



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

AFFAIRE GARCÍA RUIZ c. ESPAGNE

CASE OF GARCÍA RUIZ v. SPAIN

(Requête n°/Application no. 30544/96)

ARRÊT/JUDGMENT

STRASBOURG

21 janvier/January 1999

In the case of García Ruiz v. Spain,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr A. PASTOR RIDRUEJO,

Mr G. BONELLO,

Mr J. MAKARCZYK,

Mr P. KŪRIS,

Mr R. TÜRMEŖEN,

Mr J.-P. COSTA,

Mrs F. TULKENS,

Mr M. FISCHBACH,

Mr V. BUTKEVYCH,

Mr J. CASADEVALL,

Mr J. HEDIGAN,

Mrs H.S. GREVE,

Mr A.B. BAKA,

Mr R. MARUSTE,

Mrs S. BOTOCHAROVA,

and also of Mr M. DE SALVIA, *Registrar*,

Having deliberated in private on 18 November 1998 and 13 January 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the Spanish Government (“the Government”) on 6 January 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 30544/96) against the Kingdom of Spain lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by a Spanish national, Mr Faustino Francisco García Ruiz, on 19 December 1995.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Government's application referred to former Article 48. The object of the application 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 former Rules of Court A¹, the applicant stated that he wished to take part in the proceedings. The President of the Court at that time, Mr R. Bernhardt, gave him leave to use the Spanish language (former Rule 27 § 3).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant and the Delegate of the Commission on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 13 May 1998 and the Government's memorial on 2 June 1998.

4. On 12 October 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr A. Pastor Ridruejo, the judge elected in respect of Spain (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr J. Hedigan replaced Mrs Strážnická, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

6. At the Court's invitation (Rule 99), the Commission delegated one of its members, Mr F. Martínez, to take part in the proceedings before the Grand Chamber.

1. *Note by the Registry.* Rules of Court A applied to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and from then until 31 October 1998 only to cases concerning States not bound by that Protocol.

7. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 18 November 1998.

There appeared before the Court:

(a) *for the Government*

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

(b) *for the Commission*

Mr F. MARTÍNEZ, *Delegate,*
Ms M.-T. SCHOEPFER, *Secretary to the Commission.*

The Court heard addresses by Mr Martínez and Mr Borrego Borrego.

By a letter of 28 October 1998 the applicant had informed the Registry that he would not be taking part in the hearing and would not be represented at it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant has the degree of Bachelor of Laws and is registered as a member of the Madrid Bar, but in fact works as a nurse. He submitted that in August 1985 one M. gave him instructions to carry out certain non-contentious (*extraprocesal*) work, including in particular a search to discover any encumbrances affecting the title to a piece of land which was among the property made subject to a charging order in summary foreclosure proceedings under the Mortgage Act (*juicio sumario ejecutivo de la Ley Hipotecaria*) brought by the X company against S. before judge no. 19 of the Madrid Court of First Instance.

On 19 June 1986 M. bought the land at auction, at a price which the applicant considered advantageous.

9. The applicant maintained that in 1986 he unsuccessfully asked his client to pay him for the administrative services, advice and technical assistance he had provided at the time of the purchase in question.

He asserted that, by a registered letter of 27 May 1989 with a prepaid form for acknowledgment of receipt, to which he received no reply, he asked M. to pay him the sum of two million five hundred thousand pesetas to cover his fees.

10. On 8 June 1989, at the applicant's request, the Madrid Bar gave an opinion assessing the fees the applicant was entitled to claim for the services in question at three million pesetas. The Bar made it clear that its assessment was based exclusively on the information provided by the applicant.

11. On 16 June 1989 the applicant brought proceedings against M. under the taxation procedure (*procedimiento de jura de cuenta*) before judge no. 2 of the Madrid Court of First Instance to recover the sum he claimed. Judgment was given against the applicant on 30 June 1989 on the ground that the *jura de cuenta* procedure was intended only for the recovery of fees owed for services rendered by counsel in the context of judicial proceedings and that the services he had rendered had been non-contentious.

12. On 29 September 1989 the applicant brought an ordinary civil action (*juicio declarativo ordinario*) against M. before judge no. 12 of the Madrid Court of First Instance seeking payment of three million pesetas.

13. This claim was dismissed by a judgment of 24 May 1993. The judge took into account the statements of the defendant, who had denied the facts alleged by the applicant, and in particular that he had ever given Mr García Ruiz instructions to act for him, held that the evidence of a witness called by the applicant was not conclusive and ruled that the applicant had not proved that he had performed the services in question. He held in particular:

"The plaintiff asserts that he was instructed by the defendant (M.) to perform a number of services for him consisting in checking which court was dealing with certain proceedings and providing other information M. considered necessary to inform his decision as to whether to buy a certain property. In support of his claim he has submitted, in addition to his pleading, a series of documents, numbered 1 to 7 in the file.

In his deposition (*confesión judicial*) the defendant contested the truth of the facts on which the claim is based, denying that there had ever been any kind of contractual relationship between himself and the plaintiff or that he had asked the latter to perform the professional services which he claimed to have carried out according to the defendant's instructions.

...

Be that as it may, the plaintiff admits that he did not perform the services concerned in the context of judicial proceedings... What is not in doubt is that he must prove that he actually did perform the services in issue. In that connection, no evidence has been produced in the case which might establish the truth of the allegations... Consideration of the evidence adduced suffices in itself to persuade the Court that the

plaintiff has not satisfied a single one of the conditions for claiming lawyer's fees. In the absence of evidence, the claim must be rejected, especially as the defendant denies the facts."

14. On 4 June 1993 the applicant appealed. By a judgment of 17 March 1995, the Madrid *Audiencia Provincial* dismissed the appeal and upheld the impugned judgment.

In Part I of its judgment (The Facts) it stated: "[This Court] accepts and deems to be reproduced in its own decision the statement of the facts set out in the impugned judgment."

In Part II (The Law) it ruled:

"The grounds of the impugned decision are accepted as pertinent, in so far as they are not incompatible with those set out below.

Firstly, the appeal is against the decision given by judge no. 12 of the Madrid Court of First Instance on 24 May 1993, dismissing the claim of the appellant [that is the applicant], a lawyer, against M., for three million pesetas in respect of fees owed on account of work he had done as counsel in summary foreclosure proceedings no. 843/81, brought in the Court of First Instance. M. contests the appeal on the ground that the appellant never acted in the proceedings in question, as his legal representative in that case was Mr J.A. C.L.

Secondly, the case file does not contain the slightest evidence that the appellant [the applicant] acted as counsel in case no. 843/81, or at least that, as Article 1214 of the Civil Code requires, he took steps of a procedural nature, although he may have carried out non-contentious work; the appeal must accordingly be dismissed and the impugned judgment upheld ..."

The *Audiencia Provincial* concluded:

"... This Court must dismiss, and hereby dismisses, the appeal lodged by [the applicant's lawyer] against the judgment given by judge no. 12 of the Madrid Court of First Instance on 24 May 1993, which is hereby upheld..."

15. On 13 May 1995 the applicant lodged an *amparo* appeal with the Constitutional Court relying on the right to a fair hearing, contending that the judgment of the *Audiencia Provincial* had given no reply whatsoever to his arguments. In his appeal the applicant made the following points:

"(a) Indeed, [the applicant] did not act as counsel in summary foreclosure proceedings no. 843/81 before judge no. 19 of the Madrid Court of First Instance, as the impugned decision states; he acted solely as the agent of the respondent [M.], providing non-contentious services in the form of advice and assistance (as stated in the initial application) and in the proceedings brought before judge no. 19; but he never carried out any contentious work (*ejercicio intraprocesal*) in those proceedings ...

...

(c) ... the non-contentious work ... formed the only basis for the judicial proceedings to recover fees for services rendered ...; ... the client unjustly obtained a

financial gain ... on account of the performance of the various non-contentious services which he had requested and which were in fact performed ...”

The applicant also stated his disagreement with the way the judge of the Court of First Instance had assessed and interpreted his evidence.

16. By a decision of 11 July 1995 the Constitutional Court dismissed the appeal on the ground that it had no constitutional relevance, observing that the ordinary courts had held that the applicant had not adduced sufficient evidence that he had rendered the professional services in issue and that assessment of the facts was a matter over which the trial courts had sole jurisdiction, to the exclusion of its own jurisdiction.

II. RELEVANT DOMESTIC LAW

17. Article 120 § 3 of the Spanish Constitution is worded as follows:

“Judgments shall always contain a statement of the grounds on which they are based and be delivered in public.”

“Las sentencias serán siempre motivadas y se pronunciarán en audiencia pública.”

18. Article 359 of the Code of Civil Procedure provides:

“Judgments must be clear and precise and must address specifically the applications and other claims made in the course of the proceedings; they must find for or against the defendant and rule on all the disputed points which have been the subject of argument ...”

“Las sentencias deben ser claras, precisas y congruentes con las demandas y con las demás pretensiones deducidas oportunamente en el pleito, haciendo las declaraciones que éstas exijan, condenando o absolviendo al demandado y decidiendo todos los puntos litigiosos que hayan sido objeto del debate ...”

PROCEEDINGS BEFORE THE COMMISSION

19. Mr García Ruiz applied to the Commission on 19 December 1995. He submitted that his right to a fair hearing, guaranteed by Article 6 § 1, had been infringed in that the judgment of the Madrid *Audiencia Provincial* had not replied to his arguments. He also complained of the length of the proceedings and alleged a violation of Article 6 § 1 of the Convention.

20. On 2 September 1996 the Commission decided to give notice of the application (no. 30544/96) to the Government in so far as it concerned the applicant’s complaint of a violation of his right to a fair hearing on account of the fact that the Madrid *Audiencia Provincial*’s judgment gave no reply to his arguments, and declared the remainder of the application

inadmissible. On 24 February 1997 it declared admissible the part of the application that had been communicated to the Government. In its report of 15 September 1997 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 6 § 1 (twenty-two votes to eight). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

21. In their memorial the Government requested the Court to hold that the Madrid *Audiencia Provincial*'s judgment had replied to the applicant's arguments and that there had accordingly been no violation of Article 6 § 1 of the Convention.

22. The applicant asked the Court to hold that there had been a violation of Article 6 § 1 of the Convention and to award him just satisfaction.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant submitted that the Madrid *Audiencia Provincial*'s failure to give any reply in its judgment to his arguments had breached 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 ...”

24. The Commission accepted this argument for the most part.

25. The Government submitted that the two trial courts which had considered the case had given reasoned replies to the applicant's allegations. At first instance, judge no. 12 of the Madrid Court of First Instance had rejected his claim in a decision for which detailed factual reasons had been given. On appeal, the *Audiencia Provincial* had given judgment against the applicant after endorsing the statement of the facts and the reasoning set out in the impugned judgment. The applicant's arguments had accordingly been expressly answered on appeal, with reasons, as required by Article 6 § 1 of the Convention.

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

26. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see the Ruiz Torija v. Spain and Hiro Balani v. Spain judgments of 9 December 1994, Series A nos. 303-A and 303-B, p. 12, § 29, and pp. 29-30, § 27; and the Higgins and Others v. France judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 60, § 42). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, § 61). Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see, *mutatis mutandis*, the Helle v. Finland judgment of 19 December 1997, *Reports* 1997-VIII, p. 2930, §§ 59-60).

27. In the present case the Court notes that at first instance judge no. 12 of the Madrid Court of First Instance took into account in his decision the defendant's statements denying the facts alleged by the applicant in his claim. It held that the evidence of a witness called by the applicant was not conclusive and ruled that the applicant had not proved that he had performed the services for which he was claiming a fee (see paragraph 13 above).

On appeal the *Audiencia Provincial* first stated that it accepted and deemed to be reproduced in its own decision the statement of the facts set out in the judgment at first instance, thus ruling that the applicant had not proved that he had performed as counsel the non-contentious services which formed the basis of his claim. It went on to say that it likewise endorsed the legal reasoning of the impugned decision in so far as it was not incompatible with its own findings. On that point, it held that there was not the slightest evidence in the case file to prove that the applicant had acted as counsel in summary foreclosure proceedings no. 843/81, although he might have performed non-contentious services. It therefore dismissed the appeal and upheld the judgment delivered at first instance (see paragraph 14 above).

The case was then referred to the Constitutional Court, which, in its judgment of 11 July 1995, dismissed the applicant's *amparo* appeal on the grounds that, according to the trial courts, the applicant had not established that he had rendered the professional services for which he was claiming a fee and that assessment of the facts was a matter over which the Constitutional Court did not have jurisdiction (see paragraph 16 above).

28. In so far as the applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements

undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see the *Schenk v. Switzerland* judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46).

29. In the light of the foregoing considerations, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance decision dismissing his claim were set out at length. In the judgment at the appeal stage the *Audiencia Provincial* endorsed the statement of the facts and the legal reasoning set out in the judgment at first instance in so far as they did not conflict with its own findings. The applicant may not therefore validly argue that this judgment lacked reasons, even though in the present case a more substantial statement of reasons might have been desirable.

30. In conclusion, the Court considers that, taken as a whole, the proceedings in issue were fair for the purposes of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

Holds unanimously that there has not been a breach 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 21 January 1999.

Luzius WILDHABER
President

Michele DE SALVIA
Registrar