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

COURT (CHAMBER)

CASE OF RUIZ TORIJA v. SPAIN

(Application no. 18390/91)

JUDGMENT

STRASBOURG

09 December 1994

In the case of Ruiz Torija v. Spain*,

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 Rules of Court A**, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr F. GÖLCÜKLÜ,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr S.K. MARTENS,
Mr J.M. MORENILLA,
Mr F. BIGI,
Mr M.A. LOPES ROCHA,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 24 June and on 23 November 1994,

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") on 9 September 1993, 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. 18390/91) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by a Spanish national, Mr Eusebio Ruiz Torija, on 15 March 1991.

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 object of the request was to obtain a decision 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) of the Convention.

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* The case is numbered 39/1993/434/513. 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.

** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The President of the Court gave the lawyer leave to use the Spanish language (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr J.M. Morenilla, 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 24 September 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Gölcüklü, Mr R. Macdonald, Mr C. Russo, Mr S.K. Martens, Mr F. Bigi and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. On 13 January 1994 the President of the Court decided that in the interests of the proper administration of justice this case and that of Hiro Balani v. Spain (no. 46/1993/441/520) should be heard by the same Chamber (Rule 21 para. 6).

5. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 21 January 1994 and the applicant's memorial and his claims under Article 50 (art. 50) of the Convention on 2 and 7 February respectively. In a letter which reached the registry on 12 May, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 27 April 1994 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the decision of the President, who had also given the Agent of the Government leave to use the Spanish language (Rule 27 para. 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 25 May 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. BORREGO BORREGO, Head of the Legal Department for Human Rights, Ministry of Justice, *Agent*;

- for the Commission

Mr F. MARTÍNEZ, *Delegate*;

- for the applicant

Ms R.M. REMESAL BARCENA, abogada, *Counsel*.

The Court heard addresses by the above-mentioned representatives.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. Mr Eusebio Ruiz Torija is a Spanish national and lives in Madrid.

8. He had been the lessee of a bar in Madrid since 1960, when in 1988 the lessor instituted proceedings in Madrid no. 15 First-Instance Court for the termination of the lease and his eviction (desahucio). According to the lessor, the installation on the premises of gaming machines belonging to a third party, without the landlord's consent, amounted to an unauthorised partial assignment or subletting and constituted one of the statutory grounds for terminating a lease (see paragraph 13 below).

9. In his statement of defence the applicant's main contentions were that the installation of the machines had been lawful and that the plaintiff had acted in bad faith. At the end of his legal arguments, he added:

> "Finally, [I invoke] the fifteen-year limitation period for actions in personam, which is provided for in Article 1964 of the Civil Code [see paragraph 15 below]. Under Article 1969 time begins to run for this purpose on the day on which the action could have been brought. In the period of over twenty-eight years since the signing of the lease, [I] was able, at any time and hitherto without any objection on the part of the lessor, to provide this type of service, common in this kind of establishment, in the form of the amusement machines of all sorts which appeared successively on the market, such as juke-boxes, bar-football, billiards, children's games, etc."

10. On 13 February 1989 the first-instance court dismissed the lessor's action on the ground that the installation of gaming machines could not be regarded as an assignment or a subletting and did not therefore amount to a breach by Mr Ruiz Torija of his contractual obligations. The court did not examine the objection that the action was time-barred.

11. On appeal by the lessor, opposed by the applicant as a respondent (see paragraph 16 below), the Madrid Audiencia Provincial gave judgment on 30 January 1990 quashing the impugned decision and allowing the action for the applicant's eviction (see paragraph 17 below), without ruling on the question whether the action was time-barred. It found that the owner of the machines was a third party, who was responsible for the maintenance of the machines and who passed on half the proceeds therefrom to the applicant. This was a situation which fell within the legal definition of an unauthorised assignment or subletting and amounted to the breach of contract relied on by the lessor.

12. As it was not open to him in this case to appeal on points of law to the Supreme Court, Mr Ruiz Torija filed an amparo appeal in the Constitutional Court (Tribunal Constitucional) under Article 24 para. 1 of the Constitution (see paragraph 18 below).

By a decision of 29 October 1990 the Constitutional Court declared the appeal inadmissible. It found that it could reasonably be inferred from the judgment appealed against that the examination of the merits of the action for termination of the lease entailed the implied dismissal of the submission that the action was time-barred.

II. RELEVANT DOMESTIC LAW

A. The merits

1. The termination of the lease

13. Under the Act of 22 December 1955 on non-agricultural leases (Ley de Arrendamientos Urbanos), a landlord may terminate a lease in the event of a partial assignment or subletting of the premises to a third party without his authorisation (Article 114 para. 2). The Act also makes provision for a special eviction procedure (juicio de desahucio), with shorter time-limits and more limited possibilities of adducing evidence.

2. Gaming

14. Gaming machines could not be installed legally in Spain in premises open to the public until 1977 (Royal Legislative Decree of 25 February 1977 on criminal, administrative and fiscal aspects of gambling, supplemented by Royal Decree no. 444 of 11 March 1977 on the powers of the public authorities in this field and by the Regulation of 24 July 1981 concerning recreational machines and machines offering "games of chance").

3. Limitation

15. On account of the personal nature of the rights deriving from a lease, the actions relating thereto are barred after fifteen years (Article 1964 of the Civil Code).

The objection that an action is time-barred is not one of the pleas designated as "dilatorias", which must be determined before the examination of the merits (Article 533 of the Code of Civil Procedure). It is a plea described as "perentoria", which, in accordance with Article 544, is to be determined at the same time and under the same procedure as the main issue in the dispute.

B. The appeal proceedings

16. Plaintiffs who have been unsuccessful on at least one head of claim adduced at first instance may appeal to the Audiencia Provincial. The defendant, for his part, may

(a) either confine himself to appearing as respondent in order to oppose the appeal and seek to have the impugned judgment upheld (right deriving from Article 888 of the Code of Civil Procedure and the articles relating thereto); or

(b) himself file a separate appeal against the first-instance decision (Article 702 in fine of the Code of Civil Procedure) where that decision has not allowed his claims in full; or

(c) join the appeal already lodged (adhesión a la apelación - Articles 705 and 892 of the Code of Civil Procedure), in respect of the points of the judgment that he considers unfavourable to him. This procedure is a form of appeal that enables the party concerned to prevent non-contested points of the operative provisions from acquiring final effect and to have examined those which are unfavourable to him.

Consequently, if a judgment allows the claims of a party in their entirety, that party can oppose an appeal filed by his opponent only as the respondent to that appeal. He cannot file an appeal himself or even "join" the appeal lodged by the other party.

17. When the appeal concerns all the operative provisions of the judgment and is successful, the appeal court gives a new decision on the merits of the case, examining all the submissions adduced at first instance.

C. The obligation to give reasoned judgments

18. Under Article 120 para. 3 of the Constitution, "judgments shall always contain a statement of the grounds on which they are based and be delivered in public". As an aspect of the effective protection of individuals by the judiciary and the courts, recognised as a fundamental right by Article 24 para. 1 of the Constitution, the obligation to state the reasons for judicial decisions may be the subject of an individual appeal to the Constitutional Court (recurso de amparo).

19. According to Article 359 of the Code of Civil Procedure:

> "Judgments must be clear and precise and must address specifically the applications and other claims made in the course of the proceedings; they must find for or against the defendant and rule on all the disputed points which have been the subject of argument.
>
> Such points must be dealt with separately in the judgment."

When a court gives a decision on the merits it must therefore rule on all the submissions adduced by the parties, otherwise the judgment will be

flawed for failure to give an adequate statement of the grounds (incongruencia omisiva). However, according to the case-law, the court is not under a duty to deal expressly in its judgment with each of the submissions made by the parties where its decision to allow one of the claims entails by implication the rejection of the submission in question.

PROCEEDINGS BEFORE THE COMMISSION

20. Mr Ruiz Torija applied to the Commission on 15 March 1991. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained that he had not been given a fair hearing in so far as the Madrid Audiencia Provincial had failed to deal in its judgment with one of his submissions.

21. The Commission declared the application (no. 18390/91) admissible on 13 January 1993. In its report of 8 July 1993 (Article 31) (art. 31), the Commission expressed the opinion, by eighteen votes to three, 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*.

FINAL SUBMISSIONS TO THE COURT

22. At the hearing the Government requested the Court to hold "that the Spanish courts, and hence the Kingdom of Spain, [had] not failed to fulfil their obligations under the Convention in the present case".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

23. As they had done before the Commission, the Government contended that the application was inadmissible on the ground of failure to exhaust domestic remedies. Mr Ruiz Torija ought to have filed an application to "join" the appeal (see paragraph 16 above) so as to enable the

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 303-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

Madrid Audiencia Provincial to examine the issue of limitation; he should not merely have opposed the lessor's appeal as respondent.

24. Like the Commission and the applicant, the Court finds that in Spanish law, having suffered no prejudice, the party to whom the operative part of the judgment is wholly favourable lacks standing to appeal, whether by filing a separate appeal or by "joining" the appellant's appeal.

In the present case Mr Ruiz Torija's pleadings in the first-instance court were directed towards the dismissal of the action for his eviction. As the first-instance court found in his favour, it was not open to him to challenge the judgment. The objection must accordingly be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

25. According to the applicant, the total failure by the Audiencia Provincial to address in its judgment the submission alleging that action was time-barred (see paragraph 10 above) breached Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

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

26. The Commission in substance accepted this view. It added that the silence of the Audiencia Provincial in this matter could give rise to doubts as to the scope of the examination conducted by the appellate court.

27. According to the Government, the plea that the action was time-barred was totally unfounded and was unrelated to the subject-matter of the proceedings. The installation of machines (juke-box, bar-football, billiards, children's games, etc. - see paragraph 9 above) with entirely different functions and characteristics was immaterial in calculating the period of time for which the gaming machines had been in service. This was particularly true in view of the fact that gaming machines had not been authorised in Spain until 1977 (see paragraph 14 above). As under Article 359 of the Code of Civil Procedure judges were required to rule only on matters that had been "the subject of argument" (see paragraph 19 above), the Audiencia Provincial was not under a duty to reply to the submission.

In addition, even supposing that the appellate court had been bound to answer this submission, its failure to do so could be regarded as an implied rejection. Indeed this was the view taken by the Constitutional Court (see paragraph 12 above). Since limitation was a preliminary issue, the fact that the Audiencia Provincial determined the merits implied the dismissal of the objection.

28. The applicant contested these arguments. Although gaming machines had not been authorised in Spain until 1977, they had been tolerated well before that date. Moreover, since the lessor had invoked the

unauthorised installation of machines belonging to a third party as a ground for termination, it had been only natural to draw the court's attention to the fact that there had previously been other machines, admittedly with different functions, but which had also belonged to third parties. Finally, no rule compelled the courts to regard the issue of limitation as a preliminary one.

29. The Court reiterates that Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 (art. 6) of the Convention, can only be determined in the light of the circumstances of the case.

30. In the present case Mr Ruiz Torija pleaded, inter alia, that the action brought by the lessor for his eviction was time-barred. This submission was made in writing before the first-instance court and was formulated in a sufficiently clear and precise manner. Furthermore evidence was adduced to support it. The Audiencia Provincial, which quashed the first-instance decision and gave a fresh ruling on the merits, was bound, under the applicable procedural law, to review all the submissions made at first instance (see paragraph 17 above), at least in so far as they had been "the subject of argument" and regardless of whether they had been expressly repeated in the appeal.

The Court notes that it is not its task to examine whether the limitation plea was well-founded; it falls to the national courts to determine questions of that nature. It confines itself to observing that it is not necessary to conduct such an examination in order to conclude that the submission was in any event relevant. If the Audiencia Provincial had held the submission to be well-founded, it would of necessity have had to dismiss the plaintiff's action.

Moreover, the Court is not persuaded by the Government's argument that the submission based on limitation was so clearly unfounded that it was unnecessary for the appeal court to refer to it. The fact that the first-instance court allowed evidence to be adduced in support of this submission suggests the contrary. Accordingly, since the issue of limitation would have been decisive in this instance, the Audiencia Provincial should have addressed the submission in its judgment.

It is therefore necessary to establish whether in the present case the silence of the appeal court can reasonably be construed as an implied

rejection. The court was under no obligation to examine the question of limitation before considering the arguments on the merits (see paragraph 15 above). In addition, the question whether the action was time-barred fell within a completely different legal category from that of the grounds for termination of the lease; it therefore required a specific and express reply. In the absence of such a reply, it is impossible to ascertain whether the Audiencia Provincial simply neglected to deal with the submission that the action was out of time or whether it intended to dismiss it and, if that were its intention, what its reasons were for so deciding. There has therefore been a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

31. Under 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. Damage

32. Mr Ruiz Torija sought compensation for non-pecuniary damage, for which he gave no figure, and for pecuniary damage in the amount of 29,871,978 pesetas.

The Government did not express a view on this question.

The Delegate of the Commission considered that it would perhaps be possible to award compensation for a loss of opportunity, but not on any other basis.

33. In the Court's opinion the applicant may have suffered non-pecuniary damage, but the present judgment affords him sufficient just satisfaction in this respect.

As regards pecuniary damage, the Court cannot speculate as to what the outcome would have been if the Audiencia Provincial had examined the limitation submission. It accordingly dismisses the claim.

B. Costs and expenses

34. Mr Ruiz Torija also claimed the reimbursement of 2,500,000 pesetas in respect of the costs and expenses incurred in the national courts and before the Convention institutions.

The Government regarded this claim as excessive. 200,000 pesetas would, however, be acceptable.

In the view of the Delegate of the Commission, only the costs incurred in the Constitutional Court and in the European proceedings could be taken into consideration.

35. Mr Ruiz Torija was granted 17,290.07 French francs in legal aid in the Strasbourg proceedings. The Court notes that he incurred additional costs for which, making an assessment on an equitable basis, it awards him 1,000,000 pesetas.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's preliminary objection;

2. Holds by eight votes to one that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;

3. Holds unanimously that the present judgment constitutes in itself sufficient just satisfaction in respect of the alleged non-pecuniary damage;

4. Holds unanimously that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) pesetas for costs and expenses;

5. Dismisses unanimously the remainder of the applicant's claims.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 December 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Bernhardt is annexed to this judgment.

R. R.
H. P.

DISSENTING OPINION OF JUDGE BERNHARDT

I am unable to follow the majority in this case. What seems to be a case of minor importance concerns in reality a fundamental problem: the extent of the international control of decisions of national courts.

On the one hand, every person has the fundamental right to have fair court proceedings including the right to submit arguments and to get an answer to his or her submissions. On the other hand, national courts must enjoy considerable flexibility in selecting the arguments and reasons essential for the decision of the cases before them. An international court should criticise national courts only if it is more or less obvious that the national court has not taken cognisance of essential arguments. Were it otherwise, the international court would have itself to conduct a detailed investigation of national law in order to find out whether an argument put forward by a party had been answered adequately or not.

It is true that the Court in the present judgment (paragraph 30) tries to avoid such an investigation of national law, while stressing that the decision of the appeal court does not even mention the question of limitation. But this implies either that every argument invoked by one party must be expressly answered in the judgment of the national court or that this is at least necessary if arguments are important - but who decides whether a defence submission or an argument is important?

Here the Spanish Constitutional Court, which has a far greater knowledge of Spanish law than most international institutions, has given a plausible explanation for the fact that the Audiencia Provincial did not expressly discuss the applicant’s submission that the action was time-barred (see paragraph 12 of the judgment).