



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

COURT (CHAMBER)

CASE OF UNIÓN ALIMENTARIA SANDERS S.A. v. SPAIN

(Application no. 11681/85)

JUDGMENT

STRASBOURG

07 July 1989

In the case of Unión Alimentaria Sanders SA*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mr F. MATSCHER,
Mr R. MACDONALD,
Mr J. DE MEYER,
Mr J.A. CARRILLO SALCEDO,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 22 April and 19 June 1989,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Kingdom of Spain ("the Government") on 19 December 1988 and 20 January 1989 respectively, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11681/85) against Spain lodged with the Commission under Article 25 (art. 25) by a Spanish private company, Unión Alimentaria Sanders SA, on 5 July 1985.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). The object of the request and of the application was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

* Note by the Registrar. The case is numbered 16/1988/160/216. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant company stated that it wished to take part in the proceedings pending before the Court and designated the lawyer who would represent it (Rule 30).

3. The Chamber to be constituted included ex officio Mr J.A. Carrillo Salcedo, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 January 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mr F. Matscher, Mr R. Macdonald and Mr J. De Meyer (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, having on each occasion consulted - through the Registrar - the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant company:

(a) decided on 10 February 1989 that there was no need at that stage for memorials to be filed (Rule 37 para. 1); and

(b) directed on 14 March that the oral proceedings should open on 21 April 1989 (Rule 38).

5. On various dates between 2 March and 21 April 1989, the Registrar received a number of documents that the President had instructed him to obtain from the Government, the Commission or the applicant company, as the case might be.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr J.L. FUERTES SUÁREZ, Adviser,

Ministry of Justice,

Agent,

Mr J.M. MORENILLA RODRÍGUEZ, Adviser,

Ministry of Justice,

Counsel;

- for the Commission

Mr J.-C. SOYER,

Delegate;

- for the applicant

Mr F. RAMOS MÉNDEZ, abogado,

Counsel.

The Court heard addresses by Mr Fuertes Suárez for the Government, by Mr Soyer for the Commission and by Mr Ramos Méndez for the applicant company, as well as their replies to its questions.

7. The applicant company filed its claims under Article 50 (art. 50) of the Convention on 11 May 1989, and the observations on them by the Agent of the Government reached the registry on 22 May. On 23 May, the

Delegate of the Commission made it known that he did not intend to file any observations.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

8. Unión Alimentaria Sanders is a limited company in the food industry and has its registered office in Madrid.

9. In 1974, it concluded a contract whereby it would finance the rearing of pigs belonging to it on a farm owned by another company, Linconin SA. In return, Linconin SA was to pay the price of the animals and the administrative costs. Owing to its insolvency, however, it was unable to honour its commitments; and in the meantime it had sold the pigs.

Criminal proceedings were brought against Linconin SA and its directors but were subsequently discontinued following a general amnesty.

B. The proceedings in the Barcelona Court of First Instance

10. On 2 May 1979, Unión Alimentaria Sanders SA brought an action in the Barcelona Court of First Instance (juzgado de primera instancia) for payment of the sum it considered was owed to it by Linconin SA and one of its directors, Mrs P. Since it thought the company and Mrs P. to be insolvent, it also brought two actions based on the principle of subrogation against them and three other persons, for the enforcement of contracts for the purchase of land and a farm by the first two defendants and the registration of the purchase in the land register.

11. The case was assigned to the Barcelona Court of First Instance no. 9, which summoned the defendants to appear before it. Only one of these, Mrs B., appeared, however; the others could not be found. Mrs B. raised preliminary objections and submitted observations on the merits.

On 27 November 1980, the court requested the parties to produce their evidence, and this they did from 17 December 1980 to 26 March 1981. Once that was done, it asked them to make their submissions, since they were not seeking a hearing. The applicant company did so on 29 October, and Mrs B. on 12 November.

12. In an order (providencia) of 28 December 1981, the court declared the case ready for decision (declaró los autos conclusos para sentencia). By

Article 678 of the Code of Civil Procedure, judgment had to be given within twelve days, or within fifteen days if the file contained more than a thousand items.

13. On 10 July 1983, Unión Alimentaria Sanders SA wrote to the court to complain of a breach of Article 24 para. 2 of the Constitution, which guarantees "the right to a public trial without undue delay (*sin dilaciones indebidas*) and with all safeguards".

On 21 October 1983, the company applied to the Constitutional Court for a declaration that there had been undue delay in the proceedings in question, an order requiring the trial court to give judgment and a declaration that the applicant company was entitled to compensation for the damage ensuing from the delay. The Constitutional Court dismissed the appeal (*recurso de amparo*) on 23 January 1985 (see paragraphs 17-19 below).

14. On 17 December 1983, the Court of First Instance no. 9 found partly in favour of the applicant company. It ordered Linconin SA and Mrs P. jointly and severally to pay the plaintiff the sum of 1,852,343.67 pesetas with statutory interest, and two of the defendants who were sued on the principle of subrogation to perform the contract for the sale of certain land and have it entered in the land register. On the other hand, the court dismissed the applicant company's claims against Mrs B.

In one of the recitals of fact, it acknowledged the delay in giving judgment but gave no reason for it.

C. The proceedings in the Barcelona Court of Appeal

15. On 23 December 1983, Unión Alimentaria Sanders SA appealed against the judgment. The file was sent to the Barcelona Court of Appeal (*Audiencia Territorial*) on 25 April 1984, and in May the case was allocated to the First Civil Chamber of that court.

On 5 June, the applicant company stated that it was ready for the trial; on 10 July, the Court of Appeal held that the defendants had forfeited their right to submit written observations as they had not appeared.

On 13 September 1984, after the file had been studied by the reporting judge, the court declared the case to be ready for trial, without however setting any date for the hearing.

16. A third civil chamber had been established in the meantime, and the case was transferred to it on 27 September 1985, pursuant to a decision of 4 September. On 17 March 1986, it appointed a new reporting judge and set the case down for trial on 6 May.

On 12 May 1986, the Third Civil Chamber partly allowed the applicant company's appeal and ordered Mrs B. to repay Linconin SA a specified sum paid for the purchase of the land; it upheld the remainder of the judgment of the court below. The appeal court's judgment was notified to the applicant company by the Court of First Instance on 13 September.

D. The proceedings in the Constitutional Court

17. During the proceedings in the Court of Appeal, the Constitutional Court was considering the application brought by Unión Alimentaria Sanders SA on 21 October 1983 (see paragraph 13 above).

It declared the application admissible on 30 November and subsequently received observations from Crown Counsel (ministerio fiscal), the applicant company and counsel representing the Government (Abogado del Estado).

Crown Counsel recognised that there had been undue delay, which was not explained by the Court of First Instance, but considered that once the normal course of the trial had been resumed and judgment given, the constitutional appeal no longer had any purpose except to obtain compensation. Counsel for the Government submitted that the case had become devoid of purpose.

18. In its judgment of 23 January 1985 dismissing the appeal, the Constitutional Court first rejected these submissions by Crown Counsel and counsel for the Government and then concluded as follows on the merits:

"... Having reviewed the criteria relating to the complexity of the case and to the conduct of the judicial authorities and the parties, the Court must examine the consequences of the trial for the rights and interests at stake. This is one of the factors to be considered, as has often been pointed out by the European Court of Human Rights (Buchholz judgment). In its claim for compensation, the appellant company has given no indication of any consequences of the delay other than the precautionary entry which, in order to cover itself against the outcome of the trial, it had made [in the land register] against security at the time of the civil proceedings, so as to provide for possible compensation of the defendants if they should succeed at trial. Nothing was said about the practical consequences of the length of the trial for the rights and interests of the plaintiff. The latter confined itself in its submissions to noting the aforementioned effect of the precautionary step provided for in section 42 of the Mortgages Act and 'non-pecuniary damage', about which it remained vague. It thus appears that the time factor was not of primary importance in the instant case. Seeing that only court costs and the amount of the security were involved, it does not seem that this case before the Barcelona court merited any priority. If other, more urgent cases were pending, nothing precluded giving them priority and provisionally postponing the decision which is the subject of the present appeal.

Consideration must also be given to what is regarded as the norm in respect of a court's level of activity and output in the light of the number of cases to be dealt with. This was the factor to which counsel for the Government referred when he set out the position not only of the court which had to deal with the case under appeal but also of the other Barcelona courts dealing with ordinary - and other - cases within their jurisdiction. He stressed the temporary backlog of cases and saw that as one of the reasons for the length of the trial in issue. This Court must consider that factor, just as the European Court of Human Rights has done, which has given judgment, under Article 6 para. 1 (art. 6-1) of the Convention, on delays found to have occurred in different types of trial. The Buchholz judgment may be cited as an example.

The length of an ordinary trial of a case which is complex and much disputed but does not merit any priority must be assessed on the basis of all these factors and in the

light of the total time taken up by the trial. Inasmuch as the right to a trial without undue delay is not the same thing as strict compliance with court deadlines and does not necessarily mean that there is no abnormal situation, the delays during the civil proceedings in issue are not sufficient to warrant the conclusion that there has been a breach of Article 24 para. 2 of the Constitution ..." (Boletín de Jurisprudencia Constitucional no. 46, February 1985, p. 152).

19. One of the judges, however, dissented:

"...

In the absence of any justification duly advanced by the trial court, we must ascertain whether or not the dilatoriness of which it is accused amounts to 'delay' within the meaning of Article 24. Even accepting the relevance of the criteria adopted in the judgment of this Court, the signatory of this separate opinion does not approve the manner in which they have been applied. The action was brought on 2 May 1979 and judgment given on 17 December 1983. A total duration of more than four and a half years is in principle excessive if we take into account ... the 'total time taken up by the trial' and particularly if we remember that the trial court did not indicate to us any special feature of the case justifying such dilatoriness. In the absence of any detailed justification, it is likewise not possible ... to consider 'what is regarded as the norm in respect of a court's level of activity and output'. Since normality is what corresponds to the norm and not what departs from it, even if the norm is more often honoured in the breach than in the observance, the traditional slowness of the system of justice cannot be regarded as 'normal'. Furthermore, if the length of trials were to continue to grow longer, if the failure to comply with the norms of 'output of the system of justice' were to become widespread and if such 'abnormal', but commonplace, circumstances always had to be taken as a basis for assessing whether or not the right to a trial without undue delay had been respected, the protection of this fundamental right would by that very fact be reduced to nought ..." (ibid., p. 154).

E. The application for enforcement of the Court of Appeal's judgment

20. On 18 October 1986, Unión Alimentaria Sanders SA applied to the Barcelona Court of First Instance no. 9 for enforcement of the Court of Appeal's judgment and seizure of the defendants' assets, which it listed. That application is still pending.

II. THE POSITION OF THE BARCELONA COURTS

21. In its report for 1982 the General Judicial Council noted that each of the Barcelona courts of first instance had had to deal with an average of 1,800 cases.

The same courts continued to lack judges for periods that recurred more and more often, despite the use of substitutes for urgent matters. This was the case with Court of First Instance no. 9: the judge had to be replaced on several occasions in 1982/83 for health reasons. He retired on 27 July 1983 and his successor was not installed until 21 September 1983. Two months

later, however, the new appointee left the post, which again remained vacant. Until 22 February 1984, when the new incumbent took up his duties, the judge of the Barcelona Court of First Instance no. 1, acting as a substitute, dealt with the cases assigned to Court no. 9, and he it was who gave the judgment in the instant case (see paragraph 14 above).

22. Similar difficulties prevailed in the Barcelona Court of Appeal, to the point that the Ombudsman (Defensor del Pueblo) devoted a chapter of his report for 1985 to them. He stressed the large number of complaints about the length of proceedings in the Court of Appeal's civil chambers and mentioned the inquiry into them which had been instituted (Boletín oficial de las Cortes Generales, 15 September 1986, p. 125).

Between 1981 and 1984 the volume of cases to be dealt with by the two chambers had increased by 62%. Two new judgeships were created in 1983; but as this measure proved inadequate, a new chamber was established in 1985 and cases pending before the other two chambers were transferred to it - 964 from the First Chamber and 586 from the Second Chamber. The parties had to be informed, new reporting judges appointed and a new timetable prepared in order to deal with the backlog of cases, priority being given to the most urgent.

23. In June 1985, the Council (Junta de Gobierno) of the Barcelona Bar launched a campaign to secure an improvement in the system of justice in the city with a manifesto which by January 1986 had already been signed by a thousand lawyers.

24. More generally, in his reports for 1983 and 1984 the Ombudsman drew the attention of the Chamber of Deputies (Congreso de Diputados) to the frequency of complaints about the law's delays and the difficulty of obtaining enforcement of judgments. In the following year he described the situation as alarming. In his view, the main reasons for it were the shortage of staff and the continual changing of judges.

25. The Spanish State indeed took several relevant steps at national level. An institutional Act of 10 January 1980, for example, established the General Judicial Council, and the Judicature Act of 1 July 1985 reorganised the system. Between the two, a royal decree of 3 July 1981 set up four new courts of first instance in Barcelona, which have been in operation since September 1981; and an Act of 21 May 1982 established new judicial districts there.

Lastly, an Act of 28 December 1988 completely reorganised the administration of justice. Between 1989 and 1992 the number of judges is planned to rise from 2,000 to 3,570. In Barcelona 10 additional courts are to be set up by converting district courts (tribunales de distrito) into courts of first instance, which will increase the number of the latter to 44 by 1992; and the Barcelona Provincial Court should have 64 judges.

PROCEEDINGS BEFORE THE COMMISSION

26. In its application of 5 July 1985 to the Commission (no. 11681/85), Unión Alimentaria Sanders SA complained of the length of the civil proceedings it had instituted in the Barcelona Court of First Instance no. 9, arguing that it was contrary to Article 6 para. 1 (art. 6-1) of the Convention.

27. The Commission declared the application admissible on 11 December 1987. In its report of 13 October 1988 (Article 31) (art. 31), the Commission expressed the opinion by thirteen votes to one that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

28. The applicant company complained of the length of time taken to hear the civil action it had brought in a Barcelona Court of First instance on 2 May 1979. It relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

In the Commission's view, the case had not been heard within a "reasonable time". The Government disagreed.

A. Period to be taken into consideration

29. The period to be considered began on 1 July 1981, when Spain's declaration accepting the right of individual petition took effect. However, in order to determine the reasonableness of the period which elapsed after then, regard must be had to the stage which the proceedings had reached at that juncture (see, as the most recent authority, the Milasi judgment of 25 June 1987, Series A no. 119, p. 45, para. 14).

30. As regards the end of the material period, the Court finds that two phases must be distinguished. The first of these lasted until 13 September 1986, when the Barcelona Court of Appeal's judgment was notified to the

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 157 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

parties; the second consisted of the enforcement proceedings. The latter proceedings, which depended entirely on the initiative of the applicant company, began on 18 October 1986 and have still not been concluded. The Court will concentrate on the first phase, which lasted five years, two months and thirteen days.

B. Applicable criteria

31. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard, in particular, to its complexity and the conduct of the applicant and the competent authorities.

1. Complexity of the case

32. The Government submitted that the case was fairly complex. There were several defendants, against whom different claims were being made, and the claims based on the principle of subrogation raised delicate legal problems. In addition, the file amounted to some 1,400 pages.

33. Like the Commission, the Court considers on the contrary that the case did not present special difficulties with regard to the facts or the law. It would add that only one of the defendants appeared before the Court of First Instance and none of them before the Court of Appeal (see paragraphs 11 and 15 above) - which simplified the task of those courts.

2. Conduct of the applicant company

34. The Government pointed out that it was a principle of Spanish law that responsibility for the progress of proceedings rested with the parties. Not until 21 October 1983 did the applicant company lodge an appeal with the Constitutional Court complaining of the length of the proceedings at first instance, although the case had been declared ready for decision as far back as 28 December 1981 (see paragraphs 12-13 above). Furthermore, it never complained to that court about the appeal proceedings. It had thus, the Government argued, been instrumental in prolonging the proceedings as a whole.

35. The Court reiterates that such a principle does not absolve the courts from ensuring compliance with the requirements of Article 6 (art. 6) concerning reasonable time (see, inter alia, the Martins Moreira judgment of 26 October 1988, Series A no. 143, p. 17, para. 46). Like the Commission, the Court considers that the person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings. He is under no duty to take action which

is not apt for that purpose (see the Guincho judgment of 10 July 1984, Series A no. 81, p. 15, para. 34).

In the instant case it appears from the evidence that the applicant company showed diligence and that on 10 July 1983 it complained to the relevant court (see paragraph 13 above). This was the only ordinary procedure available to it under Spanish legislation. The *recurso de amparo* of 21 October 1983 was brought mainly in order to obtain a finding that there had been a violation of the Constitution, and it was dismissed on 23 January 1985 (see paragraph 13 above). That being so, even if in this case it indirectly helped to expedite the proceedings, it cannot on that account be regarded as an ordinary procedure for achieving that end. As far as the appeal proceedings are concerned, it is understandable that Unión Alimentaria Sanders SA did not lodge a second constitutional appeal seeing that its first one had failed.

3. Conduct of the competent authorities

36. The Commission and the applicant company were critical in particular of two long periods during which the relevant judicial authorities remained inactive.

The Court notes that after declaring on 28 December 1981 that the case was ready for decision, the Barcelona Court of First Instance no. 9 waited until 17 December 1983 before giving judgment (see paragraphs 12 and 14 above). On appeal the First Chamber declared the case ready for hearing on 13 September 1984 but the hearing before the Third Chamber did not take place until 6 May 1986 (see paragraphs 15-16 above).

These two periods of almost total inactivity amounted to more than three and a half years. Such delay can be justified only by very exceptional circumstances (see the Guincho judgment previously cited, Series A no. 81, p. 15, para. 36).

37. The Government acknowledged that there had been a backlog at the relevant time, but they pointed out that the Barcelona courts had then had an unusually heavy workload owing to the increase in the number of cases. This increase had followed on Spain's return to democracy and was due to the establishment of new judicial safeguard systems, an overhaul of legislation and a tendency to have greater recourse to the courts. Faced with this state of affairs, the relevant courts - including the Constitutional Court - had considered that the present case was not urgent and did not qualify for priority treatment.

The Spanish State had, moreover, taken the necessary steps to remedy the situation. These measures had affected, among other places, Barcelona, where new courts and judicial districts had been created, together with an additional chamber in the Court of Appeal; furthermore, the Act of 28 December 1988 had completely reorganised the administration of justice at

national level in order to make it better adapted to the needs of the modern world (see paragraphs 22 and 25 above).

38. The Court is aware that Spain had to overcome serious difficulties during the restoration of democracy. It duly appreciates the efforts made by the Spanish authorities to improve public access to the courts and to overhaul the country's judicial system. It reiterates, however, that in ratifying the Convention, Spain undertook to organise its judicial system in such a way as to ensure that it satisfied the requirements of Article 6 para. 1 (art. 6-1), including that of trial within a "reasonable time" (see the *Guincho* judgment previously cited, Series A no. 81, p. 16, para. 38).

39. The present case concerns the courts in Barcelona, in particular Court of First Instance no. 9 and the First Chamber of the Court of Appeal.

Before he retired (on 27 July 1983), the judge of Court no. 9 had to be replaced several times for health reasons. His successor relinquished his post barely two months after 21 September 1983, when he had taken up his duties. The new incumbent took over on 22 February 1984; until then the judge of Court of First Instance no. 1 also had to deal with the cases before Court no. 9, including the case of *Unión Alimentaria Sanders SA* (see paragraph 21 above). This situation coincided with a marked increase in the number of cases.

Matters were the same in the Barcelona Court of Appeal, whose case-load almost doubled within the space of five years. As the creation of two new judgeships in 1983 was not sufficient to absorb the backlog, it proved necessary to set up a new chamber in 1985, to which the applicant company's case was transferred (see paragraph 22 above).

40. A temporary backlog of court business does not entail a Contracting State's international liability if the State takes appropriate remedial action with the requisite promptness (see, among other authorities, the *Guincho* judgment previously cited, Series A no. 81, p. 17, para. 40). In such circumstances it is legitimate as a temporary expedient to decide on a particular order in which cases will be dealt with, based on their urgency and importance. The urgency of a case, however, increases with time; consequently, if the critical situation persists, such expedients are shown to be insufficient and the State must take other, more effective action to comply with the requirements of Article 6 para. 1 (art. 6-1) (see, among other authorities, the *Zimmermann and Steiner* judgment of 13 July 1983, Series A no. 66, pp. 12-13, para. 29). The fact that such backlog situations have become commonplace does not, in the Court's view, justify excessive length of proceedings (see, *mutatis mutandis*, the *Martins Moreira* judgment previously cited, Series A no. 143, p. 19, para. 54).

41. In the instant case, the two periods of delay noted by the Court - two years and more than one and a half years - are very substantial, and the courts concerned did not point to any special feature of the case which could have explained such dilatoriness (see paragraph 19 above).

The increase in the Barcelona courts' workload was foreseeable, not only because of the measures taken following the adoption of the 1978 Constitution to facilitate access to the courts but also because of a trend, long since observed, towards a high level of migration to Catalonia in general and Barcelona in particular.

Lastly, the Ombudsman and the Barcelona Bar Council had already reported the seriousness of the problem (see paragraphs 22-24 above).

This state of affairs continued for several years, thus becoming organisationally in-built. The measures taken in 1981 and 1982 in respect of the courts of first instance (see paragraph 25 above) and in 1983 and 1985 in respect of the Court of Appeal (see paragraph 22 above) proved, even at the time, insufficient and belated. They slightly reduced the length of the proceedings in the Court of Appeal but, as the Commission pointed out, had no effect on the specific situation in the Barcelona Court of First Instance no. 9.

42. In the light of all the circumstances of the case, the Court considers the length of the impugned proceedings excessive. The undeniable difficulties encountered in Spain could not deprive the applicant company of its right to have its case heard within a "reasonable time".

There was therefore a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

43. By Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

44. The applicant company claimed compensation for pecuniary damage allegedly consisting in (a) the depreciation of the amount involved in the litigation as a result of inflation (3,019,319 pesetas) and (b) the bank's commission on the precautionary entry in the land register (63,510 pesetas - see paragraph 18 above). It left the matter to the Court's discretion, however.

The Government contested the former amount on the ground that the domestic courts could order payment of interest; and as to the latter amount, said that the period after June 1986 should not be taken into account.

45. The Court is of the opinion that Unión Alimentaria Sanders SA has suffered pecuniary damage, which is not however susceptible of precise

quantification. Assessing such damage on an equitable basis, as required by Article 50 (art. 50), the Court awards the company 1,500,000 pesetas.

B. Legal fees and expenses

46. In respect of the hearings before the Commission and the Court, the applicant company also claimed reimbursement of (a) lawyer's fees (1 peseta); and (b) the cost of two return air tickets from Barcelona to Strasbourg (190,170 pesetas) and subsistence expenses in Strasbourg (30,000 pesetas).

The Government agreed.

47. The Court considers that these amounts should be allowed, that is to say a total of 220,171 pesetas.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay Unión Alimentaria Sanders SA 1,500,000 (one million five hundred thousand) pesetas in respect of pecuniary damage and 220,171 (two hundred and twenty thousand one hundred and seventy-one) pesetas in respect of costs and expenses;
3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 July 1989.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar