CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

AFFAIRE BRUALLA GÓMEZ DE LA TORRE c. ESPAGNE

CASE OF BRUALLA GÓMEZ DE LA TORRE v. SPAIN

(155/1996/774/975)

ARRÊT/JUDGMENT

STRASBOURG

19 décembre/December 1997

Liste des agents de vente/List of Agents

Belgique/Belgium: Etablissements Emile Bruylant (rue de la Régence 67, B-1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher (place de Paris), B.P. 1142, L-1011 Luxembourg-Gare)

Pays-Bas/The Netherlands: B.V. Juridische Boekhandel & Antiquariaat A. Jongbloed & Zoon (Noordeinde 39, NL-2514 GC La Haye/'s-Gravenhage)

SUMMARY[1]

Judgment delivered by a Chamber

Spain – civil appeal to Supreme Court declared inadmissible because new rules of procedure (transitional provision no. 2 of Law no. 10/92 of 30 April 1992 and section 135 of the Leases of Urban Property Act, as amended) applied with immediate effect

I. ARTICLE 6 § 1 OF THE CONVENTION

Recapitulation of case-law: primarily for national authorities to resolve problems of interpretation of domestic legislation – both Supreme Court and Constitutional Court had considered that principle of application with immediate effect should also apply to appeals that had not been entered with Supreme Court by 6 May 1992 (when new law had come into force) but in respect of which notice of appeal had already been given in accordance with rules previously in force – not for Court to express view on appropriateness of domestic courts' choice of policy as regards case-law; its task was confined to determining whether consequences of that choice were in conformity with Convention.

Recapitulation of case-law on "right to a tribunal" – solution adopted in instant case by Spanish courts had followed a generally recognised principle that, save where expressly provided to the contrary, procedural rules applied immediately to proceedings that were under way – aim pursued by statutory amendment had been legitimate: to increase financial threshold for appeals to Supreme Court in that sphere.

Recapitulation of case-law on application of Article 6 to procedures in courts of appeal and of cassation – given special nature of Supreme Court's role as court of cassation, Court was able to accept that procedure followed in the Supreme Court could be more formal – appeal to Supreme Court had been made in instant case after applicant's claims had been heard by both Madrid Court of First Instance and *Audiencia provincial* sitting as an appellate court, each of which had had full jurisdiction – fairness of proceedings in those courts had not in any way been called into question before Court – right of access to a court not unduly hindered.

Conclusion: no violation (unanimously).

II. ARTICLE 13 OF THE CONVENTION

Role of Article 6 § 1 in relation to Article 13 was that of a *lex specialis*, requirements of latter being absorbed by those of former.

Conclusion: unnecessary to rule on complaint (unanimously).

COURT'S CASE-LAW REFERRED TO

17.1.1970, Delcourt v. Belgium; 20.11.1995, British-American Tobacco Company Ltd v. the Netherlands; 22.2.1996, Bulut v. Austria; 23.10.1996, Levages Prestations Services v. France; 15.11.1996, Cantoni v. France; 16.12.1997, Tejedor García v. Spain

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

In the case of Brualla Gómez de la Torre v. Spain[1],

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 A[2], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. GÖLCÜKLÜ,
Mr C. RUSSO,
Mr R. PEKKANEN,
Mr J.M. MORENILLA,
Mr A.B. BAKA,
Mr G. MIFSUD BONNICI,
Mr P. JAMBREK,
Mr P. VAN DIJK,

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

Having deliberated in private on 24 October and 28 November 1997,

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 4 December 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 26737/95) against the Kingdom of Spain lodged with the Commission under Article 25 by a Spanish national, Mrs Victoria Brualla Gómez de la Torre, on 7 January 1995.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Spain recognised the compulsory jurisdiction of the 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 and Article 13 of the Convention.

Notes by the Registrar

1. The case is numbered 155/1996/774/975. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyers who would represent her (Rule 30). They were given leave by the President to use the Spanish language (Rule 27 § 3). On 30 September 1997 the President granted the applicant legal aid (Rule 4 of the Addendum to Rules of Court A).

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 R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr C. Russo, Mr R. Pekkanen, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr P. Jambrek and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant's lawyers 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 27 February 1997, the Registrar received the Government's memorial on 9 June 1997 and the applicant's memorial on 25 June. On 22 September the registry received her claims under Article 50.

5. In accordance with the decision of the President, 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 21 October 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 A. PERENIČ, *Delegate*;

(c) *for the applicant*
Ms S. GARCÍA MUÑOZ,
Ms M.L. GODOY RUIZ, both of the Madrid Bar, *Counsel*.

The Court heard addresses by Mr Perenič, Ms García Muñoz, Ms Godoy Ruiz and Mr Borrego Borrego.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. Mrs Victoria Brualla Gómez de la Torre was born in 1962 and lives in Madrid. At the material time, she practised as a lawyer (*procurador*) in premises owned by an insurance company and to the tenancy of which she considered that she had succeeded on the death of her father.

7. At some point in 1990 the insurance company brought an action in the Madrid Court of First Instance for termination of the lease, arguing that the applicant could not succeed to her father's rights under it. On 18 April 1991 the insurance company's action was dismissed. It appealed.

8. On 7 February 1992 the Madrid *Audiencia provincial* reversed the impugned decision, holding that the applicant could not succeed to her father's rights under the lease.

9. On 3 March 1992 the applicant gave notice to the *Audiencia provincial* of her intention to appeal to the Supreme Court. On 26 March 1992 the *Audiencia provincial* formally noted that notice of appeal had been given ("*se tiene por preparado el recurso*") and on 7 April it summoned the parties to appear before the First Division of the Supreme Court to enter the appeal within the forty-day time-limit laid down by Article 1704 of the Code of Civil Procedure (see paragraph 18 below).

10. In the meantime Law no. 10/92 of 30 April 1992 ("Law no. 10/92"), which made urgent changes to various court procedures, had come into force on 6 May 1992 (the day after its publication in the Official Gazette). It amended certain provisions of the Code of Civil Procedure, in particular those governing the conditions of admissibility of appeals to the Supreme Court in proceedings concerning leases of urban property (see paragraph 20 below).

11. On 12 May 1992 the First Division of the Supreme Court delivered a decision in which it construed the transitional provisions of Law no. 10/92. With respect to appeals of which notice had been given to the courts below before the entry into force of that Law but which had not been entered with the Supreme Court, it held:

> "In view of the silence of the [transitional] provision [no. 2] or its failure to deal with the question, the new procedure shall apply in full in the case referred to above, and that makes it necessary to refer to Article 6 of the royal decree of 3 February 1881 promulgating the Code of Civil Procedure, a provision which is of general application."

12. On 22 May 1992, within the forty-day period allowed by the *Audiencia provincial* (see paragraph 9 above), the applicant entered her appeal with the Supreme Court.

13. In its decision (*auto*) of 4 March 1993 the Supreme Court held at the outset that, pursuant to transitional provision no. 2 (see paragraph 17 below), Law no. 10/92 applied to cases such as the one before it in which an appeal had not been entered until after that Law had come into force, even if notice of intention to lodge the appeal had been given beforehand. It went on to find that the annual amount of rent payable under the lease in question was 839,256 pesetas, which was less than the minimum amount (one million pesetas) required under the new legislation for an appeal to lie to the Supreme Court. That being so, the applicant's appeal had to be declared inadmissible in accordance with Article 1710 § 1 of the Code of Civil Procedure in conjunction with section 135 of the Leases of Urban Property Act, both as amended by Law no. 10/92 (see paragraphs 19 and 20 below).

14. On 1 April 1993 Mrs Brualla Gómez de la Torre lodged an *amparo* appeal with the Constitutional Court on the basis of Article 24 § 1 of the Constitution (see paragraph 16 below). On 19 July, at the request of the applicant, the Constitutional Court ordered a stay of execution of the *Audiencia provincial*'s judgment.

15. Referring in particular to its own case-law on the Supreme Court's interpretation of transitional provision no. 2 of Law no. 10/92 (see paragraph 11 above), the Constitutional Court, declining to adopt the opinion of Crown Counsel's Office, dismissed the applicant's *amparo* appeal on 4 July 1994. It reiterated that the interpretation of transitional provisions was a matter for the ordinary courts and held that the criteria relied on by the Supreme Court in the impugned decision for declaring the appeal on points of law inadmissible were both reasoned and reasonable. That court's construction of the provisions of the new legislation was neither arbitrary nor ill-founded. The fact that in its decision it had relied on a provision that had come into force after notice of appeal had been given but before the appeal had been entered with the Supreme Court was not decisive as no constitutional provision prohibited amending the appeals procedure so long as the right to a fair hearing was protected.

II. RELEVANT DOMESTIC LAW

A. The Constitution

16. Article 24 § 1 of the Constitution provides:

> "Everyone has the right to effective protection by the judges and courts in the exercise of his rights and his legitimate interests; in no circumstances may there be any denial of defence rights."

B. Law no. 10/92 of 30 April 1992

17. Transitional provision no. 2 of Law no. 10/92 of 30 April 1992, which amended the Code of Civil Procedure, provides:

> "No ordinary appeal or appeal on points of law shall lie against a judicial decision in a civil matter delivered after this Law comes into force unless the decision satisfies the conditions laid down in this Law for that purpose.
>
> With regard to pending appeals on points of law whose admissibility has not yet been determined, the Civil Division of the Supreme Court ... may declare an appeal inadmissible for the reasons set out in Article 1710 of the Code of Civil Procedure, as amended by this Law. In that connection, both the grounds of appeal and the limits referred to in rule 4 of sub-paragraph 1 of that Article shall be governed by the legislation in force at the time of the entering (*interposición*) of the appeal ..."

C. The Code of Civil Procedure

18. Before Law no. 10/92 came into force, the relevant provisions governing notice of appeal to the Supreme Court (*preparación del recurso*) read as follows:

Article 1694

> "Notice of appeal shall be given in writing to the judicial authority which delivered the impugned decision within ten days from the day after the decision was served. The notice of appeal shall contain a statement [by the appellant] of his intention to appeal to the Supreme Court, a brief summary of the conditions that have to be satisfied and a request that the appeal be acknowledged as having been made in time and in the prescribed form, that the original case file, with the appeal file where appropriate, be sent to the First Division of the Supreme Court and that the parties be summoned to appear.
>
> If no notice of intention to appeal has been given within the ten-day period, the judgment or decision shall become final."

Article 1695

> "Notice of intention to appeal shall be given by the lawyers (*procurador* and *abogado*) representing the appellant ..."

Article 1696

> "If notice of intention to appeal has been given in accordance with the preceding two provisions and concerns a decision against which an appeal lies, the Division of the *Audiencia* shall acknowledge that notice of intention to appeal has been given (*tendrá por preparado [el recurso]*) and within five days shall send the original case file and the appeal file to the First Division of the Supreme Court.

At the same time the parties shall be summoned to appear before the First Division of the Supreme Court within not more than forty days. However, only the appellant shall be required to appear in order to enter the appeal on points of law.

..."

Article 1704

"A party which has given notice of intention to appeal shall enter the appeal with the First Division of the Supreme Court within forty days from the date on which [the parties] were summoned [to appear].

If the appeal is not entered within that time, the judgment or decision shall become final."

19. Article 1710 § 1 governs the entering of appeals on points of law. As amended by Law no. 10/92, it is worded as follows:

"1. After the case file has been forwarded by Crown Counsel's Office, it shall be sent to the reporting judge, who shall consider it and submit it to the Division for it to decide on how to deal with it in accordance with the following rules:

...

(2) The Division shall ... declare an appeal inadmissible where, notwithstanding that notice of appeal has been given, the Division finds that Articles 1697 and 1707 have not been complied with, or where the provisions relied on have no relevance to the matters at issue in the appeal, or where rectification of a defect has been ordered but the case file shows that it has not been carried out.

...

(4) An appeal shall be declared inadmissible ... where the amount in issue has not been calculated in accordance with the applicable rules or where the Division holds that the amount is less than the amounts mentioned in Article 1687 § 1."

D. Leases of Urban Property Act

20. As amended by Law no. 10/92, section 135 of the Leases of Urban Property Act provides:

"No appeal shall lie against judgments delivered by the *Audiencia provincial* sitting as an appellate court except where they concern disputes over leases of commercial property for which the agreed rent exceeds one million pesetas, in which case an appeal on points of law may be made on the grounds and in accordance with the procedures laid down in the Code of Civil Procedure."

Before Law no. 10/92 was enacted the relevant minimum sum was five hundred thousand pesetas.

E. The royal decree of 3 February 1881

21. Article 6 of the royal decree of 3 February 1881 promulgating the Code of Civil Procedure provides:

> "For appeals on points of law entered (*interpuestos*) before 1 April next, the procedure laid down by the legislation currently in force shall apply; for [appeals entered] after that date the procedure laid down by the new legislation shall apply, even if notice of appeal was given before that date."

F. Case-law of the Constitutional Court

22. In a judgment (no. 374/1993) of 13 December 1993, which concerned a case similar to the instant one, the Constitutional Court laid down the principles governing the application *ratione temporis* of Law no. 10/92 of 30 April 1992. It stated, in particular, that the Supreme Court's interpretation of transitional provision no. 2, though justified on the facts, should not be considered the only construction possible. It also explained that the term "*interposición*" used in transitional provision no. 2 referred to the entering of an appeal on points of law with the Supreme Court and not the giving of notice of appeal to the *Audiencia provincial*. Consequently, the system prior to the amendment introduced by Law no. 10/92 applied to giving notice of appeal and the new system to entering an appeal. The Constitutional Court also referred to its settled case-law to the effect that the Constitution did not afford parties to proceedings any guarantee that the appeals system established by law would not be modified, so long as the parties' right to a "fair hearing" was not infringed and decisions declaring appeals inadmissible were not unjustified or ill-founded. Lastly, it pointed out with regard to transitional provisions that, in accordance with Article 117.3 of the Constitution, it was for the ordinary courts alone to determine the applicable rule. In conclusion, the Constitutional Court dismissed the *amparo* appeal.

23. Earlier, in a decision of 20 June 1986 concerning *amparo* appeal no. 121/1985, the Constitutional Court had considered the issue of the applicability *ratione temporis* of the second transitional provision of Law no. 34/1984 of 6 August 1984. That provision also amended the Code of Civil Procedure but, unlike Law no. 10/92, provided: "After the proceedings to which they refer have ended, appeals to the Supreme Court which have been entered (*interpuestos*) shall be conducted in accordance with the amendments made by this Law." In that case the appellants had given notice of appeal in accordance with the provisions of legislation previously in force and had then entered the appeal in accordance with the provisions of the new legislation, the substantive requirements of which were, however, no different from those of the earlier legislation. The Constitutional Court held that while the word "*interponer*" appeared to refer

to the formal entering of the appeal, the reference to the ending of the proceedings suggested, however, that the legislature's intention had not been to alter the rules applicable to appeals of which notice had been given but which had yet to be entered. The Constitutional Court held that the Supreme Court's interpretation of that transitional provision could not be regarded as unfounded, still less as unreasonable, and that the decision as to which legislation governed the entering of the appeal – in that case the legislation previously in force – had not been deficient constitutionally. The Constitutional Court accordingly allowed the *amparo* appeal, holding that the appellants had been the victims of excessive formalism.

PROCEEDINGS BEFORE THE COMMISSION

24. The applicant applied to the Commission on 7 January 1995, complaining that before the Supreme Court she had had neither a fair hearing nor an effective remedy, contrary to Article 6 § 1 and Article 13 of the Convention.

25. The Commission declared the application (no. 26737/95) admissible on 15 April 1996. In its report of 18 October 1996 (Article 31) it expressed the opinion that there had been no violation of Article 6 § 1 (by sixteen votes to thirteen) or of Article 13 (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

26. In their memorial the Government asked the Court to hold that the relevant decision of the Supreme Court had not infringed the rights guaranteed by Article 6 § 1 of the Convention.

27. The applicant requested the Court to hold that there had been a violation of Article 6 § 1 and of Article 13 and to award her just satisfaction under Article 50 of the Convention.

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* 1997), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

28. The applicant's complaint concerned the Supreme Court's decision of 4 March 1993, in which it declared her appeal on points of law inadmissible pursuant to Law no. 10/92 of 30 April 1992 (see paragraphs 19 and 20 above). Alleging that her right of access to a court had been infringed, she relied on Article 6 § 1 of the Convention, the part of which relevant to the instant case provides:

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

29. Mrs Brualla submitted that giving notice of appeal to the court which had delivered the impugned decision and entering the appeal with the Supreme Court constituted a single procedural step which could not be severed to the parties' detriment on the basis of new legislation restricting the circumstances in which such appeals could be brought.

In dismissing the appeal, the Supreme Court had held that Law no. 10/92 was applicable, relying on its own interpretation of transitional provision no. 2 (see paragraph 11 above).

The term "*interposición*" in transitional provision no. 2 referred to the giving of notice of appeal, not to the entering of the appeal. In that regard, the Supreme Court had not followed an earlier decision of the Constitutional Court (see paragraph 23 above).

The Supreme Court's interpretation, based on Article 6 of the royal decree of 3 February 1881 promulgating the Code of Civil Procedure (see paragraph 21 above), did not correspond to present-day conditions, as it made the effects of the aforementioned statutory reform, which had come into force just one day after its publication in the Official Gazette (see paragraph 10 above), unforeseeable.

Consequently, the applicant had been refused access to the Supreme Court in circumstances which had prevented her from being able to protect her interests properly, whereas she had been entitled to believe that she had forty days in which to bring her appeal (see paragraph 9 above).

30. Neither the Commission nor the Government agreed. The Government submitted that the procedural reform in question could not be considered unforeseeable, since the preparatory legislative work had been public knowledge and its progress had been monitored in legal circles.

The contested interpretation (see paragraph 11 above) had been followed by the Constitutional Court (see paragraph 22 above), which had considered it to be in accordance with the distinction made in law between the two stages of the procedure for bringing appeals in the Supreme Court (see paragraphs 18 and 19 above) and based on reasonable criteria that were not arbitrary.

31. 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 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 Tejedor García v. Spain judgment of 16 December 1997, Reports 1997-VII, p. 2796, § 31).

32. In the instant case the domestic courts had to determine the effect of transitional provision no. 2 of Law no. 10/92 on appeals that had not been entered with the Supreme Court by 6 May 1992, when that Law came into force, but in respect of which notice of appeal had already been given in accordance with the rules previously in force. Both the Supreme Court and the Constitutional Court considered that the principle of application with immediate effect, laid down by that provision, should also apply in this type of case (see paragraphs 11, 13 and 22 above). In so deciding, the Supreme Court referred to the royal decree of 3 February 1881 promulgating the Code of Civil Procedure, which provides likewise (see paragraph 21 above).

Relying on another decision of the Constitutional Court (see paragraph 23 above), the applicant stated – and the Government did not disagree – that the domestic courts could have construed the new Law differently. The Court notes that the provision interpreted by the Constitutional Court in its judgment of 20 June 1986 (see paragraph 23 above) was worded differently from the provision in issue in the judgment of 13 December 1993 (see paragraph 22 above). It is, however, not for the Court to express a view on the appropriateness of the domestic courts' choice of policy as regards case-law; its task is confined to determining whether the consequences of that choice are in conformity with the Convention (see, *mutatis mutandis*, the Cantoni v. France judgment of 15 November 1996, Reports 1996-V, p. 1628, § 33).

33. The Court reiterates 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 Levages Prestations Services v. France judgment of 23 October 1996, Reports 1996-V, p. 1543, § 40).

34. In the present case the appeal to the Supreme Court was inadmissible as a result of section 135 of the Leases of Urban Property Act, as amended by Law no. 10/92. Under that provision as previously worded, an appeal lay to the Supreme Court in litigation concerning commercial leases in which the amount in issue exceeded five hundred thousand pesetas. In the instant case the condition had been satisfied when the applicant gave the *Audiencia provincial* notice of appeal, since the annual rent stipulated in the lease was 839,256 pesetas. Under Law no. 10/92, however, the minimum amount required for an appeal to lie was increased to one million pesetas (see paragraphs 13 and 20 above).

35. The Court notes that the solution adopted in the instant case by the Spanish courts followed a generally recognised principle that, save where expressly provided to the contrary, procedural rules apply immediately to proceedings that are under way.

36. Further, the Court considers legitimate the aim pursued by this statutory amendment, namely increasing the financial threshold for appeals to the Supreme Court in this sphere, so as to avoid that court's becoming overloaded with cases of lesser importance. But it is also a requirement that the inadmissibility of the appeal to the Supreme Court did not impair the very essence of the applicant's right to a court or "tribunal" within the meaning of Article 6 § 1.

37. 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. 14–15, §§ 25–26). However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations".

The manner in which Article 6 § 1 applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see, among other authorities, the Levages Prestations Services judgment cited above, p. 1544, §§ 44–45).

38. Given the special nature of the Supreme Court's role as a court of cassation, the Court is able to accept that the procedure followed in the Supreme Court may be more formal. However, the Court notes above all that the appeal to the Supreme Court was made in the instant case after the applicant's claims had been heard by both the Madrid Court of First

Instance and the *Audiencia provincial* sitting as an appellate court, each of which had full jurisdiction. The fairness of the proceedings in those courts was not in any way called into question before the Court (see, *mutatis mutandis*, the Levages Prestations Services judgment cited above, pp. 1544-45, § 48).

39. In the light of the foregoing and having regard to the proceedings as a whole, the Court considers that the applicant was not unduly hindered in her right of access to a tribunal and, accordingly, the essence of her right guaranteed by Article 6 § 1 was not impaired. Consequently, there has been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant submitted that the alleged lack of access to a court was also contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

41. The Court reiterates that where the right claimed is a civil right, the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by those of Article 6 § 1 (see, among other authorities, the British-American Tobacco Company Ltd v. the Netherlands judgment of 20 November 1995, Series A no. 331, p. 29, § 89). Consequently, it is unnecessary to rule on the complaint.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that it is unnecessary to determine whether there has been a violation of Article 13 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 December 1997.

For the President
Signed: Pieter VAN DIJK
Judge

Signed: Herbert Petzold
Registrar