



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

FIFTH SECTION

**CASE OF GRANOS ORGANICOS NACIONALES S.A.
v. GERMANY**

(Application no. 19508/07)

STRASBOURG

22 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Granos Organicos Nacionales S.A. v. Germany,
The European Court of Human Rights (Fifth Section), sitting as a
Chamber composed of:

Dean Spielmann, *President*,
Boštjan M. Zupančič,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 21 February 2012,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19508/07) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Peruvian corporation, Granos Organicos Nacionales S.A. (“the applicant company”), on 2 May 2007.

2. The applicant company was represented by Mr E. Gomez de Larrain, a lawyer practising in Hamburg. The German Government (“the Government”) were represented by their Agent, Mr H.-J. Behrens of the Federal Ministry of Justice.

3. The applicant company alleged that the refusal to grant legal aid in civil proceedings was discriminatory and violated its right of access to a court.

4. By a decision of 12 October 2010 the Court declared the application admissible.

5. The applicant company and the Government each filed observations on the merits (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company is registered under Peruvian Law and is based in Lima.

7. The applicant company exported organic bananas to Europe. In 2001/2002 it concluded a commission contract with two German companies, agreeing that all legal disputes would be brought before the courts in Hamburg. The contract also included a clause that legal disputes be settled by an arbitration tribunal in Hamburg.

8. On 31 December 2005 the applicant company requested legal aid to bring a civil action before the Hamburg Regional Court (*Landgericht*) against the two German companies for breach of the commission contract, submitting that the applicant company and its shareholder were insolvent and could thus not afford an advance payment of the court fees.

9. On 4 January 2006 the Hamburg Regional Court dismissed the request for legal aid. It held that, according to section 116 (2) of the German Code of Civil Procedure (*Zivilprozessordnung*, see Relevant domestic law, below), only legal persons founded or based in one of the member States of the European Union or the European Economic Area were entitled to legal aid.

10. On 17 January 2006 the Regional Court rejected an objection by the applicant company. It held that section 116 of the German Code of Civil Procedure exhaustively determined which legal persons were entitled to receive legal aid, and it was not for the court to extend this provision to include companies based outside Europe. Germany was not obliged to enable all legal persons in the world to benefit from legal aid.

11. On 23 January 2006 the Hanseatic Court of Appeal (*Oberlandesgericht*) confirmed the Regional Court's decisions. It added that the interference with the applicant company's right of access to a court was justified. The restriction imposed on the applicant's right of access to a court was justified by the principle of reciprocity: if equal treatment was codified under constitutional law, there would be no incentive for foreign States to provide German legal persons with the same legal standard. The court also held that, even if the applicant company were to be put on a par with a domestic legal person, the non-litigation of the applicant company's case did not run counter to the general interest. Relying on a ruling of the Federal Constitutional Court of 3 July 1973 (no. 1 BvR 153/69, report BVerfGE 35, 356), it considered in this regard that even a domestic legal entity retained its right to exist under the legal order only if it was able to pursue its objectives by virtue of its own strength and means.

12. On 25 October 2006 the Federal Constitutional Court refused to admit the applicant company's constitutional complaint. This decision was served on the applicant company on 2 November 2006.

II. RELEVANT DOMESTIC LAW

13. The relevant provisions of the German Code of Civil Procedure read as follows:

Section 110 (security for costs of proceedings)

“(1) Plaintiffs who do not reside in a Member State of the European Union or in another State party to the Agreement on the European Economic Area have, at the other party’s request, to provide a security for the costs of the proceedings.”

Section 114 (preconditions)

“Parties who on account of their personal and economic circumstances are unable to pay the costs of litigation, or who can only pay these costs in part or in instalments shall, upon their application, be granted legal aid if the intended litigation of the case offers sufficient prospects of success and does not appear wanton. ...”

Section 116 (legal persons)

“Upon their application, legal aid shall be granted to

...

(2) legal persons or associations capable of being a party founded or based in another Member State of the European Union or in another State party to the Agreement on the European Economic Area if the costs can be paid neither by them nor by those financially involved in the object of the legal dispute and if non-litigation of the case would run counter to the general interest. Section 114, last part of first sentence, shall apply.”

14. The relevant provisions of the Court Fees Act (*Gerichtskostengesetz*) read as follows:

Section 12 (civil proceedings)

“In civil legal disputes the action shall not be served until the fees for the general proceedings have been paid ...”

Section 14 (exception to contingency)

“Section 12 ... shall not apply where

1. the plaintiff has been granted legal aid,
2. the plaintiff is exempt from paying fees, or
3. the intended litigation of the case does not lack prospects of success and does not appear wanton, and where it can be substantiated that

(a) in view of the plaintiff's financial situation or other reasons, immediate payment of the costs would cause difficulties or

(b) delaying litigation would cause damage to the plaintiff that could not be compensated, or only with difficulty; the declaration of the authorised counsel is deemed to be sufficient substantiation."

Section 67 (appeal against the order for advance payment)

"An appeal can be lodged against the decision to make the court action contingent upon the advance payment of costs and against the amount of the fees ..."

III. PERUVIAN LAW

15. Article 179 of the Peruvian Code of Civil Procedure reads as follows:

"Legal aid is granted to natural persons who would risk, upon payment or guarantee of the costs of the proceedings, to no longer be able to maintain themselves or their dependents."

IV. INTERNATIONAL TREATY LAW

16. Article 20 § 1 of the Hague Convention on Civil Procedure (concluded on 1 March 1954) reads as follows:

"In civil and commercial matters, nationals of the Contracting States shall be granted free legal aid in all the other Contracting States, on the same basis as nationals of these States, upon compliance with the legislation of the State where the free legal aid is sought."

Article 31 of the Hague Convention provides that any State may accede to the convention, unless a State or several States which have ratified the convention object.

The Federal Republic of Germany ratified the Hague Convention on 2 November 1959. The Republic of Peru is not a State party to that convention.

V. COMPARATIVE LAW

17. A comparative survey conducted in 2008 on legislation and practice in thirty-two State Parties to the Convention distinguished three different approaches as to the possibility for legal persons to obtain legal aid (compare *VP DIFFUSION SARL v. France* (dec.), no. 14565/04, 26 August 2008, and *C.M.V.M.C. O'LIMO v. Spain* (dec.), no. 33732/05, 24 November 2009, §§ 11–14).

18. In the majority of States surveyed (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, England and Wales, Ireland, Italy, Latvia, Luxembourg, Malta, Moldova, Romania and Serbia) legislation excluded any form of legal aid to legal persons. In a number of other States (France, Greece, Portugal, Slovenia, Spain and Turkey) only legal persons with a non-commercial purpose (*but non-lucrative*) were eligible for legal aid. In the third group of States (Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Poland, Russia, Switzerland and Ukraine) legal persons including commercial companies were eligible for specific forms of legal aid in certain circumstances.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

19. In their submissions filed on 25 February 2011, the Government contested that the applicant company still existed. They submitted that the applicant company had failed to submit unequivocal proof that it was currently in existence. Also, it was not clear whether the applicant company had filed for insolvency proceedings to be instituted, which might have resulted in the managing director's lacking authority to appoint counsel in the proceedings before the Court.

20. The applicant company submitted that the Government's arguments in this regard could no longer be heard following the Court's finding that the instant complaint was admissible on 12 October 2010. They further submitted that the applicant company was still in existence and was registered both in the Peruvian Register of Legal Persons and with the revenue authority. The applicant company was inactive, as it lacked the means to engage in business, but it had not filed for insolvency.

21. The Court reiterates that it is not precluded from examining, where appropriate, issues relating to the admissibility of an application under Article 35 § 4 of the Convention, as that provision enables the Court to dismiss applications it considers inadmissible "at any stage of the proceedings". According to Rule 55 of the Rules of Court, any plea of inadmissibility must, however, in so far as its character and the circumstances permit, have been raised by the respondent Contracting Party in their observations on the admissibility of the application, submitted as provided in Rule 54. Only exceptional circumstances, in particular, where the reason prompting an objection to admissibility became known only at a later stage, may dispense a Government from the obligation to raise their objection in their observations before the adoption of the Chamber's

admissibility decision (see *Mooren v. Germany* [GC], no. 11364/03, § 57, 9 July 2009, with further references).

22. The Court notes that in their written observations dated 20 May 2010 on the admissibility of the application, the Government submitted that the applicant company was registered in the Peruvian Register of Legal Persons and with the revenue authority and that there was no indication that it had filed for insolvency. Furthermore, they did not contest the applicant company's counsel's power of attorney. The Government did not submit any new reasons which might have prompted their objection. Consequently, the Government are estopped from raising a preliminary objection on these grounds at this stage of the proceedings. Their objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant company complained that the refusal to grant legal aid had violated its right of access to a court. It relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

1. *Submissions by the Government*

24. The Government submitted that neither the national provisions concerning the granting of legal aid to legal persons, nor their concrete application in the instant case, violated the applicant company's Convention rights. The legal restrictions imposed on the granting of legal aid were legitimate and did not violate the applicant company's right of access to a court. Having regard to the fact that a legal person's liability, particularly that of a limited company, was limited, it was justified to set more restrictive requirements for legal persons with regard to the granting of legal aid. Furthermore, even a domestic company in the applicant company's position would not have been granted legal aid, as the applicant company had not submitted that the non-litigation of the case would run counter to the general interest, as required under section 116 § 1 (2) of the Code of Civil Procedure.

25. Relying on the Court's case-law, in particular the cases of *Del Sol v. France* (no. 46800/99, ECHR 2002-II), and *Herma v. Germany* (dec.), (no. 54193/07, 8 December 2009), the Government maintained that the Convention did not contain an obligation to make legal aid available for all disputes in civil proceedings. In line with this, there was no consensus to be found among the State Parties to the Convention as regarded the granting of legal aid to legal persons. Nor could such an obligation be derived from international practice, or any joint constitutional tradition of the

EU Member States. In this connection, the Government further relied on a ruling given by the European Court of Justice on 22 December 2010 in the case of *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Germany* (case no. C 279/09).

26. The restrictions imposed by the national law on the granting of legal aid to legal persons served a legitimate aim and were proportionate. Section 116 of the German Code of Civil Procedure addressed the question of indigence of a company in the same way as was the case with natural persons. Additionally, the intended action had to have sufficient prospects of success. Beyond this, legal aid was granted to a legal person only if the importance of the case transcended the economic interest of the legal person. The question of which interest had to be taken into consideration depended on the legal interpretation in each individual case. Hence the general interest would require the conduct of litigation especially where the decision would have an impact on large sections of the population or on economic life and would carry social implications. Only this general interest ultimately justified supporting at public expense the conduct of litigation by a company that was not in a position to conduct litigation under its own strength.

27. A further distinction had to be drawn depending on whether the company pursued profit-making objectives. The purpose of section 116 § 1 (2) of the Code of Civil Procedure, as interpreted by the national case-law, was to exclude those legal persons from benefitting from legal aid which were bringing a matter before the court solely in order to protect their economic and commercial interests. Furthermore, the provision was aimed at preventing wanton litigation from being publicly funded. Moreover, it had to be taken into account that legal persons were granted tax benefits in Germany. Thus, they were allowed to deduct from their tax burden the costs of any litigation pursued with regard to the company.

28. It was justified to differentiate between legal persons according to their registered office. If the other prerequisites were met, all legal persons from an EU member State, a State party to the Agreement on the European Economic Area, or a State party to the Hague Convention on Civil Procedure were granted legal aid in the same way as domestic legal persons. This difference in treatment was legitimatised by the principle of reciprocity. Foreign legal persons were granted the same legal status as German legal persons if legal persons domiciled in Germany would likewise be granted legal aid in the State concerned under the Hague Convention. This provision had the purpose of motivating other States to accede to the Hague Convention on Civil Procedure, or to accept comparable obligations under international law. Since every State was free to accede to that Convention, this was a reasonable way of motivating other States to do so.

29. The principle of reciprocity also had an effect on the applicant company, as a legal person domiciled in Germany would not be granted legal aid in Peru. Article 179 of the Peruvian Code of Civil Procedure only provided for legal aid to indigent natural persons, and only in cases in which the subsistence of the party risked being jeopardised. Legal persons did not have access to such aid as a matter of principle. The judgment of the Peruvian Constitutional Court referred to by the applicant company did not address the question of granting legal aid and did not lead to the conclusion that legal persons had a right under the Peruvian Constitution to be granted legal aid. Nor did the judgment by the lower courts referred to by the applicant company lead to the conclusion that legal persons were, as a general practice, granted legal aid.

30. While the Peruvian Code of Civil Procedure did not stipulate an advance payment of court fees, the party that had not been able to enforce its claim in a dispute was under an obligation to compensate the prevailing party for the court costs and the costs of the proceedings. As a consequence, the difference in treatment of legal persons not entitled to legal aid under German law and Peruvian law solely concerned the time at which a payment obligation arose, but not the financial impact of the obligation. That difference was balanced by the exemption from advance payment provided for by section 14 of the Court Fees Act.

31. The decisions taken in the applicant company's individual case had not violated its right of access to a court. The applicant company had been free to pursue its claim by filing a request to be exempted from the obligation to advance the court costs under section 14 § 3 (a) of the Court Fees Act. This provision was based on the prerequisites that the intended claim appeared neither devoid of prospects of success nor wanton and that the plaintiff could not raise the funds for the advance payment. The standards applied by the courts with respect to prospects of success and wantonness were identical to those applied in the examination of a legal aid claim under section 116 of the Code of Civil Procedure. The legal consequences were not placed at the discretion of the trial court. The purpose of this provision was to guarantee that parties had access to a court in situations in which they were unable to raise funds for the advance payment. As the German courts interpreted the procedural law in line with the procedural rights set out by the Basic Law and by the Convention, a positive decision would have been to be expected from the Hamburg Regional Court. Solely the applicant company was responsible for having chosen not make use of this available means.

32. In so far as the applicant company faced any impending damage, such as its claim becoming statute-barred, it could have been released from the obligation to make advance payment of the court costs under section 14 § 3 (b).

33. The applicant company had not been prevented from bringing a claim before the Hamburg Regional Court by the fact that representation by counsel was compulsory before that court. Under the relevant provisions of the Federal Code of Attorneys' Fees, payment for counsel became due only after the appeal stage had been completed. The fact that counsel were allowed to request advance payment had clearly not posed a problem for the applicant company as it had obviously been able to find a lawyer who was willing to represent it before all court instances without requesting payment. Under the current law, the applicant company could even have come to an agreement with its counsel regarding the payment of a success fee, or could have turned to a commercial litigation finance provider.

34. The applicant company had not been prevented from lodging its claim by the obligation under section 110 of the Code of Civil Procedure to provide security for the costs of the proceedings. Defendants only rarely filed a request under that provision. It could not be speculated upon whether the defendant party would have had recourse to this provision and it was unlikely that the Hamburg Regional Court would have granted such a request.

2. Submissions by the applicant company

35. The applicant company contested these arguments. It emphasised from the outset that the instant case was of general relevance for the effective legal protection of small third-world companies doing business in Germany and Europe. As German companies were typically financially stronger than their third-world partners they were, as a rule, in a position to dictate German law and a German venue for their contractual relationships. The denial of legal aid would, therefore, be an incentive for them to drive their third-world counterparts into bankruptcy, as they would be protected from legal prosecution by the denial of legal aid.

36. According to the applicant company, the reasons put forward by the Government did not justify a limitation on the right of access to a court. Denying legal aid to legal persons who were unable to conduct litigation with their own means violated the principle of equality of arms. The right of access to a court could not be made dependant on considerations of a general and political nature. Even if it were true that domestic legal persons would have been denied legal aid for the same reasons, this would amount to a violation of their right of access to a court.

37. The stance taken by the Government was contradictory inasmuch as the Government argued, on the one hand, that there was no general obligation to grant legal aid to legal persons, while it sought, on the other hand, to achieve worldwide implementation of exactly that obligation by pursuing worldwide enforcement of Article 20 § 1 of the Hague Convention on Civil Procedure.

38. It was not correct that German law drew a distinction between no-profit making and profit-making legal persons. German courts had consistently granted legal aid to commercial legal persons, and there was no known decision where a legal person had been denied legal aid on account of the fact that it pursued profit. It followed that the Government could not rely on such a distinction before the Court. Nor could the different treatment of legal persons be justified by tax advantages, as those advantages were enjoyed by legal persons and natural persons carrying on business alike.

39. It was not correct that the applicant company would have obtained release from the obligation to advance the court fees if it had filed a request to that effect. Moreover, this argument had already been dismissed by the Court in its decision on admissibility. It was left to the discretion of the courts whether to dispense parties from the advance payment of court fees. In view of the decisions given by the German courts on the applicant company's application for legal aid, it appeared highly unlikely that the same courts would have granted the applicant company release from the advance payment.

40. Even if this had been the case, it would not have solved the applicant company's problems of submitting a guarantee for legal costs under section 110 of the Code of Civil Procedure amounting to some 90,020 euros for each of the defendant parties, and paying its own lawyer's fees. The obstacle of providing a guarantee for legal costs would in any case have been impossible for the applicant company to overcome. Contrary to the Government's submissions, no defendant in Germany had ever failed to ask for such a guarantee from non-European plaintiffs. There was, furthermore, no doubt that the Regional Court would have granted such a request. The consequence would have been that the claim would have been dismissed as inadmissible. Moreover, it was not true that the applicant company's counsel had waived his right to a lawyer's fee. In the interest of litigation, he had merely agreed not to demand payment of any fees while the application for legal aid was pending.

41. The Government could not validly rely on the argument that the refusal of legal aid under section 116 of the Code of Civil Procedure had been motivated by the wish to encourage non-European countries to join the Hague Convention. In none of the decisions denying the applicant company legal aid had the German courts relied on this argument. The point had merely been made that legal aid should be made available to legal persons from those countries which granted German legal persons legal aid in return. The applicant company's enjoyment of its human rights could not be made dependant on the Republic of Peru joining the Hague Convention, since the Hague Convention ruled on many different issues, of which legal aid was only one. There might be, therefore, a number of reasons for a State not to accede the Hague Convention.

42. The Peruvian law granted full legal aid to national and foreign legal persons alike and did not have a requirement of providing security to the defendant party for the costs of litigation. A German legal person in a similar situation to the applicant company's would thus have been granted legal aid in Peru. Even though section 179 of the Code of Civil Procedure expressly provided for legal aid to be granted to natural persons only, the Constitutional Court of Peru had, in its decision of 4 August 2006 in case no. 4972-2006-PA/TC, expressly ruled that the fundamental right of equal treatment and to effective protection by the courts also applied to legal persons. In accordance with this ruling, legal aid was granted in Peru to legal persons if both the legal person and its shareholders were indigent, as could be seen from four decisions granting legal aid to legal persons by Peruvian courts. There was no indication that Peru denied legal aid specifically to foreign legal persons. As far as could be seen, there was no case-law on the granting or denying of legal aid to foreign legal persons in Peru which led to a conclusion that legal aid had so far either been granted to legal persons straight away or not asked for in view of the fact that the maximum amount to be paid when filing a lawsuit was low (approximately 120 euros).

43. It was not correct that the applicant company had been free to bring a claim by agreeing to a success fee with its attorney, because this option became lawful only after the relevant events and the relevant claims had become time-barred. Even if this had not been the case, no lawyer was obliged to enter into such arrangement and it would, furthermore, not have solved the problem of having to provide security for the legal costs, which neither the applicant company nor its shareholders were in a position to do.

44. The applicant company could not have obtained effective legal protection by turning to a commercial litigation finance provider, as it was unlikely that such a provider would have been found to finance the case before the claim became time-barred. Furthermore, the applicant company could not have been expected to give up some 30% of its claim in order to gain access to the courts.

3. Assessment by the Court

45. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to limitations. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Khalfaoui v. France*, no. 34791/97, § 35, ECHR 1999-IX; *Papon v. France*,

no. 54210/00, § 90, ECHR 2002-VII; and *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 44, 20 December 2007).

46. The Court further reiterates that there is no obligation under the Convention to make legal aid available for all disputes in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see, among other authorities, *Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II, and *Agromodel OOD v. Bulgaria*, no. 68334/01, § 22, 24 September 2009). It is to be noted that the right of access to a court is not absolute and may be subject to restrictions intended, in particular, to meet the legitimate concern of controlling the use of public funds for sponsoring private litigation (compare, *mutatis mutandis*, *Del Sol*, cited above, § 23). Where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation did not impair the very essence of the right and where it pursued a legitimate aim, and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 90, ECHR 2002-VI, and *Agromodel OOD*, cited above, § 23).

47. As the Court has already had the occasion to observe, there does not appear to be a consensus or even a consolidated tendency among the State parties to the Convention as regards the granting of legal aid to legal persons. The law of a substantial number of States does not provide any form of legal aid to legal persons (see *Agromodel OOD*, cited above, § 24; *VPDiffusion SARL*, cited above; and paragraph 18 above).

48. Turning to the circumstances of the instant case, the Court observes that the German civil courts rejected the applicant company's request for legal aid on two grounds: firstly, the courts relied on the fact that section 116 of the Code of Civil Procedure did not provide any form of legal aid to foreign legal persons unless they were registered or residing in another Member State of the European Union or in another State party to the Agreement on the European Economic Area. According to the Hamburg Court of Appeal, the unequal treatment of foreign legal persons was justified by the principle of reciprocity: if equal treatment was codified under constitutional law, there would be no incentive for foreign States to provide German legal persons with the same legal standards. Secondly, the Hamburg Court of Appeal held that, even if the applicant company was to be put on a par with a domestic legal person, legal aid had to be denied because the non-litigation of the applicant company's case did not run counter to the general interest. It considered in this regard that a legal entity retained its right to exist under the legal order only if it was able to pursue its objectives by virtue of its own strength and means.

49. In order to determine whether the restriction on legal aid in the applicant company's case pursued a legitimate aim and was proportionate, the Court will first examine the argument of reciprocity. The Court notes that section 179 of the Peruvian Code of Civil Procedure (see paragraph 15 above) expressly provides for legal aid to be granted to natural persons only. The Court further observes that the applicant company was unable to submit any case-law with respect to the granting of legal aid to foreign legal persons. Even though this might be due to the circumstance that foreign legal entities, having regard to the comparatively low court fees and to the fact that the Peruvian procedural law does not generally require the payment of an advance court fee, do not request legal aid in Peru, the Court is not convinced that a foreign legal person was eligible for legal aid before the Peruvian courts.

50. In the light of the above considerations, the Court concludes that the domestic courts based their decision to deny the applicant company legal aid on relevant grounds.

51. In determining whether the restriction on the right of access to a court can be regarded as proportionate to the aims pursued, the Court considers that specific weight has to be attached to the procedural safeguards provided in the domestic law. The Court observes that the German legal system, under section 14 § 3 (a) of the Court Fees Act, provides for the possibility to lodge a request to be exempted from the obligation to advance payment of the court fee if the case does not lack prospects of success and does not appear wanton, and where it can be substantiated that immediate payment of the costs would cause difficulties to the applicant company. The Court notes that the possibility to lodge such a request is open to natural and legal persons alike and does not differentiate between domestic and foreign legal entities. It thus appears that the applicant company would have been in a position to lodge such a request, but refrained from doing so. The Court further observes that it appears from the wording of section 14 § 3 (a) that this provision, unlike the possibility to appeal under section 67 of the Court Fees Act primarily addressed by the Court in its admissibility decision in the instant case, does not appear to grant any discretion to the trial court if the intended litigation of the case does not lack prospects of success and does not appear wanton and where it can be substantiated that immediate payment of the costs would cause difficulties for the applicant company.

52. The Court takes note that a possible exemption from the obligation to make advance payment does not liberate a plaintiff from the necessity to satisfy their own counsel's request for advance payment. Furthermore, there remains the possibility for the defendant to request the plaintiff to provide security for the payment of court fees under section 110 of the Code of Civil Procedure. The Court observes, however, that advance payment of lawyer's fees is not compulsory under German law. It further observes that it has not

been established by the applicant company that the question of providing security was raised during the proceedings in the instant case.

53. Having regard to the above, and in the absence of a consensus among the State Parties to the Convention on the granting of legal aid to legal persons, the Court considers that the limitations imposed on the applicant company's right of access to a court were proportionate to the aims pursued.

It follows that there has been no violation of the applicant company's right of access to a court under Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

54. The applicant company further complained that it had been discriminated against in its capacity as a foreign legal person. It relied on Article 6 § 1 in conjunction with Article 14 of the Convention, which reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

55. Referring to its submissions on the alleged violation of Article 6 § 1 of the Convention, the Government submitted that the different treatment of natural and legal persons with respect to legal aid served a legitimate aim and was proportionate. Furthermore, the different treatment of foreign legal persons was justified by the principle of reciprocity. Lastly, the Government submitted that a domestic company likewise would have been refused legal aid for lack of a public interest, had it filed a petition for such aid in similar circumstances to those in which the applicant company found itself.

56. The applicant company contested these arguments.

57. Having regard to its findings above, the Court considers that the Government have submitted relevant reasons for the different treatment of natural and legal persons – in particular the necessity to control the use of public funds for financing litigation by private companies – and between domestic and foreign legal entities, in particular the principle of reciprocity. It follows that there has been no violation of Article 6 § 1 in conjunction with Article 14 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 6 § 1 in conjunction with Article 14 of the Convention.

Done in English, and notified in writing on 22 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President