



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

FOURTH SECTION

CASE OF GARCÍA MANIBARDO v. SPAIN

(Application no. 38695/97)

JUDGMENT

STRASBOURG

15 February 2000

FINAL

29/06/2000

In the case of García Manibardo v. Spain,

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

Mr M. PELLONPÄÄ, *President*,
Mr G. RESS,
Mr A. PASTOR RIDRUEJO,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 27 January 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38695/97) 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 a Spanish national, Mrs Florencia García Manibardo (“the applicant”), on 2 September 1997. The applicant was represented by Mr F. Zapater Estebán, a lawyer practising in Tarragona. The Spanish Government (“the Government”) were represented by their Agent, Mr J. Borrego Borrego, Head of the Human Rights Office, Ministry of Justice.

The applicant alleged a breach of her right to a fair hearing in that the Tarragona *Audiencia Provincial* had declared her appeal inadmissible owing to her failure to deposit the sum she had been ordered to pay at first instance.

2. On 20 May 1998 the Commission (Second Chamber) decided to give notice of the application to the Government and to invite them to submit written observations on its admissibility and merits. The Government submitted their observations on 3 July 1998 and the applicant replied on 23 September 1998.

3. 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 case was examined by the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case 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 were Mr G. Ress, Mr J. Makarczyk, Mr I. Cabral Barreto, Mr V. Butkevych and Mrs N. Vajić (Rule 26 § 1 (b)).

5. On 8 December 1998 the Chamber declared the applicant's complaint under Article 6 § 1 of the Convention (fair hearing) admissible. It declared the remainder of the application inadmissible¹.

6. In a letter of 31 May 1999 the applicant set out her claims under Article 41 of the Convention.

7. On 15 June 1999 the Court decided that no hearing was required. In a letter of 2 July 1999 the Government set out their observations on the applicant's claims under Article 41 of the Convention and on other points. The applicant replied on 1 September 1999.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 10 October 1990 the applicant's husband was killed in a road-traffic accident when a car and a lorry collided.

9. A criminal investigation (*diligencias previas* – no. 1394/90) was started before Amposta investigating judge no. 1. It appeared at first that a Mr P. was the driver of the car involved in the accident.

10. On 12 November 1990 Mr P.'s insurers paid the applicant 18,250,000 pesetas (ESP) in compensation for her husband's death, independently of the criminal investigation that was under way. In her letter of acceptance dated that day, the applicant waived for herself and her four minor children the right to make any claim in civil or criminal proceedings in connection with the pending criminal investigation. She confirmed that waiver before Amposta investigating judge no. 1 on 22 November 1990.

11. In a decision (*auto*) of 10 June 1993 Amposta investigating judge no. 1 declared that there was no longer any need to pursue the pending investigation with regard to establishing any criminal liability.

12. By a decision (*auto*) of 30 November 1993 of Amposta investigating judge no. 1, Mr P.'s widow and children (who were minors) were awarded compensation to be paid by the insurers of the lorry that had collided with the car. Mr P. had also been killed in the accident and was believed to have been the driver of the car.

13. Mrs P., the widow of the presumed driver of the car, considered the sum she had received inadequate and that it was not her husband who had

1. Note by the Registry. The Court's decision is obtainable from the Registry.

been driving the car involved in the collision, but the applicant's. On 7 March 1994 she lodged a written application for damages on behalf of herself and her two minor children with Amposta district judge no. 1. Her action, which had to be conducted in accordance with the rules for oral proceedings (*juicio verbal*), was brought jointly against the heirs of the applicant's husband, the heirs of the owner of the car who was also killed in the accident and the insurers of the vehicle.

14. On 23 June 1994 the applicant, who was acting in her own name and on behalf of her minor children and was represented by a lawyer who accepted her instructions "on the basis that he was acting as if he had been appointed by the court", orally contested the claim against her by reference to the "facts and reasons contained in the annexed document[s]". In those documents, the applicant replied in writing to the claimant's arguments and applied for legal aid. She referred to her domestic situation, disclosed her personal income, which consisted solely of her widow's pension and the income of her children who were now without a father, and stated that she owned a home that she had purchased with the compensation received as a result of her husband's death. The documents were referred to in the record of the hearing of 5 July 1994 in the following terms: "the documents annexed to [the applicant's] memorial in reply to the claim are considered to have been produced". The insurers of the car also contested the claim and lodged written documents containing detailed submissions.

15. In a judgment of 20 December 1994 Amposta district judge no. 1 found that the driver of the car involved in the collision had been the applicant's husband, not the claimant's, and ordered the former's heirs and the vehicle insurers jointly and severally, or, in the alternative, the heirs of the owner of the vehicle, to pay Mrs P. and her two children the sum of ESP 18,000,000.

16. All the parties appealed against that decision. In a decision (*providencia*) of 16 January 1995, Amposta district judge no. 1 gave the applicant permission to appeal on condition that she deposited the amount awarded in the judgment at first instance, in accordance with supplemental section 1(4) of Basic Law no. 3/1989 of 21 June 1989 updating the Criminal Code.

17. On 25 February 1995 the applicant lodged an application with Amposta district judge no. 1 to have that decision set aside (*reposición*) on the ground that it was impossible for her to deposit the sum requested by the *Audiencia Provincial*. On 5 April 1995 the application was declared admissible in accordance with the Constitutional Court's case-law on the subject (judgment no. 84/1992 of 28 May 1992), and the applicant was exempted from the obligation to deposit the amount concerned prior to lodging the appeal. The district judge took into account the applicant's domestic and financial circumstances "as set out in the court file" in reaching his decision.

18. In a judgment of 2 September 1996 the Tarragona *Audiencia Provincial* declared the appeal lodged by the applicant's opponent partly admissible, upheld the judgment of the district judge and declared the applicant's appeal inadmissible on the ground that she had not deposited the requisite sum or shown that she had tried to find other means – such as a bank guarantee as suggested by the Constitutional Court in its judgment no. 30/1994 of 27 January 1994 – of complying with that obligation. As regards the district judge's ruling that the appeal was admissible and his decision to exempt the applicant from the obligation to deposit the monies, the *Audiencia Provincial* explained that, since the appeal had been examined even though it should have been declared inadmissible, the grounds for a finding of inadmissibility had become grounds for dismissing the appeal.

19. On 23 December 1996 the applicant lodged an *amparo* appeal with the Constitutional Court. She relied on her right to a fair hearing and on the non-discrimination principle arguing that no deposit had been demanded from her opponent despite her cross-appeal. The applicant added that she had applied for legal aid at first instance and that her financial and domestic circumstances had prevented her from depositing the amount required to lodge her appeal.

20. Meanwhile, in connection with the enforcement of the Tarragona *Audiencia Provincial*'s judgment, the Amposta district judge had, by a decision (*providencia*) of 30 December 1996, ordered the seizure of the assets of the applicant and the vehicle insurers as security for the payment of the compensation awarded to Mrs P.

21. On 7 January 1997 the applicant wrote to Amposta district judge no. 1 to request that her application for legal aid made on 23 June 1994 in her memorial in reply to Mrs P.'s claim before the district judge be examined and a stay of execution pending delivery of the decision of the Constitutional Court in the *amparo* appeal lodged on 23 December 1996. On 16 January 1997 the district judge decided to examine the application for legal aid.

22. In a decision of 10 March 1997 the Constitutional Court dismissed the applicant's *amparo* appeal on the ground that it had no constitutional basis. It held that the decision declaring the applicant's appeal inadmissible had been properly reasoned, that it answered the applicant's legal arguments reasonably and had been delivered after adversarial proceedings with full procedural guarantees. With regard to the alleged violation of the non-discrimination principle, the Constitutional Court held that the position of a person held liable civilly and the position of the party who had won the action were not comparable.

23. The applicant was granted legal aid by a decision of Amposta district judge no. 1 of 15 April 1997. No appeal was lodged against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure (provisions relating to legal aid)

24. The provisions of the Code of Civil Procedure relating to legal aid (before the entry into force of Law no. 1/1996 of 10 January 1996) read as follows:

Article 20

“Application for recognition of the right to take part in proceedings free of charge shall be made to the judge or court that has or will have jurisdiction over the proceedings or the voluntary judicial act in respect of which the application is made ...”

Article 22

“The application shall be deemed ancillary to the main proceedings and shall be examined separately under the rules specific to oral proceedings; the other parties and State Counsel shall be heard.”

Article 23

“The application and related procedure shall not entail a stay of the main proceedings, unless all parties so request ...”

Article 30

“Anyone granted legal aid under a statutory provision or by a court order shall be entitled to:

...

(3) exemption from the obligation to deposit the sums required on lodging an appeal or application for judicial review. ...”

Article 32

“A grant of legal aid for specific proceedings shall cover all steps and appeals related to those proceedings, but shall not be used in any other proceedings.”

Article 42

“Anyone entitled to free legal representation may be represented by a barrister or solicitor of his own choice if the barrister or solicitor agrees to act, failing which counsel shall be appointed by the court.”

Article 730

“The hearing shall take place on the appointed day before the judge and the registrar.

The parties shall set out their claims and anything they consider relevant to their case in turn. Thereafter, relevant evidence may be produced and the documentary evidence shall be placed in the court file.

...

The parties may choose a representative, who must be a practising barrister or a practising solicitor, to speak on their behalf. The representative may attend the hearing.

...”

B. Law no. 1/1996 of 10 January 1996 on legal aid

25. Transitional provision no. 1 of Law no. 1/1996 of 10 January 1996 provides:

“Applications for legal aid made before Law no. 1/1996 enters into force shall be made in accordance with the legislation in force when the application is made.”

C. Basic Law no. 3/1989 of 21 June 1989 updating the Criminal Code (applicable to civil actions for damages for loss caused by motorised vehicles)

26. Subsection (4) of supplemental section 1 of Basic Law no. 3/1989 of 21 June 1989 provides:

“Anyone who is ordered to pay compensation and wishes to lodge an appeal against a decision concluding proceedings to which this provision relates must show that the amount that he or she has been ordered to pay together with accrued interest and expenses has been deposited ...”

D. Decisions of the Constitutional Court

27. In its judgment no. 84/1992 of 28 May 1992, the Constitutional Court noted that while appellants should be given an opportunity to remedy an omission, the payment of the deposit before the appeal was lodged was not a mere condition of form, but an essential prerequisite for the lodging of an appeal. However, the statutory requirement to deposit the monies could, in certain cases, infringe litigants’ rights to effective protection by the courts of first instance and appeal thereby creating situations in which the person ordered to make payment was prevented from appealing and would thus be

defenceless. The Constitutional Court referred to the need for the financial circumstances of the person against whom the order had been made to be taken into account, the judge being required to examine each case and if necessary to decline to apply a statutory provision which in another case would be mandatory.

28. In its judgment no. 30/1994 of 27 January 1994 in a case on labour law, the Constitutional Court said that an appeal would be inadmissible unless the obligation to deposit monies was complied with "... except where the applicant was in receipt of legal aid, in which case he or she could satisfy the obligation with a bank guarantee instead ...".

29. In its judgment no. 187/1992 of 28 May 1992, delivered in answer to a constitutionality question raised by the Murcia *Audiencia Provincial*, the Constitutional Court likewise referred to situations in which a non legally aided applicant was subject to bankruptcy proceedings or was insolvent.

THE LAW

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

30. The applicant complained that the Tarragona *Audiencia Provincial* had declared her appeal inadmissible owing to her failure to deposit the sum she had been ordered to pay at first instance at a time when her application for legal aid had yet to be decided. She alleged a violation of Article 6 § 1 of the Convention, which provides:

"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 applicant

31. The applicant said that she had lodged a legal-aid application with the Amposta district judge in due time and in the correct form. Any error had been attributable exclusively to the district judge who was under a statutory duty to process her application. Further, the applicant maintained that when her oral submissions had been made in reply to her opponent's claim, the lawyer who had agreed to represent her "as if he had been appointed by the court" had referred to annexed documents including her application for legal aid; she added that "the documents annexed to [the applicant's] memorial in reply to the claim [were] considered to have been

produced”. She stressed that Article 730 of the Code of Civil Procedure did not preclude claims, replies or other arguments in oral proceedings being made in writing and that, in any event, both her opponent’s claim and the insurers’ reply had been in writing.

32. The applicant further noted that it had been unnecessary for her to renew the application before the Tarragona *Audiencia Provincial* since that court had the entire case file before it when hearing the appeal and the written submissions of 7 January 1997 did no more than repeat the application previously made. The Amposta district judge had, moreover, exempted the applicant from the obligation to deposit monies in view of her domestic and financial circumstances “as set out in the court file”. She said that she had explained those circumstances to each of the courts concerned and had informed the Constitutional Court that she had made an application for legal aid. She added that she had been granted legal aid on 15 April 1997 after the domestic proceedings had ended.

33. The applicant said that any error was exclusively attributable to the district judge who had been under a statutory obligation to process her application. She therefore submitted that the fact that her appeal had been dismissed for failure to comply with the order to deposit monies at a time when her application for legal aid had not been examined for a reason beyond her control constituted a violation of the right to a fair hearing.

2. *The Government*

34. The Government insisted that the applicant’s alleged application for legal aid to the Amposta district judge was invalid since the procedure specific to oral proceedings should have been used in the civil action against her, and her submissions in reply to the statement of claim should, consequently, have been made orally. They therefore maintained that the written documents had no value in law. The Government conceded that the applicant had referred to certain documents that had been placed on the court file on her first appearance and that the application for legal aid was among those documents. However, in their submission, those documents were inadmissible in the proceedings by virtue of Article 730 of the Code of Civil Procedure.

35. The Government said that the applicant had been assisted by counsel of her choice throughout the proceedings. They noted, however, that the applicant’s counsel had not once during the substantive proceedings taken the trouble to enquire whether legal aid had been granted. Moreover, the applicant had not referred to her application for legal aid in her appeal to the *Audiencia Provincial*, and the application was not made in the correct form until 7 January 1997, in the course of the proceedings for the enforcement of the judgment delivered on appeal. The Government therefore submitted that there had been no violation of Article 6 § 1 of the Convention.

B. The Court's assessment

36. 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, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 31, and the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). Further, 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 pursued (see, among other authorities, the Edificaciones March Gallego S.A. judgment cited above, p. 290, § 34).

37. In the instant case, the applicant’s appeal was declared inadmissible pursuant to subsection (4) of supplemental section 1 of Basic Law no. 3/1989 of 21 June 1989 updating the Criminal Code (see paragraph 26 above).

38. The Court considers the aim pursued by the obligation to deposit monies legitimate: namely to avoid the appellate court’s case list being overloaded. It must nonetheless determine whether the fact that the appeal was declared inadmissible infringed the very essence of the applicant’s right to a “court” for the purposes of Article 6 § 1.

39. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation (see, among other authorities, the Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, pp. 13-15, §§ 25-26). Nevertheless, where such courts exist the guarantees contained in Article 6 must be complied with, *inter alia* by ensuring effective access to the courts so that litigants may obtain a decision relating to their “civil rights and obligations”.

40. The Court notes that in the instant case the applicant applied for legal aid in 1994 when replying to the claim made against her by her opponent.

41. The Court finds unpersuasive the Government’s argument that the written documents were inadmissible since the civil proceedings against the applicant should have been conducted under the oral procedure. It observes that the opposing party’s claim was also made in writing and that the documents lodged by the applicant, including the application for legal aid,

were noted in the record of the hearing. Furthermore, when the applicant renewed her application for legal aid in 1997 she did so on the basis of the 1994 application and was then granted legal aid. Moreover, the Court is mindful of the fact that the applicant's application to Amposta district judge no. 1 for judgment to be set aside (*reposición*), an application in which she referred to her inability to deposit the amount requested by the *Audiencia Provincial*, was declared admissible and the applicant was exempted from the obligation to deposit the amount specified before lodging her appeal in view of her domestic and financial circumstances "as set out in the court file".

42. The Court notes in that connection that it was possible both under Article 30 (3) of the Code of Civil Procedure and the case-law of the Constitutional Court for the financial position of the persons concerned to be taken into account and for them to be exempted from the obligation to deposit monies if they had been granted legal aid. In the present case, the applicant was not granted legal aid in sufficient time owing to negligence on the part of a judicial body which was therefore not attributable to her while on the face of it she satisfied all the conditions of eligibility for legal aid as, indeed, was subsequently confirmed.

43. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, pp. 12-14, § 24). In the circumstances of the case, the applicant's appeal was declared inadmissible owing to her failure to deposit the requisite amount. She was thus deprived of a remedy which could have proved decisive for the outcome of the dispute.

44. In the instant case, the applicant's appeal was declared inadmissible owing to the statutory duty on persons other than those who are in receipt of legal aid to deposit with the *Audiencia Provincial* a specific amount (namely, the compensation award) as a condition precedent to their being permitted formally to lodge an appeal.

45. The Court finds that by obliging her to pay the amount ordered, the *Audiencia Provincial* prevented the applicant from using an existing and available remedy, such that a disproportionate hindrance was put in the way of her right of access to a court. Consequently, there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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.”

A. Pecuniary damage

47. The applicant requested that the Government should, as a precautionary measure, assume the consequences of any action which the insurers might bring against her to recover the sum paid to her (18,250,000 pesetas (ESP)) since her deceased husband was believed to have been the driver of the car involved in the collision. She explained that the limitation period under the Civil Code for such an action was four years, which period, in the instant case, ran from 2 September 1996, when the Tarragona *Audiencia Provincial* delivered its judgment.

48. The Government argued that the pecuniary damage alleged by the applicant was not connected with the complaint set out in the application, since she had received the compensation in question in an out-of-court settlement and it had not been in issue in the civil proceedings with which the application was concerned.

49. The Court agrees with the Government that there is no causal link between the violation that has been found and the alleged pecuniary damage. It therefore rejects the applicant's claims under this head.

B. Costs and expenses

50. The applicant claimed ESP 520,572 for costs and expenses incurred before the Constitutional Court and the Convention institutions.

51. The Government considered that they should only have to reimburse the costs and expenses incurred before the Convention institutions.

52. The Court observes that it has in previous cases awarded sums claimed as legal fees before the Spanish Constitutional Court (see, among other authorities, the *Hiro Balani v. Spain* judgment of 9 December 1994, Series A no. 303-B, p. 31, §§ 32-33, and the *Castillo Algar v. Spain* judgment of 28 October 1998, *Reports* 1998-VIII, p. 3118, §§ 53, 54 and 57). Furthermore, it considers the amount claimed by the applicant reasonable and accordingly makes an award in that sum.

C. Default interest

53. According to the information available to the Court, the statutory rate of interest applicable in Spain at the date of adoption of the present judgment is 4.25% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, ESP 520,572 (five hundred and twenty thousand five hundred and seventy-two pesetas) for costs and expenses;
 - (b) that simple interest at an annual rate of 4.25% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 15 February 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Matti PELLONPÄÄ
President