statutory restriction.

In those circumstances the restriction on the applicants' right could not be deemed to be disproportionate or unjustified; it struck a fair balance between the interests of the community and the right of the applicants. The Court accordingly concluded, by five votes to two, that there had been no violation of Article 1 of Protocol No. 1.

## Separate opinion

Judges Karakaş and Raimondi expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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**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.