

**APPLICATION/REQUÊTE N° 13524/88**

**F v/SPAIN**

**F c/ESPAGNE**

**DECISION** of 12 April 1991 on the admissibility of the application

**DÉCISION** du 12 avril 1991 sur la recevabilité de la requête

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**Article 27, paragraph 2 of the Convention** *The following do not constitute an abuse of the right of petition*

- *the appearance, not in this case attributable to the applicant of an article disclosing confidential information relating to the proceedings before the Commission*
- *the fact that the applicant failed to inform the Commission that after the introduction of his application he instituted before the domestic courts proceedings, which he did not consider effective, concerning the same facts*

**Article 27, paragraphe 2, de la Convention** *Ne constituent pas un abus du droit de recours*

- *la parution, non-imputable en l'espece au requérant, d'un article dans la presse revelant des informations confidentielles relatives a la procedure devant la Commission ,*
- *le fait que le requérant a omis d'informer la Commission qu'après l'introduction de sa requête il a intenté une procedure, inefficace selon lui, devant les juridictions internes portant sur les mêmes faits*

*(TRANSLATION)*

## **THE FACTS**

The applicant, born in 1944, is a Spanish national resident in Salamanca. He is a skilled worker.

Before the Commission he is represented by Mr. J. Plaza Veiga, a lawyer practising in Salamanca.

The facts of the case, as submitted by the parties, may be summarised as follows.

In June 1985 the applicant was dismissed by his employer, a privately-owned company, for a serious disciplinary offence. He then sought the assistance of the legal advice service of the trade union UGT. The union's social affairs adviser (Graduado Social), Mr. P.B., first asked the Labour Inspectorate to conduct an inquiry, which did not reveal any breach of employment legislation.

The case was then referred to the Salamanca Industrial Tribunal, the applicant being represented in these proceedings by Mr P B In a judgment dated 8 October 1988 the applicant's dismissal was declared justified (procedente)

The applicant informed the Industrial Tribunal of his intention to lodge a plea in cassation and requested the assistance of a lawyer to be appointed under the legal aid scheme In a decision (providencia) dated 24 October 1985 the Salamanca Industrial Tribunal informed the applicant that, the appeal having been lodged in accordance with the legal formalities (anunciado en tiempo y forma), the parties were required to appear before the Supreme Court within fifteen days The case-file was transmitted to the Supreme Court on 31 October 1985

Following the judgment of 8 October 1985 Mr P B asked the Employment Institute to grant the applicant unemployment benefit This request was granted, and the applicant received benefit for the period 28 February 1986 to 4 April 1989, on which date he was taken into the employ of another firm

In the meantime, in a decision dated 5 May 1986, the 6th Division of the Supreme Court discontinued the appeal proceedings without taking any further action, because the applicant had failed to appear within the time limit he had been set

The applicant then lodged a de amparo appeal pleading a violation of Article 24 of the Constitution (right to a fair hearing) He alleged in particular that the lawyer he had requested was never assigned to the case, whereas it is necessary to be represented by a lawyer in all cassation proceedings

On 12 November 1986 the Constitutional Court declared the appeal inadmissible on the ground that the applicant, by incorrectly interpreting Article 184 of the law on industrial litigation procedure, was responsible for the failure of his plea in cassation The Constitutional Court held that, contrary to the applicant's submissions, appearance before the Supreme Court must precede, rather than follow, appointment of a lawyer under the legal aid scheme

On 23 July 1987 the applicant brought an action for damages against the UGT and Mr P B He claimed that he had not received appropriate legal advice from them and that he had been deceived about Mr P B's real professional qualifications He complained in particular that he had not been informed what action to take in response to the decision of 24 October 1985 and claimed compensation in the sum of pesetas 20,000,000

On 22 January 1988 the Salamanca Court of First Instance gave judgment against the applicant. The court ruled that the applicant had received irreproachable advice from Mr P B, who had informed him of his obligation to appear in person before the Supreme Court and that his lawyer under the legal aid scheme would be appointed after that appearance. Further ruling that the applicant had exercised his right of appeal abusively (*con temeridad*), the court ordered him to pay costs.

The applicant appealed. However, on 12 June 1989 the Valladolid Audiencia Territorial rejected the appeal and ordered the applicant to pay costs. The judgment confirmed that the applicant had been informed by the legal advice service of the UGT of his obligation to appear in person before the Supreme Court even before a lawyer had been appointed to represent him under the legal aid scheme.

The applicant entered a plea in cassation against the judgment of 12 June 1989. The Supreme Court has not yet heard this appeal.

## **COMPLAINTS**

Before the Commission the applicant complains of the Supreme Court's decision of 5 May to discontinue the proceedings on his plea in cassation without taking any further action. He considers that under Spanish law the Salamanca Industrial Tribunal, or in the alternative the Supreme Court, should have appointed a lawyer to assist him under the legal aid system, and that without the assistance of such a lawyer he was not entitled (according to the law on industrial litigation procedure) to take part in the cassation proceedings. The applicant also asserts that, not having a lawyer's assistance, he was unable to understand the terms of the decision of 24 October 1985, still less to interpret the legal provisions applicable in his case.

He considers that his right of access to a court has been unjustifiably impeded and relies on Article 6 para. 1 of the Convention.

## **PROCEEDINGS**

The application was introduced on 9 April 1987. It was registered on 14 January 1988.

On 5 February 1990 the Commission decided to communicate the application to the Spanish Government and invite them to submit observations on its admissibility and merits.

On 28 February 1990 the Secretary to the Commission asked the applicant's representative to explain the circumstances of the appearance in the Spanish press of an article about the Commission's decision of 5 February 1990. These explanations were sent in a letter dated 11 March 1990.

The Government submitted their observations on 4 May 1990, after an extension of the initial time-limit of 20 April 1990.

On 7 September 1990 the Commission granted the applicant legal aid.

The applicant's observations in reply were sent on 10 September 1990 after an extension of the initial time-limit of 31 July 1990.

#### **THE LAW (Extract)**

The applicant complains that his access to the Supreme Court was restricted and relies on Article 6 para. 1 of the Convention. That provision reads as follows :

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The Government have raised a preliminary objection, pleading an abuse of the right of petition in two respects. Firstly, the applicant's representative allegedly took advantage of the proceedings before the Commission to try to make a name for himself by disclosing to the media information which, according to Article 33 of the Convention, should be confidential. Secondly, the applicant omitted to inform the Commission that he has instituted proceedings before the Spanish civil courts which concern the same facts as the present application.

In the alternative, the Government raise a second objection relating to the failure to exhaust domestic remedies, since the question to what extent, if any, the trade union UGT and its social affairs adviser Mr. P.B. might be liable in civil law for the failure of the applicant's plea in cassation has still to be decided

The applicant, for his part, claims that the application cannot be rejected as an abuse of the right of petition. In the first place, the statements to the press are protected by the right to freedom of expression and in this case were intended solely to explain to the public the workings of the European human rights protection system, of which little is known in Spain. Secondly, the purpose of the civil proceedings in progress is to obtain compensation for the prejudice he suffered as a result of the professional negligence of the trade union UGT and its social affairs adviser Mr. P B., and they do not constitute an effective remedy in respect of the violation of Article 6 para 1 of the Convention perpetrated by the Spanish authorities.

The Commission has first examined whether the application could be considered an abuse of the right of petition because of a breach of the confidentiality prescribed by Article 33 of the Convention. It notes that in his letter to the Commission of 11 March 1990 the applicant's representative asserted that he had merely answered questions put to him by the press, who had secured their information from other sources. While regretting the fact that the press had access to confidential information concerning the proceedings before it, the Commission considers that in this case it does not have conclusive evidence that the applicant's representative was responsible for the disclosure of this information.

The Commission has next examined whether by omitting to inform it about the civil proceedings in progress in Spain the applicant has acted in bad faith. The Commission notes in this connection that the present application had already been introduced when the applicant instituted the civil proceedings referred to and that in the applicant's opinion these proceedings were not capable of affording him redress with regard to the complaint he has submitted to the Commission. Consequently, the Commission does not consider that the applicant deliberately concealed information it needed in order to examine the application

It follows that the Government's objection based on the abusive nature of the application must be rejected.

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