

### **Law Precedent: The inapplicability of the 15-day extension for the purpose of counting the judicial appeal deadline for administrative sanctioning decisions**

ANALYSIS OF THE SUPREME COURT OF JUSTICE RULING NO. 3/2025, OF 27 FEBRUARY, CASE NO. 204/22.5YUSTR.L1-A.S1

19 March 2025

#### **A. BACKGROUND**

The **Supreme Court of Justice Ruling No. 3/2025** concerns the establishment of case law precedent regarding the (in)applicability of the extension provided for in Article 88(1)(b) of the Portuguese Code of Administrative Procedure (CPA), approved by Decree-Law No. 4/2015, of 7 January, for the purpose of counting the deadline for judicial appeal against an administrative sanctioning decision, as stipulated in Article 59(3) of the Portuguese General Regime of Administrative Offences (RGCO), established by Decree-Law No. 433/82, of 27 October.

The ruling originated from the appeal filed by Deutsche Lufthansa Aktiengesellschaft (Lufthansa), the defendant in an administrative offence proceeding initiated by the National Civil Aviation Authority (ANAC) for the alleged violation of the sanctioning regime established by Decree-Law No. 28-B/2020, of 26 June, concerning the state of calamity, contingency, and alert arising from the COVID-19 pandemic. Accordingly, ANAC imposed a fine on the appellant, who subsequently lodged a judicial appeal against the sanctioning decision. However, the Competition, Regulation and Supervision Court rejected the appeal on the grounds of untimeliness.

Lufthansa then appealed to the Lisbon Court of Appeal, arguing that, since the deadline stipulated in Article 59(3) of the RGCO was administrative in nature, the 15-day extension provided for in Article 88 of the CPA should apply.

The Court of Appeal dismissed the appeal, reaffirming that the CPA extension was not applicable to the procedural deadlines of administrative offences.

## **B. THE APPEAL**

**Given the existence of contradictory rulings on the same matter, the appellant filed an extraordinary appeal for the establishment of case law precedent, citing a ruling of the Porto Court of Appeal as the basis for the jurisprudential divergence.** In that ruling, it was determined that the extension provided for in the CPA applied to the calculation of the deadline for judicial appeal in administrative offence matters.

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Upon reviewing the conflicting judgments, the Supreme Court of Justice admitted the appeal and allowed its continuation under Article 441(1), second part, of the Portuguese Code of Criminal Procedure, with the aim of establishing case law precedent.

### **B.1. LUFTHANSA'S ARGUMENTS**

Lufthansa succinctly argued that the calculation of the deadline for judicial appeal against administrative sanctioning decisions falls within the scope of general administrative law. It contended that the autonomy of the administrative phase of the administrative offence process vis-à-vis the judicial phase—where the former is exclusively governed by administrative law, namely the CPA—meant that the extension provided for in Article 88 of the CPA should apply.

The appellant asserted: *«If it is unquestionable that the administrative offence process consists of two distinct phases, and it is recognised that its administrative phase is entirely separate from the preliminary stages of the criminal process, there must be a dichotomy of applicable rules in the administrative offence process, which are differentiated precisely according to the phase in which the*

*process is situated. (...) [Thus,] given the administrative nature of the appeal deadline provided for in Article 59 of the RGCO, there is no doubt that the application of Article 88 of the Code of Administrative Procedure should prevail, as follows, first and foremost, from the interpretation based on the general rules of interpretation set out in Article 9 of the Civil Code.».*

Furthermore, Lufthansa argued that the inapplicability of the extension to the calculation of the deadline would violate the principles of effective judicial protection, trust, good faith, and legal certainty, enshrined in Articles 2 and 226 of the Portuguese Constitution, thereby preventing Lufthansa from legally challenging a sanctioning decision.

Lufthansa concluded its argument by stating: «q) *In fact, it also makes no sense that Article 87 of the Code of Administrative Procedure should apply for the purpose of counting the deadline—suspending it on Saturdays, Sundays, and public holidays—while Article 88 should not apply to extensions. r) On the contrary, the counting of the deadline and the extensions provided for in the Code of Administrative Procedure should be fully applicable to the judicial appeal phase, for the purposes set out in Articles 59 and 60 of the RGCO, as this is the only possible interpretation in light of the unity of the legal system.».*

## **B.2. PUBLIC PROSECUTOR'S ARGUMENTS**

In response, the Public Prosecutor's Office argued that «*the wording of the law and the systematic element, both hermeneutics criteria enshrined in Article 9 of the Civil Code, exclude the subsidiary application of the Code of Administrative Procedure, namely its Article 88(1)(b), to administrative offence proceedings. This is because there is no lacuna in the RGCO concerning the calculation of deadlines that would require subsidiary application of another branch of law. Even if such a lacuna existed, it would have to be filled by resorting to the provisions of the Code of Criminal Procedure, which does not provide for an extension.».*

### **B.3. THE DECISION**

**The Supreme Court of Justice ruled, unanimously, that the extension provided for in Article 88 of the CPA does not apply to the deadline for judicial review set forth in Article 59 of the RGCO.**

**In this regard, the Court first clarified that the RGCO establishes a specific and autonomous regime for the calculation of deadlines, which does not include the concept of extension.**

Specifically, the Court bases its reasoning on Article 59, paragraph 3, of the RGCO, which states that *«the appeal shall be made in writing and presented to the administrative authority that imposed the fine, within 20 days of the defendant's knowledge of the decision»* and on Article 60 of the same regulation, which stipulates that *«the deadline for challenging the decision of the administrative authority is suspended on Saturdays, Sundays, and public holidays»* **thus concluding that there is no reference to extension.**

The Court continues its argument by referring to Article 41 of the RGCO, which states that the subsidiary law applicable to the offence process is criminal procedure, not administrative procedure, establishing that *«whenever this law does not provide otherwise, the provisions regulating criminal procedure shall apply, duly adapted.»* **It further recalls that the CPP does not provide for any extension of deadlines for procedural time limits.** Moreover, precedents from the Supreme Court of Justice – such as the Ruling on the Establishment of Precedent No. 2/96 – **reaffirm that the autonomous regulation of criminal procedure excludes the concept of extension, a principle that is also applicable to the offence procedure.** Furthermore, the systematic interpretation of the CPA reveals that Article 88 applies exclusively to administrative procedures, which do not include sanctioning procedures, thus excluding its applicability to offence processes.

## **C. ESTABLISHMENT OF PRECEDENT**

In line with the above, the Supreme Court of Justice established case law precedent as follows: «*The extension provided for in Article 88(1)(b) of the Code of Administrative Procedure, approved by Decree-Law No. 4/2015, of 7 January, is not applicable for the purpose of counting the deadline for appealing against an administrative authority's decision to impose a fine, as provided for in Article 59(3) of Decree-Law No. 433/82, of 27 October, which instituted the administrative offence regime.*».

This News Flash does not exempt the need to read the full text of [Supreme Court of Justice Ruling No. 3/2025, of 27 February \(PT version\)](#).

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