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Date: 2020.11.27 20:05:14 GMT

Reason: Non-repudiation

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Northern Central Administrative Court

Process # 335/14.5BECBR

The Judges of the Administrative Litigation Section of the Northern Central Administrative Court agree, after conferring:

**

I – REPORT

COLIN PAUL GLOSTER, supported by the cues in the records, hereby files a **JUDICIAL REMEDY/REVIEW** regarding the sentence by the Administrative and Fiscal Court of Coimbra in the context of the Special Administrative Action [Ação Administrativa Especial – A.A.E.] brought by him against the **FUNDAÇÃO PARA A CIÊNCIA E TECNOLOGIA** [Foundation for Science and Technology – F.C.T.], also supported by the cues in the records, which ruled “(...) *the request for nullity or annulment of the decision of cancelling/canceling the scholarship on January 28 2014 unfounded (...)*”.

Alleging, the **APPELLANT** reached the following conclusions: “(...)

(...)”.

1. The ruling under appeal infringed the provisions of Article 110th #1 of the

CPA91 [Código de Procedimento Administrativo – Administrative Procedure Code; Translator’s Note: the Code was approved in 1991, thus the reference to “91”]: “as soon as the instruction procedure is over, and except for the provisions of article 103rd of the aforementioned code, the interested parties are entitled to be heard on the proceedings before the final call is made, and to being informed in particular about the likely direction of the latter.”

2. The appellant was notified to have his say in the context of preliminary hearing only on the administrative act of the suspension of his doctoral fellowship, which occurred on January 29 2013, having never been notified to do so on the administrative act of the fellowship’s cancellation, which occurred about a year later (on January 28 2014).

3. According to the undertaken notification, only the appellant’s alleged health issues were impairing the research work he had been assigned to, for what the

lifting of the mentioned suspension was subject solely to presentation to the scientific supervisor and the host institution of a statement issued by the medical services of the University of Coimbra attesting his fitness for the job, the Defendant / Defender thus complying with the provisions of the final section of article 100th #1 of the CPA91, having informed the plaintiff / complainant / claimant / pursuer of the likely direction of the decision: the lifting of suspension of the fellowship would be dependent on the presentation of the mentioned medical statement.

4. The setting in motion of article 89th of CPA91 (“request for evidence to the interested parties”) which is carried out by the judge a quo bears no application to the concrete case, since the suspension of the appellant’s fellowship is – in itself – an administrative act and not a request for evidence to the plaintiff / complainant / claimant / pursuer (something which falls within the preliminary investigative acts in the administrative procedure). In fact, notification for the preliminary hearing presupposes that the preliminary instruction is finished.

5. *Bearing in mind the fact proven in 9., the act of suspension of the fellowship was taken not as a provisional procedural measure but rather as an alternative act not cumulative with the act of cancellation of the fellowship.*

6. *The decision as to the suspension of the fellowship was taken on the heels of a recommendation from the doctoral supervisor (check point 4 of the proven matter of fact) to which the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], the host institution, adhered (check point 7 of the proven matter of fact), and of which the plaintiff / complainant / claimant / pursuer was completely unaware.*

7. *In the pronouncement carried out by the plaintiff / complainant / claimant / pursuer in the context of preliminary hearing on the act of suspension of the fellowship (fact proven in 13.), he focusses / focuses only and only on challenging the alleged health issues which were at the root of the fellowship suspension, having just referred, in relation to the statement about the “regular convenience [Translator’s doubt: is this «convivência» – conviviality, interaction and «conveniência» – expediency, appropriateness, a misquote?] with his co-workers”, that such claim is completely abstract and has no factual grounds which would allow the plaintiff / complainant / claimant / pursuer to grasp what was intended through the statement, him being totally unaware of what was then referred by his supervisor and the host institution about alleged facts pertaining to the disciplinary element.*

8. *The A. [Autor – plaintiff / complainant / claimant / pursuer] was never submitted to any disciplinary procedure which would allow him to defend himself against the charges of unruliness unilaterally imputed by his supervisor and the host institution.*

9. *The learned ruling goes beyond a confession by the R. [Ré – defendant / defender] itself (check article 6th of the Legal Challenge – “the fellowship was suspended by the R. because (...) the health conditions of the person [ie, the plaintiff / complainant / claimant / pursuer] would not allow the development¹ of the work plan in an environment of regular interaction [see above] with his co-workers, as well as with other staff of the host institution” – and article 19th of the Legal Challenge – “FCT then decided to withhold the fellowship, because it was convinced that the grantee’s performance review did not allow, in the immediate, the continuation of his work on medical grounds”) by concluding that “the A.’s discipline, specifically the maintaining of a sane interaction with peers and other agents of the scientific community was, factually, the basis for both decisions”.*

10. *Thus, the above confession by the Defendant / Defender, by referring that on the basis of the suspension only health reasons were taken into account (and not, accordingly, disciplinary issues by the A.), would not allow the court to conclude that the A.’s discipline, and in particular the maintaining of a sane interaction with peers and other agents of the scientific community was, factually, the basis for both decisions (suspension and cancellation).*

11. *Moreover, the ruling could not have considered that the A. had the opportunity for having his say before the contested act about the concrete problems of unruliness, since the now Appellant only had access to the rulings and the memos determining the cancellation of the fellowship when the present legal action was already underway, with the notification having been served on June 16 2014.*

12. *Even if it was to be considered that, in any way, the A. was aware of the factuality contained in points 1 to 7 of the memo when he had his say in the preliminary hearing upon the suspension (which we only admit as a purely academic hypothesis), it turns out that after the mentioned preliminary hearing new facts allegedly occurred which were paramount to the issuing of adverse opinions from the supervisor and the host institution (check points 20 and 23 of the proven facts) and, therefore, to the administrative act of cancellation of the doctoral fellowship, which were never reported to the A., namely the facts presented on points 20, 21 and 22 of the proven facts, thus preventing him from contesting them, ask for evidentiary remedy or add documents.*

1 Translator’s Note: the original document misspelled “desempenhar” (to carry out, to develop) as “desempanhar”, and thus the official court documents transcribe the excerpt as «”desempanhar” (sic)».

13. *By deciding under the abovementioned terms, the ruling under appeal has also infringed the provisions of #2 of article 33rd of the Research Fellowships Regulation of the Foundation for Science and Technology, I.P., which imposed preliminary hearing of the interested party before the cancellation, grounded on the #1 of the same legal provision.*

14. *It has been common understanding that the lack of preliminary hearing of interested parties, in infraction proceedings, disciplinary proceedings and other sanctioning procedures, implies nullity, thus being recognized that, outside the scope of the former, “there is a tendency to consider its lack (or illegality) in common procedure as generating mere voidability” – check Mário Esteves de Oliveira – Pedro Costa Gonçalves – J. Pacheco Amorim, Código de Procedimento Administrativo, Almedina, pages 520 to 522.*

15. *On the opinions of both the supervisor and the host institution (check proven facts 20 to 23) the plaintiff / complainant / claimant / pursuer is accused of unruly behaviour / behavior, even if he was never subject to disciplinary proceedings on any of the conducts of which he is charged. There exists, therefore, a disciplinary procedure grafted into this administrative act, since he is accused of unruly behaviour / behavior (and even of crimes), never having been given to the A. the chance of defending himself, contradicting it, thus being infringed the fundamental warranty which, for such procedures, laid down in #3 article 269th of the CRP [Constituição da República Portuguesa – Portuguese Constitution], according to which, in any disciplinary process, the defendant / defender is guaranteed hearing and defence / defense.*

16. *Hence, the dismissal of hearing of the parties concerned contended with a fundamental right of the now appellant – article 269th #3 of the CRP – leading to the nullity of the act under article 133rd #1 and #2 subparagraph d) of CPA91.*

17. *The sentence hereby under appeal, by having considered that in the case of the legal records there was no legal defect of the lack of preliminary hearing and by not*

admitting that the act did not contain essential elements or went against the essential content of a fundamental right it infringed the provisions of articles 100th, 89th and 133rd #1 & #2, subparagraph d), all of CPA91, 33rd of the RBI and 269th #3 of the CRP.

18. The court a quo takes as proven the behaviour /behavior imputed to the A. by his supervisor, by the host institution and, accordingly, by the Defendant / Defender, thus considering that there was a compliance with subparagraph b) of article 12th of the EBI [Estatuto do Bolseiro de Investigação – Research Fellows Regulation], without there have being produced any evidence whatsoever about the

4 [page 4]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

same facts, and without having been given the A. the opportunity of having his say about the same facts, clarifying them, disproving them or disputing them.

19. It comes to such conclusion despite that, as to the proven facts, they do not include the notification to the defendant / defender of the detailed description of those facts, the existence of a disciplinary action taken against the now appellant due to those facts or the internal operating rules of the host institution.

20. On the other hand, the ruling under appeal also considers that the mentioned conducts by the A. also infringe duties resulting from the law, namely the duty of not offending the civil right to good name and not to commit the types of criminal offences / offenses of conduct of, verbally or in written form, imputing facts or suspicions, or addressing words offensive of the honor / honour or reputation of a third party and that of defamation, which leads to the infringing of duties provided for in subparagraph g) of the mentioned article 12th of the EBI.

21. It reaches such conclusion despite that, as to the proven facts, there was no indication that someone had ever filed a civil or criminal complaint and, even less, that

he was convicted (of civil or criminal charges) for having offending someone else's good name.

22. The Court a quo has thus ruled about matters it could have not be aware of, since it issues a decisive ruling on a question it knows does not fall under the jurisdiction of administrative and fiscal courts.

23. The ruling under appeal is thus null, under the provisions of article 615th, #1, subparagraph d) of the CPC [Código de Processo Civil – Civil Procedure Code], applicable ex vi [by reference to] article 140th of the CPTA [Código de Processo dos Tribunais Administrativos].

24. Regardless of having reckoned that the contested cancellation act was voidable, on the grounds of lack of reasoning, the ruling now under appeal held that the mentioned act would always have been carried out with the same content, by force of the principle of taking advantage of the administrative act.

25. The act now challenged was delivered under the CPA91. According to the provisions of article 135th of CPA91, “administrative acts carried out which offend applicable legal principles or provisions for which infringement no other sanction is foreseeable are voidable.”. On its turn, CPA91's 136th refers that: “1 – The voidable administrative act may be revoked under the provisions of article 141st; 2 – The voidable act is liable to being impugned before the courts under the legislation regulating the administrative litigation.”

26. #5 of article 163rd of the CPA15 [Translator's note: a revised version of the CPA became in force in 2015 by the issuing of Decree-Law 4/2015 of January 7], which came into effect already after the practice of the administrative act impugned by the present records, introduces a completely innovative provision unparalleled for on the CPA91. The provision stipulates in innovative fashion that in certain cases the annulling effect does not occur, and that this provision is to be in force for both judicial and administrative annulment.

27. *Although not stating it directly on the ruling under appeal, the Court a quo applied to the case under scrutiny the provisions of article 163rd, #5, subparagraph a) of the CPA15, notwithstanding the mentioned provision only applies to administrative procedures begun after the coming into effect of the decree-law (check article 8th, #1, of Dec.-Law 4/2015 of January 7).*

28. *Attempting to “salvage” the annulled act, the Court a quo produces a retroactive application of the abovementioned legal provision, something which is inadmissible and breaks every general rule of law enforcement.*

29. *It should also be mentioned the following: only a bound act would have its invalidating effect refused by the Court.*

30. *In the case specified by article 33rd, #3 of the RBI [Regulamento de Bolsas de Investigação – Research Grants Regulation], the element of connection between the hypothesis and the establishment [ie, of the law] calls for the bound binding of the establishment.*

31. *However, on the norm’s hypothesis, the legislator used indeterminate concepts (“serious violation”, “reiterated”), something which corresponds to the bestowal of discretionary power to the Administration in what concerns the fulfilment / fulfillment of the mentioned hypothesis. By using indeterminate concepts on the norm’s hypothesis, the legislator conferred the Administration administrative discretion when assessing.*

32. *In view of the above, and contrary to the established on the ruling now under appeal, we are not facing a bound act, but rather a discretionary act and, as such, the court cannot conclude for sure, in the context of a posthumous prognosis judgment, that the contested administrative decision was the single one concretely possible.*

33. *On the other hand, even that we had been facing an exercise of bound power, which is not the case, the failure of the duty to provide preliminary hearing, laid down in article 100th of the CPA, and of the duty of reasoning, laid down in the 124th and 125th, would not allow to conclude, beyond any doubt, that if the Appellant had been heard before the final decision, his intervention*

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

in the proceeding would not have led to a reassessment of the situation and, thereby, to influence the final decision.

34. In view of the above, the court a quo could not, as it did, syndicate the merit of that discretionary act, nor consider that the contested decision was the only concretely possible one.

35. Hence, not having decided that the annulling effect of the act was not produced, as a result the sentence now under appeal must be revoked.

36. The act contested by the appellant, being of discretionary nature, demands right away an increased duty of reasoning: Administration must not only provide news of the presence of the factual premises of the action which the legal norm outlines in abstract on the hypothesis (justification), but also, since discretionary powers are at stake, the interests that, in its view, were paramount to the definition of a special content of the act itself. This outlining of the motives will obviously make it easier for the court to spot the misuse of power, the error of fact, the evident error of appreciation and the clear violation of the principles. Only this way could there be an extrinsic and intrinsic control of the discretionary decision.

37. Which did not happen in this particular case: as the decision under appeal refers, the act omits the duties violated by the A.'s conduct, and so the legal grounds for the cancellation; thus, the act suffers from the legal defect of lack of reasoning by insufficiency (article 125th, #2 of the CPA). Well, such insufficiency is precisely what leads to not being possible to completely clarify the motivation of the act.

38. It cannot be said, then, that the final decision would necessarily be the same, whether the defendant / defender would expunge it from the legal defect of lack of reasoning or not, and thus the non-compliance with articles 124th and 125th of the

Administrative Procedure Code has, on the case under scrutiny, effect which invalidate the final ruling.

39. It is therefore not applicable the principle of recovery of the administrative act, since it's not possible to conclude that the annulment of the act would not entail any advantages to the appellant.

40. Thus, the present appeal must be ruled as well founded, in face of the ascertained lack of the (increased) duty of reasoning and of preliminary hearing of the A. (...)."

*

Having been notified to the effect, the **Defendant / Defender** provided counter-claims which concluded as follows: "(...)

1. – The Court a quo ruled correctly by holding as valid the administrative act now under appeal.

2. – The legal defects attributed to the administrative act cannot be imputed to it, namely:

a) the lack of preliminary hearing, since the appellant had already been heard regarding the facts imputed to him.

b) legal defect of breach of law, when it is shown in the legal records that violation of the duties laid down by article 12th subparagraphs b) and g) of the EBI and article 33rd of the RBI was proven.

3. Notwithstanding the violation of the duty of reasoning and before the proven matter, it is clear that the possible annulment of the act would not bring any advantage to the appellant, insofar as we are facing a bound act (...)."

*

The Court a quo delivered a dispatch of admission of the filed appeal, setting its terms and the way of going up [to the court of appeal].

*

The Honourable / Honorable Public Prosecutor issued an opinion with this Superior Court in the sense of dismissal of the appeal of the following kind: “(...)

Colin Paul Gloster is filing an appeal on the sentence which ruled the legal action filed by him against Fundação Para a Ciência e Tecnologia unfounded.

It is our opinion that the sentence is flawless. Let's see:

8 [page 8]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

The sentence under appeal upheld the legal defect of lack of reasoning invoked by the now appellant, of which the consequence would be the annulment of the contested act.

However, despite that defect, the court a quo has decided for the principle of recovery of the administrative act since, although liable to being annulled, its content would forcibly be the same in face of the evidence produced.

As the sentence well states:

“On the case under scrutiny, the act suffers from a legal defect of lack of reasoning.

However, the weighting of the reiterated violation of the duties of internal functioning of the host institution, as well as the violation of duties laid down by the law in general, namely the duty of not offending the civil right to good name and of not committing the criminal offences / offenses of conduct of, verbally or in written form, imputing facts or suspicions, or addressing words offensive of the honor / honour or

reputation of a third party and that of defamation would lead, in the context of renewal of the act, to the keeping of the content of the act by force of article 12th, subparagraphs b) and g) of EBI, #3 of article 33rd of the abovementioned Regulation.

*In that sense, it should be noted that a possible annulment of the act would not bring with it any advantage to the A., in that the Administration would renew it in the context of execution of the annulment judgment, expunging it from the legal defect of lack of reasoning. In addition, it follows from the letter of the law of #3 of art. 33rd of FCT's Research Grants Regulation that when there happens a serious and reiterated violation of the grantee's duties, that determines *ope legis* [ie, by force of the law] the cancellation of payment of the fellowship. It is, indeed, an act of bound nature.*

Well, under that factual frame, and taking into account the content of articles 12th, subparagraphs b) and g) of the EBI and #3 of 33rd of the abovementioned Regulation, the only conclusion left available is that the act under scrutiny, because of its bound nature, would have been carried out with the same content.

It is our belief, then, that the annulment effect of the act would not be produced.”

As is known, according to this principle the court may turn down the invalidating effects of the lack of reasoning based on the principle of recovery of administrative acts

or on the limited relevance of formal defects or the theory of the downgrading essential formalities into non-essential ones.

Both doctrine and jurisprudence have come to adopt this principle, considering that the annulment of an administrative act carried out under bounded powers and agrees with the principles established in the law is not justified. Under such principle, it is allowed that the lack of reasoning may not lead to the annulment of the act.

Jurisprudence of the STA [Supremo Tribunal Administrativo – Supreme Administrative Court] has been adopting this principle of recovery of the administrative act – or theory of the inoperative legal defects – which means that, although the act is tainted with one or more defects, it still won't be annulled whenever it is safe to assume that the new act to be issued cannot but show the same decisional content if exempted from the defect.

National courts have thus reasoned that the principle is operative only in the situations in which courts rule for the irrelevance of the essential formalities in the content of the legal act. That is, even if the essential formalities had been fulfilled, the sense and content of the act would not suffer any changes.

It is not about operating the sanation of the act or the suppression of its illegality, since its final purpose is solely that of – keeping the legal act illegal – nonetheless rendering the invalidating force of the legal defect that wounds it, via the uselessness of the annulment revealed by a judgment of evidence as to the substantial (or material) conformity of the act with the legal order, since the annulment of the act does not carry any real advantage or practical reach to the contestant (check Ruling of the Constitutional Court [TC – Tribunal Constitucional] of June 22, 2011 laid down in the process #00462/2000-Coimbra, in www.dgsi.pt).

Thus, the ruling under appeal did the right thing, and so the appeal must be dismissed as groundless. (...)”.

*

Dispensing with prior approvals, it is our task then to appreciate and decide, since there are no impediments to it.

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II – FRAMING OF THE OBJECT OF THE APPEAL – ISSUES TO BE DEALT WITH

The object of appeal is framed by the conclusions of the corresponding allegations, according to the provisions of articles 144th #2 and 146th #4 of the C.P.T.A. [Código de Processo dos Tribunais Administrativos] and articles 5th, 608th #2, 635th #4 and 5 and 639th of the new CPC [Código de Processo Civil – Civil Procedure Code; the new version of the code was issued by Law 41/2013 of June 26] *ex vi* articles 1st and 140th of the CPTA.

On this assumption, the essential issues at stake are the following: (i) nullity of the sentence due to legal pronouncement error; (ii) Error in the judgment of law.

Therefore, these will be, by reasons of logical precedence, the questions to be appreciated and decided upon.

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III – REASONING

III.1 – THE FACTS

The established factual framework [*positive, negative and corresponding motivation*] on the court ruling under appeal was as follows: “(...)

1. On an unknown date of July 2012, the Defendant / Defender upheld a complaint by the A. granting him a fellowship with effects from the 1st of January 2012;

2. The mentioned fellowship was meant to finance the completion of the doctorate, carried out with the host institution Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], located in Coimbra;

3 – On November 9 2012 the A.’s supervisor, Rui Miguel Curado da Silva, sent an email to the plaintiff / complainant / claimant / pursuer stating that he would recommend the fellowship’s renewal.

4 – On January 7 2013 a proposal was issued by the doctoral supervisor «on the renewal of the doctoral fellowship (reference SFRH/BD/81130/2011) granted to MSc Nicholas Collin Paul Gloucester» with the following content: *«Assessing as a whole the scientific work carried out and the disciplinary element regarding 2012 of MSc Nicholas Collin Paul, supervised by me at Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] (...), I recommend a suspension of his doctoral fellowship (...) until I get from the medical services of the UC a declaration of aptitude of the mentioned fellow stating that he is fit to carry out research work in a laboratorial, academic and international environment. The scientific component of the fellow's work (...) is comfortably positive. (...) However, in what concerns the disciplinary part, my assessment is extremely negative. The facts reported in points 1 to 7 of the attached memo about the main disciplinary episodes (...) are extremely serious and unacceptable for the good course of his research work with the institution and other institutions with which we collaborate. (...) The fellow received several warnings from myself and other elements of the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] that the content of emails such as those described in points 3 and 4 of the memo were unacceptable (...). In late-October 2012, despite the seriousness of those facts, together with the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board we decided to renew his doctoral fellowship, although we agreed that the fellow had no room for further disciplinary faults. As described in point 5 of the memo, on November 19 2012, the fellow sends a letter to the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board accusing the institution of establishing the renewal of his 2013 fellowship as conditional upon frictions with another research group. (...) As a result of this reassessment I read, this time in full, the long accusatory email described in point 3 of the memo (Attachments 1 and 2), and found out that the fellow complained of having been banned*

from ESTEC (ESA) [European Space Research and Technology Centre – European Space Agency] (...). I decided to contact ESTEC (...) The mentioned letter sent by the fellow to the ESA was the subject of an internal investigation, having been concluded that the accusations were groundless (...)”.

5 – The mentioned memo includes the following:

«(...)

3. *On August 2 2012, fellowship holder Nicholas Colin Paul Gloucester (SFRH/BD/81130/2011) made some very serious and groundless accusations to the ESA, to staff and students of ESA, via an email (Attachment 1), in reply to an email addressed to the Instrumentation and Experimental Particle Physics Lab’s [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] collaborators in which Professor Mariano Gago disclosed*

12 [page 12]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

activities of the ESTEC (ESA) which could be of interest to the researchers in our lab. The fellow forwarded a copy of the email to 6 different email addresses of the ESA and to one of Universidade Nova de Lisboa, attaching a PDF letter (attachment 2), in which he accused the ESA of robbing him without producing evidence to it. He accuses ESTEC’s former employee Philippe Willekens of being a liar and of having threatened him, not signalling / signaling any witnesses or referring the circumstances. Citing an unidentified third person, he further accuses Philippe Willekens of spending such amounts of money in hotels that would suffice to launch a satellite. He further accuses the student who replaced him at ESTEC of being a psychopath. 4. On August 23 2012, that same fellow sent an email to Dr. Cátia Alves (Attachment 3), employee of the UC (...) [...] in which he used insulting language against the UC and the employee herself in terms which are inappropriate in any working relation. (...) 6. In the meantime, it

came to the knowledge of the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board that the student had raised the same issue of point 5 on the forum of ABIC [Associação dos Bolseiros de Investigação Científica – Scientific Research Fellows Association] in uncertain terms and producing insinuations which call into question the good name of the host institution and/or the ethical conduct of those responsible by it (Attachment 4) (...)”;

6. The abovementioned attachments include:

- An email of August 2 2012 sent by the A. to the address gago@lip.pt with the following content: *«(...) Be careful of consequences of letting innocent people being tricked by ESA. Some people I met in ESTEC were nice, but some were extraordinarily evil.»*;

- An email of August 3 2012 sent by the A. to gago@lip.pt, with the following content: *«in hindsight I wish to avoid a misinterpretation by explicitly informing you that I was not claiming that Anna Maria Balsano; Anik de Groof; and Raphael Milchberg are among the ESA employees who abused me», to which he adds a handwritten letter addressed to Karen Fletcher of ESTEC, where it reads that «Mr. Willekens lied to me before, during and after the internship. (...) The European Space Agency was stealing money from me»*;

- An email of August 23 2012 sent by the A. to the address catia.silva@uc.pt with the following content: *«To the University of Coimbra: I am a client and an employee and I used to be a slave of this so-called university. I have not been reimbursed for payments for social*

security and I am unable to pay for social security for January 2012. Cátia Gonçalves Rodrigues da Silva is too lazy to do what we employ her to do. (...);

- A message of the author N_P_C_de_Gloucester, registered on October 19 2011 on the ABIC's forum, with the following content: *«(...) Renewal of this bursary is due soon (and I am reliant on it to stay alive) but an essential step for a renewal, is for the host institution to accept to having it renewed, and unfortunately on Monday 22nd October 2012 someone who is affiliated with the host institution warned me (but without threatening) that if I do not immediately cancel a court case (in which I am using a third party which is not any host institution nor the Department nor the University) then allegedly resulting “friction” for the host institution might result in the host institution to reject renewing this bursary.»*²

- A letter sent by the A. to the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], stamped with the reception date of November 19 2012, with the following content: *«In my quality as a Researcher with your institution, I hereby, under the provisions of articles 61st and 62nd of the Administrative Procedure Code [C.P.A.], to request you that it be sent to me a copy of all documentation and all elements you possess on me in your archives. I am obliged to file such request because I am upset with the warnings verbally directed at me by the Instrumentation and Experimental Particle Physics Lab, Coimbra Office, on the 22nd of October 2012, in the course of a meeting I attended there. During the meeting, the Instrumentation and Experimental Particle Physics Lab, Coimbra Office informed me that it would be advisable that I dropped the lawsuit filed by me against a computer technician of the company Netstream – Consultadoria e Gestão de Redes Informáticas, Lda. The entity hinted that for the year 2013 there might not be a renewal of the fellowship of which I currently benefit in case there existed any degree of friction between the Instrumentation and Experimental Particle Physics Lab, Coimbra Office and Dr. Joaquim Marques Ferreira dos Santos (...)*

7. On January 8 2013 an opinion, endorsed by the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board, was issued, underlining that *«(...) the referred doctoral fellowship must be put on hold until we receive – from the UC's medical services – a declaration of aptitude of the mentioned fellow to pursue the research work*

² Translator's Note: as seen on the webpage <https://forum.bolseiros.org/viewtopic.php?f=1&t=5065>, i) the message was actually sent on October 24 2012; moreover, the message was misquoted, mistaking “suing” for “using” in the official records; ii) the date of October 19 2011 was the date the mentioned user registered onto the “Fórum Bolseiros” online platform.

he is undertaking, within an environment of regular interaction with his coworkers and this Lab and the University's staff»;

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

8. On January 8 2013, around 5 pm, Rui Miguel Curado da Silva sent an email to the A. with the following content:

«(...) Please be tomorrow morning at the lab. I have some important things to talk with you. (...)»;

9. On January 29 2013 the A.'s supervisor, Rui Miguel Curado da Silva, told him he would have two options left: cancellation of the fellowship or its suspension, pending on medical treatment abroad, the payment of the fellowship restarting in 2014;

10. On that day, at 12.06 pm, an email was sent to the A. via the address id.bolsas@fct.pt with the following content:

«Subject: Research Fellowship reference SFRH/BD/81130/2011, financed by POPH-QREN Typology 4.1 – Advanced Training, costs shared by Fundo Social Europeu [European Social Fund – ESF] and national funds of the MEC [Ministério da Educação e Cultura – Ministry for Education and Culture]

(...)

After reviewing your application process with the abovementioned reference, we inform you that on July 29 2013 [misspelling – January would be correct] we received an email from your supervisor, Professor Rui Miguel Curado da Silva and from your host institution, Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], requesting the

suspension of the fellowship bearing in mind the alleged health issues which are not allowing you to carry out³ the research work you've been assigned to do, within an environment of regular interaction with your coworkers as well as the Lab and the University's staff. FCT was informed that the lifting of the suspension is dependent on the presentation, to the supervisor and the host institution, of a statement issued by the UC's medical services attesting your aptitude for work. In compliance with articles 100th et seq of the Code of Administrative Procedure, you have 10 days to have your say on this subject.».

11. On February 1st 2013, the A. went to the University's Medical Services of the Bureau of Social Welfare of the University of Coimbra, where the doctor, Célia Lavaredas Pires Lavaredas de Sousa [misspelling] scheduled a medical specialty appointment for February 27 2013;

12. The mentioned doctor referred that results of the exams could take months;

13. On February 8 2013, at around 7.22 pm, the A. sent an email to the address id.bolsas@fct.pt with the following content:

«YOUR EXCELLENCIES

BOARD OF DIRECTORS

FOUNDATION FOR SCIENCE AND TECHNOLOGY, I.P.

Subject:

Pronouncement in Preliminary Hearing (articles 100th to 105th of CPA)

Your reference: email message of January 29 2013 with the subject: "Research Fellowship reference SFRH/BD/81130/2011, financed by POPH-QREN Typology 4.1 – Advanced Training, costs shared by Fundo Social Europeu [European Social Fund –

³ Check Note 1.

ESF] and national funds of the MEC [Ministério da Educação e Cultura – Ministry for Education and Culture]”

I have been notified via the abovementioned email that the Foundation was contemplating putting the fellowship I was endorsed with on hold.

Such intention stemmed from alleged health issues that were harming the regular fulfilment / fulfillment of the research work I am assigned with as well as personal relations established within the Lab and the University as a whole.

It so happens that the said notification should contain more than a generic statement, and effectively contain, under the provisions of article 101st, #2 of the same Code, “the necessary elements to (...) understand all the relevant aspects to the decision in the matters of both fact and law”. It should furthermore be provided information about the place and time for consultation of the process.

16 [page 16]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

Well, in this case, the mentioned elements being absolutely lacking, it is completely impossible for me to have a thorough say about the situation, something which amounts to a sidelining of my rights, thus genuinely illegal.

What is more, the situation does not occur in reality. There is no disturbance of the regular performance of my research functions or any incompatibility or a bad atmosphere with coworkers and further University staff. To prove the non-existence of any health problem I request, under the provisions of article 104th of the C.P.A., that a medical report issued by the Medical Services of the University of Coimbra – which I intend to attach as soon as it is completed – should be considered. In fact, I went to a general practice consultation on January 30 2013, pending currently of a medical specialty consultation already scheduled for February 27 2013, after which a full report

on my health condition is to be prepared by the Medical Services (check documents #1 and 2, attached).

Accordingly, it is requested that the decision should be suspended, so as to resend the notification this time including all the legal requirements, as well as to carry out the abovementioned demarche and thus taking into account all the relevant circumstances.

(...)

That being said, it should be noted that the subject does not accept the statement according to which alleged health issues “are not allowing [him] to carry out⁴ the research work he is assigned to”.

Since all through the year 2012 the subject carried out all the work he was assigned to do.

Having notably complied with all the goals established in the approved activities plan, as is clear from the report he sent the FCT.

To this respect, it must be noted that on an email of November 16 2012 his supervisor, Professor Rui Silva, announced to him that:

«I sent today my letter in favor of your grant renewal to the direction of the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas].

Rui»

As to the alleged “regular interaction with his coworkers”, such allegation is completely abstract and has no factual support allowing the subject to grasp what is meant to be said by such statement.

Being certain that not only the subject carried out the research tasks he was responsible for, but also rendered himself available for collaborating with fellow colleagues who [needed].

Having performed this year as he always did.

It must be underlined that the subject has been collaborating with Professor Rui Miguel Curado da Silva since 2008 in the Project “CdTe Focal Plane for a Gamma-Ray Space Telescope Equipped With Laue Lenses”.

Never having had any problem whatsoever in his relation with that Professor, who is, in the context of the current fellowship, his supervisor.

It should be mentioned, moreover, that in 2010 when João Bernardo Pena Madeira Gouveia de Campos produced the first approved version of his first M.Sc. thesis he made a point of thanking the subject for all his help, and it can be read in the text (check “Optimization of the focal plane for the Gamma Ray Imager mission”, September 2010):⁵

«Acknowledgements

(...)

I WOULD ALSO LIKE TO THANK COLIN PAUL GLOSTER FOR HIS HELP IN DEALING WITH SOFTWARE IN FRONT OF WHICH I WOULD DO LITTLE IF I WAS LEFT ALONE.

[...]» (our emphasis)

In view of the above, it becomes clear that the reasons invoked for “suspension of the fellowship” are not verified.

⁵ Translator’s Note: in the meantime, João Campos changed the subject of his research and presented a second M.Sc. thesis (in a different Department) in 2014.

(...)

Being certain that, throughout the year 2012, the subject worked hard to fulfill the goals of the activities outline, [having been successful].

Which is indeed recognized in the message now sent to him, in which there is no mention whatsoever to the non-fulfilment / non-fulfillment of such goals.

It is my purpose to carry on fulfilling the established goals, and I cannot understand the reasons why the institution that hosted me (and to which I was invited by Professor Rui Miguel Curado da Silva, a person I deeply respect and admire) now raises alleged health issues to jeopardize the keeping and continuance of my activities.

Being certain that, as I stated before, my performance and commitment in the research work were no different from those of previous years.

Thus the subject can't understand the behaviour / behavior of the institution which undertook to host him during the completion of the research work and upon which also fall duties (pay attention namely to article 9th #1, subparagraph b) of the Grantees' Charter [Estatuto do Bolseiro]).

For all these reasons, and despite the subject not accepting the alleged reasons of illness, the truth is that the non-payment of the fellowship could never stem from those reasons, a fortiori when the declaration petitioned by the host institution was demanded only at this moment and the medical services of the University of Coimbra were unable to schedule a consultation before February 27 2013.

The subject cannot be harmed in his rights for reasons not imputable to him.

And so not only the fellowship cannot be put on hold as also FCT should persuade the host institution so it allows the subject to continue developing his research work in compliance with the goals outlined in the approved work plan.

(...)

On the other hand – even without conceding as to the fact that the requested presentation of the medical statement cannot constitute grounds for the host institution to ask for the “suspension of the grant” – the truth is that, even if the FCT considers the former as an adequate and sufficient reason leading to the suspension of the duties which befall upon the host institution and, in consequence, of the activities of the subject that are financed by the grant, it should always be applied here (even though perhaps relying on an extensive or analogical interpretation levied by the guaranteeing of the subject’s rights) the provisions of subparagraph g) and of #1 and #6 of article 9th of the Grantees’ Charter (...).

Such norms state the following:

«Article 9th

Grantees’ rights

1. All grantees have the right to:

(...)

g) Suspend the activities financed by the grant on the grounds of illness of the grantee, warranted by a medical report or a declaration of illness issued by a medical institution;

(...)

6. In the case of suspension of the activities to which subparagraphs f) and g) of #1 refer, the payment of the grant can be maintained for the corresponding lapse of time; in that case there will be no other payments of allowances applicable in the cases outlined by the mentioned legal provisions, and in general legal terms the count is to be restarted as of the 1st work day of the grantee’s activity after the interruption.»

Well, if the subject is impeded from carrying on his activity with the host institution due to its demanding of a medical statement issued by the medical services of the University of Coimbra (the institution which hosts the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas]) and if those services – in order to issue such statement –

have scheduled a consultation for February 27 2013, the payment of the fellowship should be kept for – at the least – the time lapse corresponding to the intended suspension of

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

the activities imposed by the host institution until the issuing of the medical statement now requested.

Any conduct on the part of FCT other than the ones outlined above would amount to an ostensive violation of the rights of the subject and of the legitimate expectations placed in him [development of his research; expectations based on which he opted to stay in Portugal and settle]

Under the described terms there are no grounds that support the suspension of the fellowship and we request the FCT to take measures with the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] so that they immediately allow the subject to carry on with his activities.

Without conceding, in any case, that even that a situation of suspension of activities with the host institution should occur, payment of the fellowship to the subject should always be maintained during the corresponding timeframe.

(...)

He always worked, in the context of the research works, with zeal, dedication and thoroughness. Sometimes, even working during other person's mealtimes and weekends.

However, he has now been served with the notification of the draft decision of suspension of the fellowship on medical grounds, which don't allow him to carry on the

research work he was assigned to do within an atmosphere of regular interaction with his coworkers and lab and University staff.

Now, such claim is groundless, since the interested party enjoys a perfectly normal health condition and does not suffer from any mental or physical condition.

And so, in face of the above, suspension of the attributed fellowship should not take place. It must be recalled that the interested party went to the medical services of the University of Coimbra, so as to subject himself to the necessary exams to obtain the

requested medical statement, having been told by the attending physician – Célia Maria Pires Lavaredas de Sousa, M.D. – to render himself available on February 27 2013, but that the results of all the reports can take months to be completed.

In face of the above, and since the interested party does not suffer from any physical and/or mental abnormality and also since there is no way of producing the medical report within the legally established timeframe for the hearing of interested parties, it is requested that the granting of the fellowship be maintained; quite the opposite, there is no document whatsoever even hinting at any health problem of the interested party.

(...)”.

14. On February 13 2013 a handwritten piece of paper was received by the FCT, to which a sticker with the reference «FCT/5977/13/2/2013» was appended, also addressed to the Board of Directors of FCT, with the same subject and reproducing almost entirely (with the exception of the last 9 paragraphs of the email) the contents of the aforementioned email, of which the substance is hereby taken as reproduced.

15. Along with the mentioned manuscript there was a declaration, with the header being that of the Social Welfare Services of the University of Coimbra – Medical University Services, with the following content:

«After a general practice consultation with these services on January 30 2013, the student (Paul Colin Gloster) was referred to a specialist consultation at hospital level, having been informed that his 1st appointment will take place on February 27 2013.

Coimbra, Februray 1st 2013

Célia Labaredas»

16. On September 16 2013 a clinical study was produced by Nuno Gonçalo Gomes Fernandes Madeira, M.D., of the Psychiatric Services of the University Hospital Centre of Coimbra, EPE, about the A., presenting the following conclusion:

«Following the clinical assessment carried out to date, based on the follow-up done in our institution and on further evaluation (clinic and neuropsychological) carried out

22 [page 22]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

on his native country, to be found in attachment, it was concluded that he eventually suffers from autism spectrum disorder. It is our understanding that, with the appropriate support and in line with the legal rationale which underlies higher education and unemployment policies, namely the principle of inclusion, he does not suffer from a psychiatric condition compromising his capability for studying and working in Portugal»;

17. On September 18 2013, the following statement was produced by Célia Maria Pires Lavaredas de Sousa, M.D.:

«Based on and in compliance with the current clinical info from a specialist doctor, the abovementioned student, provided he is given proper support, does not suffer from any psychiatric condition compromising his capability for studying and working in Portugal.»;

18. Both the clinical study and the medical statement mentioned in the two previous points were attached to the email of September 19 2013, sent by the A. to Rui Miguel Curado da Silva, in “Cc” to the addresses unemployment, no, bolsas@fct.pt, rui.constantino@fct.pt, rui@coimbra.lip.pt, fonte@coimbra.lip.pt;

19. On September 26 2013, Rui Miguel Curado da Silva sent an email, of which the subject was «State of play on the suspension of the doctoral fellowship with the reference SFRH/BD/81130/2011» to rui.constantino@fct.pt, with the following content:

«After a period of psychiatric commitment in Coimbra, the mentioned grantee was transferred to Ireland. The fellow has recently sent an Irish document stating that he was apt to work and study in Portugal. The medical services of the University of Coimbra validated the document without consulting us, and so the document does not satisfy the main requirement of the Opinion stated by us and sent to the FCT upon the suspension (...)

Now, contrary to this requirement of working “in a laboratorial, academic and international environment”, the document produced by the fellow limits itself to referring that he is apt to study and work, thus not fulfilling the requirements of our suspension Opinion»;

On October 30 2013, the doctoral supervisor, Rui Miguel Curado da Silva, issued an opinion, of which the content is now given as reproduced, transcribing the following excerpts:

«As a result of the facts that led to the suspension of the doctoral fellowship of MSc Colin Paul Gloster, under my supervision at the Instrumentation and Experimental

Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] (...) and a student (UC) at the University of Coimbra on January 29 2013, I recommend a definitive cancellation of his doctoral fellowship (...). On September 19 2013 I received a letter from the medical services informing that Colin was finally apt to work and study (generically speaking) in Portugal. Under these conditions, Colin becomes subject to the same rules and the same assessment as any other student, just as the specialists who treated the mentioned fellow have told us. The present decision stems from the failure, to date, of an apology or any attempt to mend the unruly behaviour / behaviors originated by the mentioned fellow and reported in points 1 to 7 of the memo sent to your services on January 28 2013. What is more, there is the aggravating circumstance on having received on May 2nd 2013, yet another complaint about a serious infraction committed by MSc Colin Paul Gloster. Up until the referred date, the fellow lodged into the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] servers false and slandering contents on a number of researchers throughout the world (...).»;

21. On May 2nd 2013 an email sent by touteiro@gmail.com to carlos@lip.pt reported the following:

«(...) the webpage below contains false and slandering contents on a number of researchers throughout the world, among whom a friend of mine from the USA. The page was created by an American gentleman who has lawsuits running against him in the USA, and was removed from “the air”. However, it seems there is a copy of that page lodged into the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] server, and it should be removed. I would thus ask to check where it is lodged and who is the person responsible, so as to allow us to withdraw the page (...).»

22. On the same day, by email sent from Jorge Gomes to rui@coimbra.lip.pt the following was reported:

«(...)

Northern Central Administrative Court

The contents in question are lodged in the personal page of an Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] - Coimbra user whose username is “gloster”

(...)».

23. On December 11 2013 the host institution, Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], issued a statement with the following content: *“In view of the information that has been coming to our knowledge on the student Colin Paul Gloster and bearing in mind the statements contained in the supervisor’s opinion, the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] understands it should support the opinion of Professor Rui Silva in the sense of having the referred doctoral fellowship permanently cancelled / canceled.»;*

24. On January 28 2014 an email was sent to the A., from the address bolsas@fct.pt which read as follows:

«Research Fellowship reference SFRH/BD/81130/2011, financed by POPH-QREN Typology 4.1 – Advanced Training, costs shared by Fundo Social Europeu [European Social Fund – ESF] and national funds of the MEC [Ministério da Educação e Cultura – Ministry for Education and Culture]”

Having been undertaken an assessment of your application process of which the reference is above, it was decided that the fellowship is to be cancelled / canceled, as a result of the opinions of Professor Rui Miguel Curado da Silva and of the host institution, Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], received on December 19 2013 and which recommend the permanent cancellation of the fellowship.

We note that contributions for Social Welfare [Segurança Social – I.S.S.] delivered after the fellowship's cancellation (December 2012) will not be reimbursed.

This process is thus terminated.

With my Best Regards

Rui Constantino

Department of Training and Human Resources in S&T [Science and Technology – Ciência e Tecnologia]»

*

The matter of fact was established as proven in face of the documents' contents, which were not challenged, and the stances of the interested parties, which was deemed relevant to the decision on the lawsuit according to the numerous law solutions.

Have been proven: fact 1 by agreement (articles 8th of the PI [Petição Inicial – Statement of Claim] and 1st of the Judicial Challenge); fact 2 by agreement (articles 12th of the PI and 1st of the Challenge); fact 3 by agreement (articles 14th of the PI and 1st of the Challenge); fact 4 by the contents of the document titled Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] «Opinion» attached to the PA [Processo Administrativo – Administrative Process] (pages 2 to 6); facts 5 and 6 by the contents of the memo on the disciplinary issues of the A. and corresponding attachments to the PA (pages 8 to 15, 33 and 35); fact 7 by the contents of the document titled «Institution's Opinion» attached to the PA (page 7); fact 8 by the contents of the email of January 28 2013 (attached to the PI as document 1); fact 9 by confession of the A. (article 17th of the PI); fact 10 by the contents of the email of January 29 2013 attached to the PA (page 37); fact 11 by the content of the declaration attached to the PA (page 43); fact 12 by agreement (articles 22nd of the PI and 1st of the Challenge); fact 13 by the content of the email of February 8 2013 (attached to the PI as document 2), along with the content of the manuscript of the

same date attached to the PA; fact 14 by the content of the February 8 2013 manuscript attached to the PA – pages 38 to 42; fact 15 by the content of the declaration attached to the PA – page 43; fact 16 by the content of the study attached to the PI (document 4); fact 17 by the content of the document titled medical statement attached to the PI (document 6); fact 18 by agreement (articles 31st of the PI and 1st of the Challenge) and by the content of document 7 attached to the PI; fact 19 by the content of the email of September 29 2013 attached to the PA (page 47); fact 20 by the content of the opinion attached to the PA (pages 75 and 76); fact 21 by the content of the email of May 2nd 2013 attached to the PA (page 77); fact 22 by the content of the email on page 77 of the PA; fact 23 by the content of the opinion attached to the PA (page 79); and fact 24 by the content of the January 28 2014 email, attached to the PA (page 84).

*

Nothing more of interest to the decision at stake was given as proven, taking into account the numerous plausible law solutions and the object of the lawsuit. (...)”.

*

26 [page 26]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

III.2 – OF LAW

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The factualness thus established, it is our task from here on out to appreciate the questions raised by the judicial remedy sub juditio.

*

*

I – Of the invoked nullity of the sentence by ultra petita

*

The Appellant claims, under the terms he outlined on his appeal allegations, which lead back to the corresponding conclusions, that the Court a quo, by determining that the conducts imputed to the A. possess the nature of criminal and civil offences / offenses, ruled on the matter about questions of which it was unaware of, since it issues a decisive judgment on a question it knows does not fall under the jurisdiction of administrative and fiscal courts; and that, by doing so, incurred in ultra petita.

Quid iuris?

Under the provisions of the #1 of article 615th of the C.P.C. [Código de Processo Civil – Civil Procedure Code], the sentence is null when the judge knows of issues he could not have knowledge about – subparagraph d), and when he condemns in a higher quantity or on an object different from the one being asked – subparagraph e).

The nullity of the sentence by excess of ruling (ultra petita) is the reverse of the one brought about by lack of ruling/failure to rule on the matter.

The latter occurs when the judge fails to know, without prejudice, about all the issues submitted by the interested parties to his consideration.

To what “issues” are, for the effect, there is a clarification by Lebre de Freitas, Montalvão Machado and Rui Pinto in the Annotated Civil Procedure Code, 2nd, 2nd edition, page 704: they *«are all requests presented, all causes of asking and exceptions invoked as well as all the exceptions he unofficially has to know», which doesn't amount to “considering all the arguments which, according to the many ways of solution to the lawsuit, plausible as those may be [article 511-1] the parties may have presented...” [page 680].*

On the same direction, we can check A. Varela, RLJ [Revista de Legislação e Jurisprudência – Journal of Law and Jurisprudence] 122, II2 and Rodrigues Bastos, Notas ao Código de Processo Civil [Notes on the Civil Procedure Code], III, 195.

It further has been reaffirmed the jurisprudence that the judge must know of all the issues, not needing to know of all the reasons or all the arguments [*check, for all, the Rulings of February 25 1997 on the BMJ* [Boletim do Ministério da Justiça – Ministry of Justice Bulletin] 464-464 [misspelling?] and of January 16 1996 on the CJ STJ [Jurisprudence of the Supreme Court of Justice] 1996 1st, 44 and, on the website www.dgsi.pt, the Rulings of September 13 2007, process #07B2113 and of October 28 2008, process #08A3005].

That is to say that, within the domain of the civil procedure law, excess of ruling can only occur, to the effects, if the court knew (i) requests, (ii) causes for asking or (iii) exceptions of which it was unaware of.

Equipped with these considerations of doctrinal and jurisprudence framing, and going back to the actual case, we must say from the onset that, taking into account the rationale specifically invoked, the Appellant has no reason in arguing for the nullity of the sentence.

In fact, the T.A.F. [Tribunal Administrativo e Fiscal – Fiscal and Administrative Court] of Coimbra did not condemn the Appellant for the commission of a crime, having only assumed that the conducts ascribable to him were prone, in abstract, to configure civil and criminal crimes, on the heels of considering demonstrated that the duties [*of the grantees*] laid down in subparagraph g) of the provisions of article 12th of the EBI had been violated.

What seems to be perfectly admissible, since the monitoring of the legality of the contested legal act lies within full competence of the Administrative and Fiscal Courts, notwithstanding the incidental knowledge of possible constitutional non-conformity

and/or criminal non-conformity of the materiality summoned in the lawsuits in view of clearing the “avowed object of the legal records”.

Thus, and referring to the appeal now under scrutiny, contending the validity of the contested legal act with the imputed violation of article 12th of the EBI, it was necessary that the T.A.F. of Coimbra should determine the violation [*or not*] of the duties of grantees laid down by the latter.

Requiring such task the incidental the integration [*or not*] of the Author’s conduct within the criminal framework, something to the pursuance of which the TAF’s dispose of full competence and sufficient inquisitorial powers, it is manifestly evident that, unlike what the Appellant claims, the Court a quo did not produce any decisive ruling on an issue that was beyond the umbrella of administrative and fiscal courts.

Therefore, the existence of nullity of the sentence for excess of ruling is not recognized.

*

II – Of the imputed error on the judgment of law

The plaintiff filed the present legal action petitioning that the present procedural means should be upheld, so as to be “(...) *declared the nullity/annulment [of] the administrative act which proceeded to the cancellation of the Plaintiff / Complainant / Claimant / Pursuer’s doctoral fellowship and, such act being revoked, that the payment of the fellowship to the Plaintiff / Complainant / Claimant / Pursuer should be reinstated, even during the time lapse which lasted since cancellation to the present time, as well as grants due during the period of suspension of the fellowship, since no payment to the Plaintiff / Complainant / Claimant / Pursuer had been done.*».

To the effect he claimed, *brevitatis causae* [for the sake of brevity], that the contested act (i) had the flaw of omission of the preliminary hearing of interested parties; (ii) did not contain the essential elements and infringed the essential content of a fundamental right; (iii) it

lacked reasoning; and that (iv) it violated the provisions of articles 12th and 17th of the Grantees' Charter [Estatuto do Bolseiro de Investigação – hereafter *EBI*].

As we know, the Court a quo ruled as groundless the request of the declaration of nullity or annulment of the decision of cancelling the fellowship of January 28 2014.

The weighting of the law on which the ruling of dismissal of the present action relied on was, basically, as follows:

“(…)

Of the failure of carrying out preliminary hearing

By force of article 100th #1 of the CPA91, as soon as preliminary investigation of the case is concluded, and notwithstanding the provisions of article 103rd of the same code, interested parties have the right to have their say in the procedure before the final decision is taken, and must be informed namely of the probable direction of the former.

It is through preliminary hearing that the principle of «participation of the citizens in the producing of the deliberations and decisions concerning them» (article 267th #5 of CRP [Constituição da República Portuguesa – Portuguese Republic Constitution]) is carried out and, thus, the recipient of the act is allowed to participate in and influence the decision-making on the part of the Administration. Its fulfilment / fulfillment constitutes an important guarantee of the defence's / defense's rights, which leads to it being considered an essential formality – check Ruling of the STA [Supremo Tribunal Administrativo – Administrative Supreme Court] of January 29 2009, page 651/08 (Costa Reis).

Hence the violation of the right to preliminary hearing determines the illegality of the final act, generating nullity – the typical sanction under the CPA regarding the «administrative acts carried out in offense of principles or legal provisions applicable for which violation is not envisaged any other sanction» (article 135th of the CPA91), and not annulment – in this sense, check the abovementioned ruling.

Nevertheless, this formality does not cease to be instrumental. Which is why it can be downgraded to non-essential formality; which does not entail that from the fact that it was not carried out a legal defect invalidating the act should arise.

This happens in the cases laid down in article 103rd of the CPA91 because, inter alia, the interested party already had his say on the procedure about issues which matter to the decision and about the evidence produced – check #2, subparagraph a).

30 [page 30]

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

In casu, it is noted that the interested party was notified to have his say on the suspension of the fellowship's payment. This suspension is a typical example of a provisional measure (check article 84th of the CPA91). Administration decides to put on hold an act establishing rights (the act of granting the fellowship) with the purpose of ascertaining – within procedural context – if the premises for the keeping of fellowship payment are still in place (check point 9 of the established matter of facts).

The decision of suspending the fellowship was taken on the heels of a recommendation by the doctoral supervisor (check point 4 of the established matter of facts) to which the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], the host institution, adhered (check point 7 of the established matter of facts). At the bottom of the recommendation was an «extremely negative» assessment of the compliance with disciplinary duties, which compromised the smooth course of the research work within the institution and with other institutions collaborating with the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas]. Specifically, according to the referral to the memo on disciplinary problems involving the A., at stake were conducts like, for instance, throwing «serious and groundless accusations to the ESA, to staff and students of ESA itself» via email, the sending of an email to Cátia Gonçalves referring to her as «too

lazy to do what we employ her to do» and to the posting in a forum of a message which claims that the Instrumentation and Experimental Particle Physics Lab's [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board had threatened the A. of not renewing the fellowship unless he dropped the legal lawsuit he had filed against Paulo Gomes (check points 5 and 6 of the established matter of facts).

Examining the notification to the effects of ruling, before the decision of suspension (point 10 of the established matter of facts) it is noted that the former explicitly mentions the «alleged health issues not allowing him to carry out (sic)⁶ the research work assigned to him, in an atmosphere of regular interaction with coworkers as well as with other Lab and University's staff».

It is reported, towards the end, that the effects of the suspension may cease as long as a statement issued by the medical services of the University of Coimbra confirming his aptness for work be produced and appended to the legal records.

By referring the health issues and the troubles in the coexistence with coworkers and lab staff, combining these two, as well as by making an explicit reference to the opinion of the supervisor, Professor Rui Curado da Silva and that of the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], the host institution, the said notification placed the A. in the factual conditions to exercise his right to prior hearing before the final decision. He could have disputed the existence of a pathological situation, the existence of companionship issues with coworkers and further staff, and could have disputed the intertwining of both.

Within that framing, the A. is disputing the existence of any incompatibility with coworkers and other university staff, as well as adding documents attesting his aptness for working and studying.

⁶ Check Note 1.

Later, the supervisor issues an opinion in the sense that «(...) the decision stems from the lack of an apology or any other attempt at mending the unruly conducts sourced by the referred fellow in points 1 to 7 of the memo» – check point 20 of the established matter of facts. The assessment was then endorsed by an opinion of the host institution, Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] – check point 23 of the established matter of facts. The final decision was delivered in express agreement with both these opinions – check point 24 of the established matter of facts.

It is to be noted that the A.'s discipline, specifically the keeping of a sane coexistence with coworkers and other agents of the scientific community was, factually, what formed the basis for both decisions, for what, the A. having been notified to have his say about those facts in the context of application of provisional measure, the formality of prior hearing of the interested party downgrades – at the heart of the final decision – into a non-essential formality in view of article 103rd, #2, subparagraph a) of the CPA91, since the A. had already had the opportunity of having his say about all the issues that mattered to the decision.

In face of the above, the claim of legal defect by lack of preliminary hearing is untenable.

Of the duty of reasoning

The duty of reasoning of administrative acts, both constitutionally and legally imposed to Administration (articles 268th, #3 of the CRP and 124th of the CPA91) attains essentially to (i) enable its recipients to effectively react against the harmfulness of the acts and (ii) force administrative decisions into being properly reasoned and well-considered by their authors.

Reasoning must be explicit, clear, coherent and comprehensive, making explicit the factual and legal reasons for the decision, and may consist of a mere declaration of concordance with the grounds of previous rulings, information or proposals which, in this case, constitute part and parcel of the corresponding act – article 125th, #1, of CPA91.

The content of the reasoning is, to a large extent, tributary of the type of act or effects at stake and of the circumstances of the concrete case, in particular, and also of the observations of the interested parties in the prior hearing, i.e., in the reasoning of the act it becomes necessary to take into consideration the reasons the interested party invoked in that procedural intervention – check OLIVEIRA, Mário Esteves / GONÇALVES, Pedro Costa / AMORIM, J. Pacheco, Código do Procedimento Administrativo Anotado [Annotated Administrative Procedure Code], 2nd edition, Coimbra, Almedina, 2007, page 592.

The administrative act is considered as well reasoned when a regular recipient can realize the cognitive and evaluative path followed by the author so as to reach a decision.

In the case under scrutiny, reasoning is done by adherence to the opinions of the supervisor and the host institution. Now, weighting the contents of both opinions, it is observed that regarding the first (article 19th of the matter of facts) the medical information added by the A. to the administrative process was not taken into account. An omission of which the consequences, to the concrete understanding of the act, have a definite relevance since, in the case before us, the A. was asked to render a medical statement from the University of Coimbra medical services, which he added in the context of administrative procedure. However, on the second opinion, in which “definitive” cancellation is recommended, the medical conclusions are accepted, although this time to subjectively render the A. responsible by the unacceptable conducts described in it.

As a result, the cognitive path of the author of the act, the grounds of the act as to the matter of facts, are not left unrevealed. As to the evaluative path we cannot say the same, at least in its entirety, since the duties violated by such conducts and the legal grounds for the cancellation are not at all explained.

Indeed, no legal reasons to underpin the decision are made explicit in the supervisor's "recommendation".

Accordingly, the act suffers from lack of reasoning due to insufficiency – check #2 of article 125th of the CPA91 – even being annulable due to formal procedural defect (check, in this direction, Rulings of the STA [Supremo Tribunal Administrativo – Administrative Supreme Court] of May 25 2011, process 091/11, DULCE NETO, TCAN [Tribunal Central Administrativo Norte – Northern Central Administrative Court] of June 9 2010, process 00007/09.2 BEMDL, JOSÉ VELOSO of TCAS [Tribunal Central Administrativo Sul – Southern Central Administrative Court] of October 15 2015, process 12489/15, PAULO PEREIRA GOUVEIA with extensive jurisprudential and doctrinal references, which we can closely recognize in that decision).

The A. claims that the lack of reasoning of the act entails its nullity. We cannot, however, endorse that position. Lack of reasoning or its insufficiency is only susceptible of rendering the act liable to annulment. In our legal system, the general rule is that of liability to annulment, nullity has an exceptional character, to the point that outside the cases of lack of one of the essential elements it is devoid of explicit regulation – check articles 133rd and 134th of the CPA91.

Reasoning is accounted for in article 268th #3 of the CRP as an objective duty which is part of the legal framework to which Administration is subject when practising / practicing administrative acts. In principle, lack of reasoning will generate the act's mere liability to annulment. Only in particularly serious cases or cases in which the intensity of the harm to the legal order is substantial due to lack of reasoning must we uphold the consequence of nullity. VIEIRA DE ANDRADE (apud Ruling of TCAS of October 15 2015, process 12489/15, PAULO PEREIRA GOUVEIA) explains that the «violation of the legal order may be of such seriousness that, in order to maintain the essential of the legal force of the "institutional guarantee", constitutionally foreseen, of the duty of reasoning, is the sanction to its lacking to consist in the nullity. It will be the case of special situations in which lack of reasoning

assumes either the very nature of essential element of the act, eventually ending up under the legislative criterion contained in #1 of article 133rd of the CPA, or a nature parallel to that of offense of the essential content of a fundamental right (article 133rd, #2, subparagraph d) of the CPA)».

In our case, as it results from what has been stated above, besides the fact that we are not before a lack of essential elements of the act (perpetrator, object, content and recipient) we are not – nor the A. alleged or demonstrated it – before a case in which reasoning assumes the very nature of essential element. And it is also certain that we are not, nor the A. alleged or demonstrated it, before a situation in which there is a serious and intense offense to the legal order.

In face of the above, there prevails the legal defect of lack of reasoning invoked by the A., rendering the act merely liable to annulment.

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Northern Central Administrative Court

Of the violation of the law due to non-existence of the infringement of the fellows' duties (provided for by article 12th of the EBI) and due to the non-existence of any of the reasons for termination of contract (provided for by article 17th of the mentioned Charter)

The fellowship, according to article 33rd of FCT's Research Grants Regulation, may be cancelled / canceled as a result of an inspection led by FCT after analysing / analyzing the information provided by the research fellow, by the supervisors or the host institution (#1); as a rule, as the result of a negative evaluation of the grantee's performance on the part of any of the mentioned entities, after the hearing of the fellow by the financing entity (#2); for serious or reiterated violation of the duties of the grantee included in the mentioned regulation and in the EBI, the fellow having the

possibility of demanding restitution of all or part of the sums ascribed to him/her depending on the concrete case (#3).

Article 12th, subparagraph b) of the EBI determines, with interest to the case now under scrutiny, that all fellows must comply with the internal operating rules of the host institution and the directives of the scientific supervisor.

*In the case at stake, and believing that civility and mutual respect between the fellow and all members of the host institution, of the University and, generally, of all other institutions which integrate the scientific community and are related to the Instrumentation and Experimental Particle Physics Lab [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas], as well as the keeping of a loyal relation to the host institution without harming the good name and reputation of the former within the community form part of the internal operating rules in any public or private institution, rules to which fellows must obey, it is our understanding that, given the conducts in question – to «throw serious, groundless accusations against ESA, against ESA’s own employees and students» by email, the sending of an email to Dra. Cátia referring to her as “too lazy to do what we employ her to do», and the posting of a message on a forum in which it is claimed that the Instrumentation and Experimental Particle Physics Lab’s [ie, LIP – Laboratório de Instrumentação e Física Experimental de Partículas] Board would have threatened not to renew his fellowship unless he dropped the lawsuit he had filed against Paulo Gomes (check point 6 of the established matter of facts) – it is manifest that the grantee repeatedly violated the duty of compliance with the internal operating rules of the host institution (check article 12th, subparagraph b) of the EBI), which determines, *ope legis* [by force of the law], in accordance with article 33rd of the Regulation, cancellation of the fellowship.*

Besides, the A.’s conducts also infringe duties arising from the law, namely the duty of not offending the civil right to good name and of not committing criminal offences / offenses such as the conduct of, verbally or in written form, imputing facts or suspicions, or addressing words offensive of the honor / honour or reputation of a third

party and that of defamation that call for the violation of duties laid down by subparagraph g) of the mentioned article 12th of the EBI and which imply, similarly, application of the penalty set out in the mentioned article 33rd of the Regulation.

In face of all the above, the legal defect of violation of the law is dismissed.

Of the principle of recovery of the administrative act

The Defendant / Defender entity, in its legal defence / defense, claims that, by force of the provisions of article 33rd #3 of the RBI, the act at stake, even if liable to annulment, could not but have the same content.

The principle of recovery of the administrative act has been applied, mostly, with regard to formal and procedural legal defects, such as the disregarding of the specified legal form and the disregarding of formalities prior or contemporaneous of the practising / practicing of the act, linking with greater incidence with cases of disregarding of preliminary hearing or lack of reasoning.

The court can turn down an invalidating effect to the disregarding of formality under article 124th of the CPA91 if the act has been practised / practiced under the exercise of bound powers and if it could conclude beyond any doubt, in a judgment of posthumous prognosis, that the challenged administrative decision was the sole concretely possible.

In the case under scrutiny, the act suffers from the defect of lack of reasoning.

However, the weighting of the repeated violation of the duties of internal operating rules of the host institution, as well as the violation of duties enshrined in the general law, namely the duty not to offend the civil right to good name and of not committing the criminal offences / offenses of the conduct of, verbally or in written form, imputing facts or suspicions, or addressing words offensive of the honor / honour or reputation of a third party and that of defamation would lead, in the context of renewal of the administrative act, to the keeping of the act's content, by force of articles 12th subparagraphs b) and g) of the EBI and of #3 of article 33rd of the abovementioned Regulation.

In that sense, it must be noted that a possible annulment of the act would not bring any advantages to the A., insofar as that, in the context of execution of the

annulment judgment, the Administration would renew the act purging it from the legal defect of lack of reasoning. To this must be added that it stems from the letter of the law of #3 of article 33rd of FCT's Research Grants Regulation that the ascertainment of a serious or reiterated violation of the duties of the

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

fellow determine ope legis the cancellation of payment of the grant. It is, in effect, an act of bound nature.

Now, within that factual frame, and considering what results from the provisions of article 12th, subparagraphs b) and g), of the EBI, and #3 of article 33rd of the abovementioned Regulation, the only conclusion left available is that the act in question, by having a bound nature, would have been carried out with similar content.

It is our belief, therefore, that the annulment effect of the act cannot be produced.

(...)".

Summarizing the legal reasoning just transcribed, it is clear that the T.A.F. of Coimbra disregarded the argumentative constellation added by the Plaintiff / Complainant / Claimant / Pursuer around the invalidity associated with the contested act, with the exception of the invoked legal defect of lack of reasoning.

However, by refusing to attribute an invalidating effectiveness to the spotted legal defect of lack of reasoning, ruled the present action as inadmissible.

The Appellant protests against the decision, attributing it the legal defect of judgment of law on the domain of the judgment stated as to the issues to be decided upon, of (i) omission of prior hearing of the interested parties and of (ii) possibility of recovery of the administrative act.

It should be affirmed, from the onset, that the Appellant is manifestly right in the judicial remedy under scrutiny and that the decision is thus not to be kept.

In earnest, and as to the invoked disregard of prior hearing, it is important to underline that the Court a quo grounded the judgment of dismissal of that hearing on the understanding that the Plaintiff / Complainant / Claimant / Pursuer was heard in the context of preliminary hearing about the fundamentals of the (i) provisional measure of suspension of the doctoral fellowship, which encompasses the motivation for the (ii) subsequent decision of cancellation of the doctoral fellowship, whereby «(...) *the formality of hearing of the interested party, within the context of*

the final decision downgrades into a non-essential formality by force of article 103rd, #2, subparagraph a) of the CPA91, since the A. had already had the opportunity of having his say about all the issues of interested parties which mattered to the decision (...)”.

However, we do not follow such understanding.

In earnest, it is detectable in the factual fabric of the legal records a clear evidence of the existence of two administrative acts carried out by the Administration, translated into (i) the act of suspension of the doctoral fellowship and (ii) the act of cancellation of that same fellowship.

Well, before the scrutiny that has to be done, and that has to be done also as to the probative collated in the legal records, we cannot but conclude that the first act of suspension of the fellowship was motivated by reason of the Appellant’s alleged poor health and took place on January 29 2013 [*check, further and particularly, points 8), 9), 10), 19) and 20)*].

On its turn, the second act of cancellation of the doctoral grant was motivated by the alleged practice by the Appellant of conducts violating the grantees’ duties provided for in the EBI, and took place on December 11 2013 [*check points 20 to 24*].

Likewise, after scrutiny of the probative collated in the legal records, it is not to be doubted that – as to the act of suspension of the doctoral fellowship – the principle of participation of private individuals in the Administration’s decision-making was fully executed, in the aspect of preliminary hearing of the interested parties [*check abovementioned points*].

The same, however, is not to be said in what concerns the second act of cancellation of the doctoral fellowship, of which the grounds –it must be underlined – are not, in any way, to be mistaken for the motivation present in the act of suspension of the doctoral fellowship, since the Defendant / Defender completely withheld the right for preliminary hearing without delivering any act or decision which would justify such omission [*check abovementioned points*].

In fact, even if we could consider the existence of a justification for the inexistence or the dispensation of preliminary hearing, the truth is the Defendant / Defender at no time invoked such justification or gave any reasons to it in the context of the procedure.

[Official Seal of the Republic of Portugal]

Northern Central Administrative Court

“And thus the final decision of an administrative procedure in which the interested parties were not heard since it was deemed, without the necessary reasoning, that there were no legal grounds for a hearing, is a voidable decision by procedural defect.” [- check Mário Esteves de Oliveira, Pedro Costa Gonçalves and J. Pacheco de Amorim, Annotated Administrative Procedure Code, 2nd edition, Almedina, page 463].

In face of the above, and according to article 267th #5 of the CRP and to article 100th of the CPA, the A. had the right to be heard in the designation procedure at stake – which he wasn’t.

In this respect, an essential formality of the procedure in question was disregarded, something which is sanctioned with the annulment of the contested act, by violation of the A,'s right to preliminary hearing within the context of the referred procedure.

However, and since it constitutes a uniform jurisprudential understanding, the Court can only turn down an invalidating effect to the omission of formality laid down in article 100th of the CPA if it can, in a judgment of posthumous prognosis, conclude beyond any doubt that the contested administrative decision was the only one exactly possible [*check, among others, Rulings of the STA of June 2nd 2004 (Full Court), process #01591/03, of May 23 2006 (Full Court), process #01618/02, of October 11 2007, process #0274/07 of September 10 2008 – Process #065/08 of September 10 2009 – Process #0940/08 in: «www.dgsi.pt/jsta»; Ruling TCA North [Northern Central Administrative Court] of March 5 2009 – Process #00115/06.IBEVIS in «www.dgsi.pt/jtcn»*].

It was stated, in this regard, on the Ruling [*Full Court*] of the Administrative Supreme Court of May 23 2006, in the process #1618/02 that: *«So, it is only admissible that the administrative court fails to impose the annulment of the act which didn't comply with the duty of hearing, recovering it, when the act, so impregnated as it is with legal binding, does not allow for any other solution (of law and fact) unless the one that was ruled, that is to say when the latter imposes itself as an absolute inevitability: a legal category which leaves margin for arbitrariness, difficulties in interpreting the law or in establishing*

factual assumptions, all these are circumstances which hinder the recovery of the act by the court»...”.

And on the ruling of the same Venerable Court of February 11 2003, in the process #044433, it was also held that *“(...) we mustn't forget that formal and procedural defects such as the violation of article 100th, in view of the instrumental*

nature of the disregarded legal formalities, albeit essential, will only stand as invalidating of the act if the purpose attained with such formalities was not achieved. If, notwithstanding, it is, then the disregarded formality downgrades into a non-essential one, since it becomes absolutely irrelevant to the description of the juridical situation which the act embodies. Preliminary hearing being a merely instrumental legal formality, its disregard does not lead to the annulment of the act if, in light of the material provisions, it cannot absolutely interfere on its substantial contents, that is, if the decision taken in particular could not have been other (...).”

Thus, in order to be deemed applicable – in situations such as those described in the legal records – the principle of recovery of administrative acts, the Court would have to conclude beyond any doubt that the fulfilment / fulfillment of the disregarded formality would not in any way alter the direction of the contested decision on the present legal records.

Under such circumstances, we can only go as far as to accept that the Court refrains from settling the contentious annulment if shown evidence [*of which the onus lies with the Defendant / Defender*] that the committed violation had no influence whatsoever in the decision outcome, which would always be the same if the procedural defect spotted had not occurred.

It so happens that, in the case of the legal records, that demonstration was not presented.

In any case, and so there are no doubts left, we must say that, of all the elements placed at this Superior Court’s disposal, it’s not possible to conclude, without room for doubt, that if the Appellant had been heard prior to the final decision, his intervention in the procedure would not have lead to a reappraisal of the situation and, thus, influencing the final decision.

On this occasion, not being possible to assure that the final decision would necessarily be the same, whether the interested party made use of his right to preliminary hearing or

Northern Central Administrative Court

not, on this case the Latin formula “utile per inutile non vitiatur”, which enables the judge, and namely the administrative judge, to be able to deny annulment relevance to the Administration’s mistake, is utterly unfeasible.

This way, we reach the conclusion that the contested act cannot be rescued based on the principle of recovery of administrative acts, and therefore the annulment of the act should be enforced [*check Rulings of the TCAS of October 8 2009 in the context of Process #05464/09, of TCAN of March 19 2009, delivered in Process #00643/05 and of December 18 2015, drawn from Process #00277/13*].

Thus the Court a quo was wrong in deciding otherwise.

Conclusively, the abovementioned findings 1) to 17) of the appeal are upheld, which determines the detrimental character of all other arguments added in the context of the present judicial remedy [*check article 95th #1 in fine of the CPTA and 608th #2 of CPC*].

Consequently, we must uphold the present judicial remedy, and the sentence under appeal should be revoked; the contested act must be annulled and a reconstitution of the procedure is determined, which is detailed in the provision.

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IV – PROVISION

Under these terms, and after conferring, the judges of the Administrative Litigation Section of this Court, in harmony with the powers granted by article 202nd of the CRP agree to **UPHOLD** the present judicial remedy, to revoke the sentence under appeal and to annul the contested act, further determining the reconstitution of the administrative procedure.

Legal fees are to be debited to the Appellant.

**

Oporto, November 27th 2020

Ricardo de Oliveira e Sousa [Reporting Judge, who consigns and certifies that, according to the provisions of article 15th-A of DL [Decreto-Lei – Decree-Law] #10-A 2020 of March 13, supplemented by article 3rd of DL # [illegible] members of the formation of the court, Court of Appeal Judge **João Beato** and Court of Appeal Judge **Helena Ribeiro**].