



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

FOURTH SECTION

CASE OF MIRAGALL ESCOLANO AND OTHERS v. SPAIN

*(Applications nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98,
41400/98, 41446/98, 41484/98, 41487/98 and 41509/98)*

JUDGMENT

STRASBOURG

25 January 2000

FINAL

25/04/2000

In the case of Miragall Escolano and Others v. Spain,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,

Mr A. PASTOR RIDRUEJO,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr J. HEDIGAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 25 November 1999 and 13 January 2000,

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

PROCEDURE

1. The case originated in ten applications¹ against the Kingdom of Spain lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Juan Miragall Escolano, Mrs María de la Cinta Andreu Rocamora, Mrs María Victoria Bonet Vilar, Mr Valentín Gómez López, Mr José Antonio Soriano Rams, Mr Francisco Monforte Sancho, Mrs María Dolores García Moreno, Mr José Roig Espert, Mr Salvador Roig Espert and Mrs Ana María Icardo García (“the applicants”), who are Spanish nationals, on 16 September and 10 November 1997, 26 March, 14 and 15 April, 18, 25, 27 and 26 May 1998 respectively. The applicants were all represented by Mr M.R. Mancebo Monge, a lawyer practising in Valencia (Spain). The Spanish Government (“the Government”) were represented by their Agent, Mr J. Borrego Borrego, Head of the Human Rights Department at the Ministry of Justice.

The applications concerned an alleged infringement of the applicants' right to a fair hearing in that the Supreme Court had held that for the purposes of lodging an appeal, time had started to run from the date of delivery of its judgment on 4 July 1987 in proceedings to which the applicants had not been parties, and not the date of its publication in the Official Gazette or, at the very least, the date it was served on the National Society of Chemists.

1. Nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98.

2. On 1 July 1998 the Commission decided to join the first five applications and to communicate them to the Government, whom it invited to lodge written observations on their admissibility and merits. The Government lodged their observations on 29 September 1998 and the applicants replied on 26 November 1998.

3. On 9 September 1998 the Commission decided to join the remaining five applications and to communicate them to the Government, whom it invited to lodge written observations on their admissibility and merits. The Government lodged their observations on 30 October 1998 and the applicants replied on 11 January 1999.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, and in accordance with Article 5 § 2 thereof, the applications were examined by the Court.

5. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the applications to the Fourth Section. The Chamber constituted within that Section included *ex officio* Mr A. Pastor Ridruejo, the judge elected in respect of Spain (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr M. Pellonpää, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber hearing the first five applications were Mr G. Ress, Mr L. Caflisch, Mr J. Makarczyk, Mr I. Cabral Barreto and Mrs N. Vajić and to complete the Chamber hearing the second group of applications were Mr Caflisch, Mr Makarczyk, Mr Cabral Barreto, Mrs Vajić and Mr J. Hedigan (Rule 26 § 1 (b)).

6. On 26 January and 23 February 1999 the Chambers composed of the above judges declared the applications admissible¹.

7. On 3 February, 15 and 29 March 1999 the parties indicated that it would be unnecessary to hold a hearing.

8. In a letter of 22 April 1999 the applicants lodged their claims under Article 41 of the Convention. The Government have not lodged any observations on that issue.

9. On 10 May 1999 the Government informed the Court that no friendly settlement was envisaged.

10. On 25 November 1999 Mr Hedigan, substitute judge, replaced Mr Ress, who was unable to take part in the further consideration of the case (Rule 26 § 1 (c)) in the Chamber examining the first group of applications. On the same day the Chambers, now identical, decided to join the two groups of applications (Rule 43).

1. *Note by the Registry.* The texts of the Court's decisions are obtainable from the Registry.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The profit margins for chemists in Spain were fixed by a ministerial order (*Orden Ministerial*) on 22 January 1982.

12. On 10 August 1985 the government published a ministerial order in the Official Gazette (*Boletín Oficial del Estado*) reducing the profit margins.

13. On 9 September 1985 the National Society of Chemists of Spain (*Consejo general de Colegios Oficiales de Farmacéuticos de España*) commenced proceedings for judicial review with a view to obtaining an order quashing the ministerial order of 10 August 1985. The Supreme Court ordered a stay on the implementation of the order concerned. On 4 July 1987 it quashed the order on its own initiative. The judgment of the Supreme Court was served on the National Society of Chemists on 7 July 1987, but not on the applicants, as they were not parties to the proceedings.

14. The judgment of 4 July 1987 became public when a ministerial order of 30 September 1987 was published on 5 November 1987 in edition no. 265 of the Official Gazette, which reproduced the grounds of the judgment in question.

15. On 5 and 6 July 1988 the applicants lodged claims (dated between 27 April and 27 June 1988) with the State General Administrative Department for the payment of compensation for the damage sustained as a result of the ministerial order, under Article 106 of the Spanish Constitution and section 40(3) of the Law on the Legal Regime governing the Administration of the State. Those claims were deemed to have been rejected as the authorities did not reply to them.

16. On 3 January 1990 the applicants sought judicial review before the Supreme Court. They argued that the one-year limitation period for lodging their application had started to run on 5 November 1987, when the Supreme Court's judgment of 4 July 1987 was published in the Official Gazette, or, at the very least, 7 July 1987, when it was served on the National Society of Chemists. Their applications were, however, dismissed on the ground that the time-limit for making a claim for compensation to the administrative authorities had been one year from the date of delivery of the Supreme Court's judgment, namely 4 July 1987, and that they had lodged their applications out of time.

17. The dates the Supreme Court delivered its judgments were as follows: 27 December 1993 (application no. 41487/98); 26 January 1994 (application no. 38366/97); 26 March 1994 (application no. 41446/98); 17 November 1994 (application no. 41509/98); 21 November 1994 (application no. 41015/98); 29 November 1994 (application no. 40777/98); 12 January 1995 (application no. 38688/97); 17 January 1995 (application

no. 41484/98); 23 January 1995 (application no. 41400/98); and 28 January 1995 (application no. 40843/98).

18. The applicants then lodged ten *amparo* appeals with the Constitutional Court, arguing that the starting-point of the one-year limitation period for lodging their applications with the authorities had been either 5 November 1987, when the Supreme Court's judgment was published in the Official Gazette, or 7 July 1987, when it had been served on the National Society of Chemists.

19. State Counsel's lodged memorials that were favourable to the applicants, in which he said:

“Whatever the position, State Counsel's Office considers that the interpretation by the Third Chamber of the Supreme Court, an interpretation which led it to declare that the action for compensation was statute-barred and, consequently, to dismiss that claim, in fact reflected a formal restrictive approach which is not best suited to facilitate the right of access to a court. That is because, as the Third Chamber itself openly recognised in its decision of 1 July 1994, which was produced by the applicant, it is impossible to establish the date when a judgment will be delivered before it has been drawn up and signed. That means that in every case, even people who were parties to the proceedings in question (which the applicant was not) will only learn the content and date of the judgment when it is served on them. Thus, taking as the starting-point the date of delivery of a judgment (which in practice is a fiction) and not the date of its service results in a material reduction in the time allowed for lodging the relevant claim for compensation, a reduction which, depending on how long service is delayed (which, admittedly, was for a very limited period in the present case), restricts and may even deny the effectiveness of the right to make a claim. Consequently, the decision of the Third Chamber of the Supreme Court entails a violation of the right to effective protection by the courts.”

20. The Constitutional Court nonetheless dismissed the appeals on the ground that the applicants had lodged their claims with the State General Administrative Department a year and two days after the date the Supreme Court's judgment was delivered. It held that a presumption arose that the applicants had been aware of the Supreme Court's judgment of 4 July 1987 in sufficient time, given their direct interest in it and the role played by the National Society of Chemists, which would have informed its members of the judgment.

The dates of delivery and service on the applicants of the decisions of the Constitutional Court were as follows: 10 March 1997; 2 October 1997; 13 October 1997; 27 October 1997; 10 November 1997; and 27 November 1997.

The judgments of 2 October 1997 (*amparo* appeal lodged by Mrs María de la Cinta Andreu Rocamora, application no. 38688/97) and 27 November 1997 (*amparo* appeal lodged by Mrs María Victoria Bonet Vilar, application no. 40777/98, Mr Salvador Roig Espert, application no. 41487/98, and Mrs María Dolores García Moreno, application no. 41446/98) were delivered by the Constitutional Court sitting as a full court. Three judges expressed an opinion dissenting from the judgment of

2 October 1997 (*amparo* appeal no. 160/1997). Three of the judgments of 27 November 1997 referred to the grounds of that judgment and to the dissenting opinion annexed to it. In the dissenting judges' view the starting-point for the limitation period was the date the person relying on it could reasonably act. In the instant case, that could not have been the date of "delivery" of the judgment of 4 July 1987, that being the date when the judges had voted in the parties' absence. Accordingly, in those sets of proceedings, the starting-point for the limitation period had to be the date of service of the decision, that being the point at which the parties had been able to act. With regard to Article 1969 of the Civil Code (see paragraph 23 above), the following view was expressed in the dissenting opinion:

"... If regard is had to the fact that this latter rule provides that the limitation period for all types of action shall be calculated from the date the actions could have been brought, it is obvious that that date can under no circumstances be the date of delivery of the judgment, for the simple reason that the parties are not invited to be present at that 'act', which in general takes place in practice at the same time as the vote which, with the exception of judgments made public 'in open court', enables it to be considered as a fiction devoid of purpose. ...

We therefore find ourselves confronted by a dangerous doctrine (by reason of the legal uncertainty which it creates for the parties) which, if extended to the calculation of the time-limits for appeals, may undermine the right to a remedy which is also fundamental. ...

If account is taken of the fact that rules governing procedural time-limits are mandatory, that an interested party is at liberty to bring an action at any time within that period, and that any change to the rules for calculating the time-limits will affect the constitutional principle of legal certainty (Article 9 [of the Spanish Constitution]), the conclusion that we are faced not with a mere problem of interpretation of an ordinary legal rule (for which the Supreme Court has sole jurisdiction), but with an unreasonable interpretation of a procedural requirement that prevented the claim for compensation being considered by a court on the merits is inescapable. In our view, that situation amounts to a violation of the right to effective protection by the courts, since the requirement that the courts must examine a case cannot be satisfied by a mere decision containing formal reasoning, but requires a decision satisfying the criteria of legal and substantive debate or which, in accordance with Article 24 § 1, protects 'legitimate rights and interests'.

The right to bring an action or to lodge an appeal must arise from the moment the parties may effectively become aware of a legal decision imposing an obligation on them or adversely affecting their legitimate rights or interests. As an act of communication between the court and the parties, service serves that purpose, namely to make the parties aware of the decision of the court and of the grounds for the decision. A pseudo-publication, a mere component of an esoteric judicial liturgy in which the parties play no role, cannot constitute the act required by our Constitution to enable the right to the effective protection by the courts or the right to a remedy to be exercised."

The dissenting judges concluded:

“... we have to conclude that we are not dealing with a mere problem of interpretation of an ordinary legal rule ... but with an unreasonable interpretation of a procedural requirement which prevented the claim for compensation being considered by a court, something which is, in our view, contrary to the right to effective protection by the courts...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

21. Article 106 of the Constitution provides:

“1. The courts shall supervise regulatory powers and the lawfulness of administrative acts and whether such acts are directed at aims which justify them.

2. Save in cases of *force majeure*, individuals shall be entitled in the circumstances and in the manner laid down by statute to compensation for any damage caused to their property and their rights whenever such damage results from the functioning of the public service.”

B. Law on the Legal Regime governing the Administration of the State

22. At the material time, section 40(3) was worded as follows:

“Where the damage results from administrative deeds or acts ... the right to make a claim shall lapse one year after the event giving rise to the claim for compensation.”

C. Civil Code

23. The relevant provisions of the Civil Code read as follows:

Article 1969

“Save as expressly provided otherwise, for the purposes of the limitation period in any action whatsoever, time shall start to run from the date the action may be brought.”

Article 1971

“For the purposes of the limitation period in actions for the execution of obligations arising under a judgment or decision, time shall start to run from the date the judgment or decision becomes final.”

D. Case-law of the Supreme Court

24. The issue of the starting-point has been considered by the Supreme Court in a number of decisions.

Judgment of 19 May 1965

“... The limitation period starts to run from the moment that a possibility of asserting the right exists, that is to say, from the moment the cause of action becomes a matter of public knowledge and the right can logically and legally be asserted, since it would be absurd and unjust if time started to run when the act giving rise to the cause of action was still unknown or concealed, when, as a consequence, it was impossible to challenge or contest that act effectively or when an obstacle prevented any challenge...”

Judgment of 17 January 1970

“... Time shall start to run from the moment the parties are notified, that is to say, from the moment they become aware of the rights and obligations which the decision creates for them...”

Judgment of 15 October 1990

“... [For the purposes of the one-year time-limit laid down by section 40(3) of the Law on the Legal Regime governing the Administration of the State, time begins to run as soon as] the judgment quashing the act or general administrative provision at the origin or constituting the cause of the pecuniary liability becomes final...”

THE LAW

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

25. The applicants asserted that they had been denied a fair trial as the Supreme Court had ruled that for the purposes of the limitation period for lodging their claims, time had started to run from the date the judgment was delivered and not the date it was published in the Official Gazette or, alternatively, the date it was served. They alleged a violation of Article 6 § 1 of the Convention, which reads:

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

A. Submissions of the parties

1. *The applicants*

26. The applicants argued that the grounds of the judgment of 4 July 1987 had become public only on 5 November 1987, following their publication in the Official Gazette. Furthermore, since the National Society of Chemists had not become aware of the judgment until it was served on 7 July 1987, it was thereafter that it had been possible for the judgment to be forwarded to the respective regional branches for the chemists to apprise themselves of it individually.

27. The applicants argued that the case-law of the Convention institutions cited by the Government was not applicable in the instant case. They referred to the *Axen v. Germany* and *Pretto and Others v. Italy* judgments of 8 December 1983 (Series A nos. 72 and 71). They stressed that there was no problem of interpretation of Spanish law in the instant case, adding that three judges of the Constitutional Court, which was sitting as a full court, had delivered an opinion dissenting from the decision of 2 October 1997 (see paragraph 20 above). They also relied on Article 1969 of the Civil Code (see paragraph 23 above).

28. The applicants submitted that in a case similar to the instant case their lawyer had asked the Supreme Court to inform him of the time and date of delivery of the judgment and, in a Supreme Court decision of 1 July 1994, had obtained the following reply.

“FIRST. – By contesting the judicial decision fixing the time and date of the vote and judgment in the proceedings for judicial review, and by asking to be informed of the time and date of delivery of the judgment, the applicant's representative in these proceedings is seeking the impossible, since – as Article 365 of the Code of Civil Procedure, on which he relies in support of his request, indicates – that date cannot be fixed until the judgment has been drafted and signed. The date concerned cannot and must not be known [*no resulta escible*] when the date of the vote and judgment is announced.

SECOND. – The fact that the judgment has been read out at a public hearing by the judge rapporteur is recorded by the secretary to the Chamber. The record is available for consultation and constitutes evidence of the date of the judgment, but it is impossible to fix the date of delivery before it has been drafted and signed.”

In the applicant's submission, it was not possible to make a claim for compensation until the decision had been taken and the public had been apprised of it through its publication in the Official Gazette or, at the very least, until it had been served on the parties to the proceedings.

29. They therefore argued that the Supreme Court's restrictive interpretation of the starting-point for calculating the time-limit for lodging their claims had, in breach of Article 6 § 1 of the Convention, deprived them

of access to a remedy that would have enabled them to obtain the compensation claimed.

2. The Government

30. The Government relied on the case-law of the Convention institutions concerning time-limits for lodging appeals and, in particular, on the Tejedor García v. Spain judgment of 16 December 1997 (*Reports of Judgments and Decisions* 1997-VIII), the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997 (*Reports* 1997-VIII) and the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998 (*Reports* 1998-I). They pointed out that the issue in the instant case was not how long the parties had to lodge a claim, but when time had started to run. They noted that the applicants had referred in their claims to 4 July 1987, the date of the Supreme Court's judgment quashing the relevant ministerial order. They added that almost 16,000 chemists had lodged their claims for compensation within the time-limit and referred to Article 1971 of the Civil Code (see paragraph 23 above), which provided that time started to run in actions for the enforcement of obligations arising under a judgment when the judgment became final.

31. The Government also referred to a judgment of the Supreme Court of 15 October 1990 (see paragraph 24 above). They noted that the date of 7 July 1987, when the parties were served with the Supreme Court's judgment in this case, should not be taken into consideration as the applicants had not been parties to the proceedings. The date of 5 November 1987, when the judgment was published in the Official Gazette, was not relevant either, since it was the ministerial order that made the grounds of the judgment public which was published, not the judgment itself.

32. The Government therefore submitted that the domestic courts' interpretation of the applicable domestic law was not unreasonable and that there had been no violation of Article 6 § 1 of the Convention.

B. The Court's assessment

33. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, the Brualla Gómez de la Torre judgment cited above, p. 2955, § 31, and the Edificaciones March Gallego S.A. judgment cited above, p. 290, § 33).

The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals (see, *mutatis mutandis*, the Tejedor García judgment cited above, p. 2796, § 31).

The Court further considers that the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty. Litigants should expect those rules to be applied.

34. The Court notes that in the instant case Article 1969 of the Civil Code lays down that for the purposes of the limitation period for commencing a wide variety of actions time begins to run from the date when the action can be brought, unless specially provided otherwise (see paragraph 23 above). It observes that the judgment in question was not served on the applicants, as they were not parties to the proceedings. In addition, the Supreme Court ruled in a decision of 1 July 1994 cited by State Counsel at the Constitutional Court that it was impossible to fix the time and date of the vote and judgment in administrative appeals until the latter had been drafted and signed, and “[t]he date concerned cannot and must not be known when the date of the vote and judgment is announced” (see also, *mutatis mutandis*, *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II).

35. The Court further notes that both State Counsel – in his memorials opining in favour of the applicants – and the dissenting judges in the Constitutional Court said that parties are not invited to be present when judgments are handed down. There was still less reason for inviting the applicants, who were not parties to the proceedings in which the relevant judgment was delivered.

36. The Court reiterates that the rules governing time-limits for appeals are intended to ensure a proper administration of justice. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy. Furthermore, in each case the form of publicity to be given to the “judgment” under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see the *Axen* judgment cited above, pp. 13-14, § 31).

In the present case, the administrative claim, which was sent to the Supreme Court within a year of publication of the decision in issue in the Official Gazette, was declared inadmissible as being out of time since the majority of the Constitutional Court considered that it should have been lodged within a year after delivery of the decision. However, it seems unlikely that the applicants were aware at that time of the decision, since it was not intended for them and was delivered in a case to which they were not parties. The dissenting judges in the Constitutional Court considered that the time for appealing only started to run from the date the appellant was able to act effectively. In the instant case, that could not have been the day the judgment was “delivered”, when the judges vote in the absence of

the parties. Accordingly, the starting-point had to be the day the decision was served, that being when the parties were in a position to act.

37. Since the issue concerns the principle of legal certainty, it is not merely a problem of interpretation of a legal provision in the usual way but of an unreasonable construction of a procedural requirement which prevented a claim for compensation being examined on the merits and thereby entailed a breach of the right to the effective protection of the courts. The parties must be able to avail themselves of the right to bring an action or to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests. Otherwise, the courts could substantially reduce the time for lodging an appeal or even render any appeal impossible by delaying service of their decisions. As a means of communication between the judicial body and the parties, service makes the court's decision and the grounds for it known to the parties, thus enabling them to appeal if they see fit.

38. In the light of the foregoing, the applicants cannot be said to have acted negligently or to have erred in lodging their administrative-law claims only on 6 July 1988 (a year and two days after the delivery of the Supreme Court's judgment of 4 July 1987), as, firstly, the starting-point was in issue and, secondly, they were not parties to the proceedings in which the Supreme Court had delivered the judgment concerned. Further, the Supreme Court examined the applicants' claims as a court of first and last instance.

The Court consequently considers that the domestic courts' particularly strict interpretation of a procedural rule deprived the applicants of the right of access to a court to have their claims for compensation examined (see, *mutatis mutandis*, the Pérez de Rada Cavanilles v. Spain judgment of 28 October 1998, *Reports* 1998-VIII, pp. 3256-57, § 49).

39. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

41. In support of their claims for just satisfaction, the applicants relied on the following declaration, made by the Government in their observations of 29 September and 30 October 1998:

“Thousands of chemists have demanded that the State be held responsible for applying a ministerial order over several months, when its execution was initially

suspended and the order was subsequently declared null and void *ab initio*; clearly, the State will meet its obligations to pay the compensation determined by the courts.”

42. The applicants claimed the corresponding amounts plus interest at the statutory rate from the date each claim had been lodged with the State General Administrative Department until the date of payment, as was decided in other proceedings to which the Government had referred and in respect of which the applicants produced two judgments of the Supreme Court of 9 December 1993 (appeal no. 186/90) and 25 April 1995 (appeal no. 7127/92) setting out the criteria for payment.

The amounts due applying those criteria were as follows: Mr Miragall Escolano: 1,252,855 pesetas (ESP); Mrs Andreu Rocamora: ESP 1,237,839; Mrs Bonet Vilar: ESP 398,780; Mr Gómez López: ESP 494,787; Mr Soriano Rams: ESP 470,647; Mr Monforte Sancho: ESP 875,346; Mrs García Moreno: ESP 692,867; Mr J. Roig Espert: ESP 689,814; Mr S. Roig Espert: ESP 2,735,735; and Mrs Icardo García: ESP 2,735,735.

43. The Government made no observations on the applicant's claims under Article 41.

44. The Court notes that the applicants have not made any claim for compensation for non-pecuniary damage or for reimbursement of costs and expenses.

It considers that the question of the application of Article 41 concerning pecuniary damage is not ready for decision. Consequently, it must reserve that question and fix the subsequent procedure in the light of the possibility of an agreement being reached between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court). The Court gives the parties three months for that purpose.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that the question of the application of Article 41 of the Convention is not ready for decision in so far as the pecuniary damage is concerned; accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government to submit, within the forthcoming three months, their written observations on the matter and the parties to notify the Court within the same period of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French, and notified in writing on 25 January 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Matti PELLONPÄÄ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Pellonpää is annexed to this judgment.

M.P.
V.B.

DISSENTING OPINION OF JUDGE PELLONPÄÄ

(Translation)

I regret that I do not share the majority of the Chamber's opinion that there has been a violation of Article 6 § 1.

I note, like the majority (see paragraph 33 of the judgment) that “it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness” (see the *Tejedor García v. Spain* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2796, § 31).

The Supreme Court held that the one-year limitation period for seeking compensation before the administrative courts began to run on 4 July 1987, that being the date when the Supreme Court quashed the ministerial order in issue. The applicants' appeals against that interpretation of Spanish law were dismissed by the Constitutional Court, which held that the applicants could be presumed to have been aware in sufficient time of the judgment of 4 July 1987 owing to their direct interest and the fact that the National Society of Chemists had intervened and would have informed its members of it.

The question is whether that interpretation by the two senior national courts was arbitrary and/or constituted a hindrance to the applicants' right of access to a remedy guaranteed by Article 6.

In that connection, I consider that such an interpretation could be qualified as arbitrary if, for example, the applicable national rules stated that the starting-point was the date of service of the decision on the individual concerned. That is not the case here. Under section 40(3) of the Law on the Legal Regime governing the Administration of the State (as worded at the material time) “the right to make a claim shall lapse one year after the event giving rise to the claim for compensation”. Article 1971 of the Civil Code refers to the “date the judgment or decision becomes final”. Although the provision relied on by the dissenting judges in the Constitutional Court – Article 1969 of the Civil Code – could support the minority's position, I do not consider the other interpretation as being so unreasonable as could be termed from the outset arbitrary and contrary to Article 6.

The remaining issue is whether that interpretation nonetheless prevented the applicants from bringing the claim concerned. The fact that the minority of the Constitutional Court's interpretation is the one “best suited to facilitate the right of access to a trial”, to adopt the expression used by State Counsel (see paragraph 19 of the judgment), is nonetheless not decisive. For a finding of a violation of Article 6 to be made out, the verdict of the Supreme Court, accepted by the majority of the Constitutional Court, must instead have impaired the “very essence” of the right of access (see the *Brualla Gómez de la Torre v. Spain* judgment of 19 December 1997,

Reports 1997-VIII, p. 2955, § 33). In other words, the issue is whether, as in the case of *Pérez de Rada Cavanilles v. Spain* (judgment of 28 October 1998, *Reports* 1998-VIII, pp. 3256-57, § 49), it was the particularly strict application by the domestic courts of a “procedural rule” that deprived the applicants of the “right of access to a court”. It will be recalled that in that case the applicant had three days to make an application in circumstances in which it was virtually impossible for her to comply. The Court rightly held that there had been a violation of Article 6.

In the instant case, the applicants said that the date of 5 November 1987 (or, at the very least, 7 July 1987) should have been considered the starting-point for the one-year limitation period for lodging their claims. I note that even from 5 November 1987 the applicants had approximately eight months in which to lodge their claims within a year from the judgment of 4 July 1987. The applicants' claims were dated before 4 July 1988, but reached the authorities afterwards. The claims – dated between 27 April and 27 June 1988 – referred to the judgment adopted on 4 July 1987 without any reference to any other date such as the date of publication of the ministerial order in the *Official Gazette* (5 November 1987). Although those circumstances do not prove that the applicants foresaw how the authorities and the Supreme Court would interpret the rules, I consider it not unreasonable (having regard also to the wording of section 40(3) cited above, which the applicants rely on in their complaints) to assume that they could have foreseen the possibility of their being interpreted in that way. In any event, the interpretation of the national courts did not prevent the vast majority of the chemists concerned from lodging their claims within one year from 4 July 1987, judging from the information provided by the Government (and not contested by the applicants) that almost 16,000 chemists did so within the period. Although I do not know why thousands of other chemists lodged their claims before the applicants, that information nevertheless tends to confirm that there was no violation of the very substance of the right guaranteed by Article 6 § 1 – as interpreted by the Court in its case-law – of all chemists concerned, including the applicants. Consequently, I conclude that there has been no violation of that Article.