



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

CASE OF EDIFICACIONES MARCH GALLEGOS S.A. v. SPAIN

(7/1997/791/992)

JUDGMENT

STRASBOURG

19 February 1998

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SUMMARY¹

Judgment delivered by a Chamber

Spain – application to set aside proceedings for payment of bill of exchange inadmissible owing to a mistake made when application was submitted

ARTICLE 6 § 1 OF THE CONVENTION

Recapitulation of case-law: primarily for national authorities to resolve problems of interpretation of domestic legislation – ordinary courts and Constitutional Court had considered that the mistake made when application to set aside was submitted had not been a straightforward clerical error but represented a want of diligence that could not be remedied and that the lack of any possibility of rectifying the mistake in the proceedings in question did not infringe the right to effective protection by the courts – Court’s task was confined to determining whether consequences of the courts’ decision were in conformity with Convention.

Recapitulation of case-law on “right to a court” – decision of Spanish courts in instant case had taken account of seriousness of mistake made and of special features of procedure for applying to set aside proceedings for payment of a bill of exchange, in which the time-limits were mandatory and no extensions of time could be granted – legitimate purpose of strict time-limits, namely to speed up payment of sums in issue, the proceedings not being designed to determine merits of claim – no interference with right of access to a court.

Conclusion: no violation (unanimously).

COURT’S CASE-LAW REFERRED TO

22.2.1996, Bulut v. Austria; 19.12.1997, Brualla Gómez de la Torre v. Spain

1. This summary by the registry does not bind the Court.

In the case of Edificaciones March Gallego S.A. v. Spain¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr I. FOIGHÉL,

Mr J.M. MORENILLA,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr J. MAKARCZYK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 November 1997 and 29 January 1998,

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 21 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 28028/95) against the Kingdom of Spain lodged with the Commission under Article 25 by a public limited company incorporated under Spanish law, Edificaciones March Gallego S.A., and its sole director, Mr Federico March Olmos, on 19 May 1995. Mr March died in October 1995. As referred to the Court, the case concerns solely Edificaciones March Gallego S.A.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Spain recognised the compulsory jurisdiction of the

Notes by the Registrar

1. The case is numbered 7/1997/791/992. The first two numbers indicate 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. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

Court (Article 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 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant company stated that it wished to take part in the proceedings and designated the lawyer who would represent it (Rule 30). The lawyer was given leave by the President of the Chamber, Mr R. Bernhardt, to use the Spanish language (Rule 27).

3. The Chamber to be constituted included *ex officio* Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention), and Mr Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr C. Russo, Mr A. Spielmann, Mr I. Foighel, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr J. Makarczyk (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant company's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence on 12 March 1997, the Registrar received the Government's memorial on 14 August 1997 and the applicant's memorial on 27 August 1997.

5. On 17 October 1997 the Commission produced various documents which the Registrar had requested on the instructions of the President of the Chamber.

6. In accordance with the decision of the President of the Chamber, who had also given the Agent of the Government leave to address the Court in Spanish (Rule 27 § 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 24 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

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

(b) *for the Commission*

Mr J.-C. SOYER, *Delegate;*

(c) *for the applicant company*

Mr J.L. BENEDICTO GIL, of the Alicante Bar, *Counsel.*

The Court heard addresses by Mr Soyer, Mr Benedicto Gil and Mr Borrego Borrego. Mr Benedicto Gil produced various documents at the hearing.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Edificaciones March Gallego S.A. is a public limited company set up in 1985 and its registered office is at Benidorm (Alicante). Mr Federico March Olmos was its sole director.

8. On 11 December 1989 proceedings for payment (*juicio ejecutivo cambiario*) were brought against the applicant company and, as guarantor, Mr March in Valencia Court of First Instance no. 10 by another company, Manuel Codesido Marí S.L., which claimed the sum of 4,367,842 pesetas on a bill of exchange. The court registry was instructed to inform the defendants that in default of payment their property would be seized and that they could apply to have the proceedings set aside.

9. As the applicant company did not have its registered office at the address indicated on the bill of exchange, the plaintiff company requested the court on 21 February 1990 to order, under Articles 1444 and 1460 of the Code of Civil Procedure, that the applicant company's property should be seized without any prior demand for payment and to summon the company to appear by *edictos* (see paragraph 24 below).

10. On 26 February 1990 Mr March appeared before the Court of First Instance, which assessed what part of his property could be seized and gave him three days in which to indicate that he intended to apply to have the proceedings set aside, if he so wished (see paragraph 24 below). Notice of the proceedings and of the property to be seized was served on Mr March's wife.

11. On 1 March 1990 Edificaciones March Gallego S.A. appeared before the same court and declared their intention of applying to have the proceedings against the company set aside. The document giving notice of that intention, which was submitted by the company's lawyer (*procurador*), Mrs I., stated "... on 26 February last the summons and copies of the application for proceedings for payment were handed to my client...".

12. On 6 March 1990 the applicant company was given four days by the court to make its submissions, adduce evidence and apply to set aside, in accordance with Article 1463 of the Code of Civil Procedure (see paragraph 24 below). The court noted that Mr March had not appeared within the

three-day period he had been granted on 26 February 1990 and declared that he was in default.

13. On 9 March 1990 Mrs I., acting on behalf of Mr March in accordance with “the authority to act in the file of the proceedings” formally applied to have the proceedings in question set aside, within the four-day period granted to the applicant company by the court. In the application to set aside the court was requested to declare that the bill of exchange in question was void since, in view of the amount for which it had been drawn up, an insufficient amount had been paid in compulsory tax on bills of exchange.

14. On 15 March 1990 the court held that the application to set aside was inadmissible (*se tuvo por no formulada*) on the following grounds:

“1. Mr Federico March Olmos did not appear timeously or comply with formal requirements;

2. the lawyer [who submitted the application to set aside] had not received authority to act from the aforementioned person [Mr March] or, at the very least, that authority had not been formally submitted and is not in the file;

3. the only party which gave notice of intention to apply to set aside within the prescribed time is Edificaciones March Gallego S.A., who had duly authorised Mrs [I.], in accordance with requirements...;

4. the debtors are two persons that can be clearly distinguished: on the one hand, a company, Edificaciones March Gallego S.A., and, on the other, a natural person, Mr Federico March Olmos...”

It was also stated in the decision (*providencia*) that it was unnecessary to summon the applicant company by *edictos*, as Manuel Codesido Mari S.L. had requested on 21 February 1990 since, although the applicant company did not have its registered office at the address indicated, it had appeared timeously in accordance with Article 261 of the Code of Civil Procedure. It was noted in the decision that Mr March had not appeared (see paragraph 12 above), unlike the applicant company, which, however, had not formally applied to set aside (see paragraph 13 above) in accordance with Articles 1462 and 1463 of the Code of Civil Procedure (see paragraph 24 below).

15. On 20 March 1990 the applicant company’s lawyer made a *reposición* application to the Court of First Instance, arguing that the application to set aside had been made on behalf of the company, that the fact that Mr March’s name appeared in the application had been merely a typing error and that it was clear that the intention had been to apply to set aside on behalf of the applicant company and not of Mr March.

16. In a decision (*auto*) of 30 March 1990 the court upheld the impugned decision.

17. On 6 April 1990 the applicant company appealed. In a decision (*auto*) of 23 October 1991 the Valencia *Audiencia provincial* upheld the decision of 30 March 1990. The court stated that the mistake went to the applicant company's and Mr March's *locus standi* in that although the first name, "March", was identical in both cases, the second was different, the application to set aside having been made in the name "March Olmos", the name of the natural person, and not of "March Gallego", the name of the company of which the natural person was the sole director.

18. In the meantime, on 9 June 1990, the Valencia Court of First Instance, having found that Mr March had not appeared and that Edificaciones March Gallego – who had not been summoned but who, having indicated in time their intention of applying to set aside, had been deemed to have appeared – had in the end not applied to set aside, ordered that the proceedings for payment of the bill of exchange should continue (*sentencia de remate*).

19. On 14 June 1990 the applicant company appealed against that judgment. On 23 October 1991 the Valencia *Audiencia provincial* dismissed the appeal on the ground that the applicant company's application to set aside had been refused by Valencia Court of First Instance no. 10 on 30 March 1990.

20. On 21 November 1991 Edificaciones March Gallego and Mr March lodged an *amparo* appeal with the Constitutional Court on the basis of Article 24 § 1 of the Constitution (see paragraph 23 below), alleging that the courts' refusal to rectify the clerical error in the application to set aside was a breach of fair procedure.

21. On 3 December 1991 the amount of the bill of exchange was paid to the plaintiff company.

22. On 19 December 1994 the Constitutional Court held, contrary to the opinion of its Crown Counsel's office, that there had not been merely a rectifiable error in the identification of the persons who had applied to set aside but a want of diligence that could not be remedied and dismissed the applicant company's appeal.

It pointed out, firstly, that as the right to bring an action and obtain a reasoned decision from the courts was subject to statutory requirements, the courts were bound to apply the rules of procedure in the light of the aim that had been sought to be achieved by the legislature, while avoiding both excessive formalism that would breach the fairness of procedure guaranteed by Article 24 of the Constitution and excessive flexibility such as would render nugatory the procedural requirements laid down in statutes.

The court noted the difference in legal status between the applicant company (a legal person) and Mr Federico March Olmos (a natural person), and said:

"The difference in legal status between the parties concerned – one of them a legal person and a public limited company (Edificaciones March Gallego S.A.) and the

other a natural person (Mr Federico March Olmos) –, the obvious identity or divergence of their interests due to the similarity of their names and the fact that Mr Federico March Olmos, as sole director of the company, had given its statutory representatives authority to act – as was noted in the decision of 15 March 1990 – do not justify holding, as the interested parties maintained, that there was an error in the identification of the persons that had formally applied to set aside. On the other hand, those factors do justify finding, like the ordinary courts, that there was a want of diligence in the proceedings that cannot be remedied; nor must it be overlooked that it would have to be remedied after [the procedure of formally submitting] the application to set aside had been completed. That fact makes it impossible for the Court to hold that there was merely an irregularity, omission or imperfection that could be cured by supplying the missing element. In the instant case, apart from the fact that the omission in question concerned an essential element of the act and related to the person carrying it out, it would have to be cured outside the mandatory time-limits laid down for formally submitting an application to set aside (Article 1463 of the Code of Civil Procedure, in conjunction with section 241 of the Judicature Act), and in such cases of late rectification of an essential element of a procedural step subject to mandatory time-limits, this Court has held that failure to rectify [the error] does not infringe the right to effective protection by the courts.”

II. RELEVANT DOMESTIC LAW

A. The Constitution

23. Article 24 § 1 of the Constitution provides:

“Everyone has the right to effective protection by the courts in the exercise of his rights and his legitimate interests, and in no circumstances may there be any denial of defence rights.”

B. The Code of Civil Procedure

24. The relevant provisions of the Code of Civil Procedure are the following:

Article 279

“Any service of process or summons that does not comply with the requirements of this section [of this code] shall be invalid.

However, where the person on whom service is being effected or the summons served learns of it during the proceedings, the service of process shall be fully effective as if it had been carried out as prescribed by law.

...”

Article 1444

“If the debtor’s permanent address or place of residence is unknown, the Court may decide, on an application by the plaintiff, to order a seizure without giving notice to pay...”

Article 1460

“If the debtor’s permanent address or place of residence is unknown, the debtor shall be summoned by *edictos*...”

[In the procedure of summons by edictos the summons is posted up on the notice-board of the judicial body concerned and, where appropriate, published in the Official Gazette and in the main newspapers of the province (Article 269 of the Code of Civil Procedure).]

Article 1461

“Within a period that may not be extended of three working days from the day following the summons the debtor may apply to set aside the proceedings for payment by appearing in court assisted by a lawyer [*procurador*].”

Article 1462

“At the end of the period referred to in the foregoing two Articles, a debtor who has not appeared, assisted by a lawyer, shall be deemed in default and the proceedings shall follow their course without it being necessary to summon him again or to send him any notifications other than those provided for in law...”

Article 1463

“If, within the time laid down and having satisfied the formal requirements, the debtor gives notice of his intention to apply to set aside, he shall be deemed to be making such an application and must formally submit his application to set aside within a period of four days, which cannot be extended, and shall raise such defences and submit such evidence as he considers necessary...”

Article 1464

“Only the following objections shall be admissible in proceedings for payment:

...

All other objections that may be raised by a debtor shall be reserved for ordinary proceedings and shall not prevent delivery of the judgment in which payment is ordered [*de remate*].”

Article 1479

“Judgments delivered in proceedings for payment [*juicio ejecutivo*] shall not be final, the parties being entitled to bring ordinary proceedings relating to the same issue.”

C. The Judicature Act (Law no. 6/1985 of 1 July 1985)

25. The relevant provisions of the Judicature Act are the following:

Section 11(3)

“In accordance with the principle of effective protection laid down in Article 24 of the Constitution, the courts shall always rule on claims and may only dismiss them on the ground of a formal defect where that defect cannot be remedied, or at least not in accordance with the procedure laid down by law [for that purpose].”

Section 241

“Procedural steps carried out after a time-limit shall only be annullable if that is permitted by the nature of the time-limit in question.”

Section 267(2)

“Manifest clerical errors and arithmetical errors shall be rectifiable at any time.”

PROCEEDINGS BEFORE THE COMMISSION

26. Edificaciones March Gallego S.A. and Mr Federico March Olmos applied to the Commission on 19 May 1995, alleging that, contrary to Article 6 § 1 of the Convention, they had not had a fair hearing. They considered that their right to have their *contestation* (dispute) heard by a tribunal had been infringed, that the bill of exchange at the origin of their dispute had been defective and that the notifications made during the proceedings in issue had not complied with the relevant provisions of the Code of Civil Procedure.

27. In decisions of 15 January 1996 and 24 June 1996 the Commission declared the application (no. 28028/95) admissible as regards the applicant company’s complaint that it had not had the right to have its dispute over its civil rights and obligations heard by a tribunal and inadmissible as to the

remainder, in particular the complaints of Mr Federico March Olmos. In its report of 26 November 1996 (Article 31) it expressed the opinion by twenty-three votes to four that there had not been a violation of Article 6 § 1 of the Convention. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹¹.

FINAL SUBMISSIONS TO THE COURT

28. In their memorial the Government requested the Court to hold that the refusal of the applicant company's application to set aside had not infringed the right guaranteed by Article 6 § 1 of the Convention.

29. At the hearing the representative of the applicant company asked the Court to find that there had been a breach of Article 6 § 1 and to award the company just satisfaction under Article 50 of the Convention.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant company complained that, by reason of a straightforward clerical error that was easily detectable and rectifiable, the Spanish courts had declared inadmissible its application to set aside the proceedings for payment of the bill of exchange in issue. It considered that its right to have the dispute over the bill of exchange heard by a tribunal had been contravened and relied on Article 6 § 1 of the Convention, the relevant part of which provides:

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

Edificaciones March Gallego S.A. pointed out that proceedings for payment had been brought against both themselves and Mr March Olmos, the latter as guarantor, by the Manuel Codesido Marí S.L. company, which sought from them the sum of 4,367,842 pesetas in respect of a bill of exchange which, according to the applicant company, was defective and

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

incapable of founding the claim in question. However, a mistake had been made in the submission of the application to set aside the proceedings brought against the applicant company in that the application had been formally made in the name of Mr March Olmos and not in the name of Edificaciones March Gallegos S.A.

Thus a mere clerical error, a purely typographical mistake, in the name of the party applying to set aside had deprived the applicant company of the right to have a dispute over its civil rights and obligations heard by a tribunal.

31. Like the Commission, the Government disputed that argument. They pointed out that it had been Mr March who, although he had failed to appear, had applied to set aside and not Edificaciones March Gallegos, which had, however, been the only party to appear.

If one and the same person, in this instance Mr March, acted in two different capacities simultaneously, as a natural person and as the sole director of a company, that person had to take due care to avoid any confusion between those two different capacities. They accordingly considered that the mistake made when the application to set aside had been submitted represented an inexcusable want of diligence.

Furthermore, the Government maintained that the judicial procedure for payment of a bill of exchange was a summary procedure that was very formal in nature and had as its sole purpose the payment of a debt that had been accepted and acknowledged but not yet paid. As it was unlike ordinary proceedings on the merits of a claim, the time allowed for each stage was very short and no extensions could be granted.

32. The Court notes that both the Valencia Court of First Instance and the Valencia *Audiencia provincial* (see paragraphs 14 and 17 above) declared Mr March's application to set aside inadmissible and dismissed the application and appeal subsequently brought by the applicant company. Pointing out the difference in legal status between the applicant company, a legal person, and Mr March Olmos, a natural person, those courts considered that, despite the identity of their interests, the similarity of their names and the fact that Mr March Olmos was the sole director of the applicant company, the error made was not a purely clerical one but amounted to a want of diligence that could not be remedied.

That assessment was upheld by the Constitutional Court (see paragraph 22 above), which pointed out that the error in question concerned an essential element of the act and related to the person carrying it out. It added that at all events, in view of Article 1463 of the Code of Civil Procedure and section 241 of the Judicature Act, the mistake could only be cured outside the mandatory time-limits prescribed in the procedure for applying to set aside.

33. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the

courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, the Bulut v. Austria judgment of 22 February 1996, *Reports of Judgments and Decisions* 1996-II, p. 356, § 29, and, as the most recent authority, the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 31). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention.

34. Further, it is apparent from the Court's case-law that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, the Brualla Gómez de la Torre judgment cited above, p. 2955, § 33).

35. In the instant case the inadmissibility of Mr March's application to set aside was the result of an inaccurate reference to the party bringing the application, a mistake which could not subsequently be remedied. The applicant company, the only party to appear, was therefore deprived of the possibility of itself applying to set aside, as the time-limits laid down in Articles 1461, 1462 and 1463 of the Code of Civil Procedure are mandatory and no extensions of time can be granted.

The inadmissibility of the application complained of by the applicant company was thus the result of an avoidable mistake at the time it was submitted.

36. Furthermore, regard must be had to the special character of the proceedings in question, which by their formal nature were designed solely to secure summary payment of a debt acknowledged by the debtors and recorded in the form of a bill of exchange duly signed. As such proceedings are not designed to determine the merits of the claim, the strict time-limits attending them serve exclusively to speed up payment of the sums in issue. Accordingly, as the Constitutional Court noted (see paragraph 22 above), the mistake made by the applicant could no longer be cured within the mandatory time-limits laid down in Article 1463 of the Code of Civil Procedure.

37. In conclusion, the Court considers that the applicant company has not suffered any interference with its right of access to a court and that consequently the essence of its right to a court has not been impaired. There has therefore been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar