

Portuguese appeal court ruling: 11 November 2020

An appeals court in Portugal has ruled that the RT-PCR process is not a reliable test for Sars-Cov-2 (the purported cause of the Covid-19 disease [which has not been isolated or identified with a compiled genome available], and therefore any enforced quarantine based on those test results is unlawful. Further, the ruling suggested that any forced quarantine applied to healthy people could be a violation of their fundamental right to liberty. Most importantly, the judges ruled that a single positive PCR test cannot be used as an effective diagnosis of infection.

In a recent decision, dated 11 November 2020, a Portuguese appeal court ruled against the Azores Regional Health Authority concerning a lower court decision to declare unlawful the quarantining of four persons. Of these, one had tested positive for Covid using a PCR test; the other three were deemed to have undergone a high risk of exposure. Consequently, the Regional Health Authority decided that all four were infectious and a health hazard, which required that they go into isolation. The lower court had ruled against the Health Authority, and the appeal court upheld that ruling with arguments that explicitly endorse the scientific case for the lack of reliability of the PCR tests

The court's ruling is a long text. The court's main points are as follows:

1. A medical diagnosis is a medical act that only a physician is legally qualified to undertake and for which such physician will be solely and entirely responsible. No other person or institution, including government agencies or the courts, has such an authority. It is not up to the Azores Regional Health Authority to declare someone ill, or a health hazard. Only a physician can do that. No one can be declared ill or a health hazard by decree or law, nor as the automatic, administrative consequence of the outcome of a laboratory test, no matter which.
2. From the above, the court concludes that “if carried out with no prior medical observation of the patient, with no participation of a physician certified by the Ordem dos Médicos who would have assessed symptoms and requested the tests/exams deemed necessary, any act of diagnosis, or any act of public health vigilance (such as determining whether a viral infection or a high risk of exposure exist, which the aforementioned concepts subsume) will violate [a number of laws and regulations] and may configure a crime of usurpação de funções [unlawful practice of a profession] in the case said acts are carried out or dictated by someone devoid of the capacity to do so, i.e., by someone who is not a certified physician [to practice medicine in Portugal a degree is not enough, you need to be accepted as qualified to practice medicine by undergoing examination with the Ordem dos Médicos, roughly our equivalent of the UK's Royal College of Physicians].”
3. In addition, the court rules that the Azores Health Authority violated article 6 of the Universal Declaration on Bioethics and Human Rights, as it failed to provide evidence that the informed consent mandated by said Declaration had been given by the PCR-tested persons who had complained against the forced quarantine measures imposed on them.
4. From the facts presented to the court, it concluded that no evidentiary proof or even indication existed that the four persons in question had been seen by a doctor, either before or after undertaking the test.
5. The above would suffice to deem the forced quarantine of the four persons unlawful. The court thought it necessary, however, to add some very interesting considerations about the PCR tests:
6. “Based on the currently available scientific evidence this test [the RT-PCR test] is in and of itself unable to determine beyond reasonable doubt that positivity in fact corresponds to infection by the SARS-CoV-2 virus, for several reasons, among which two are paramount (to which one would need to add the issue of the gold standard, which, due to that issue's specificity, will not be considered here): the test's reliability depends on the number of cycles used; the test's reliability depends on the viral load present.”
7. Citing Jaafar et al. (2020; <https://doi.org/10.1093/cid/ciaa1491>), the court concludes that “if someone is tested by PCR as positive when a threshold of 35 cycles or higher is used (as is the rule in most laboratories in Europe and the US), the probability that said person is infected is <3%, and the probability that said result is a false positive is 97%.” The court further notes that the cycle threshold used for the PCR tests currently being made in Portugal is unknown.
8. Citing Surkova et al. (2020; ([https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30453-7/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30453-7/fulltext)), the court further states that any diagnostic test must be interpreted in the context of the actual probability of disease as assessed prior to the undertaking of the test itself, and expresses the opinion that “in the current epidemiological landscape of the United Kingdom, the likelihood is increasing that Covid 19 tests are returning false positives, with major implications for individuals, the health system and society.”
9. The court's summary of the case to rule against the Regional Health Authority's appeal reads as follows:
10. “Given how much scientific doubt exists — as voiced by experts, i.e., those who matter — about the reliability of the PCR tests, given the lack of information concerning the tests' analytical parameters, and in the absence of a physician's diagnosis supporting the existence of infection or risk, there is no way this court would ever be able to determine whether C was indeed a carrier of the SARS-CoV-2 virus, or whether A, B and D had been at a high risk of exposure to it.”