APPLICATION/REQUÊTE N° 13012/87

Miguel MARTINEZ v/SPAIN

Miguel MARTINEZ c/ESPAGNE

DECISION of 4 September 1989 on the admissibility of the application

DÉCISION du 4 septembre 1989 sur la recevabilité de la requête

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Article 14 of the Convention, in conjunction with Article 6, paragraph 1 of the Convention *: It is not discriminatory to require of employers alone a cautio judicatum solvi in order to proceed with an appeal in labour court proceedings, the objective and reasonable justification for the distinction lying in the de facto inequalities between employers and workers and the potentially different consequences of appeal proceedings for the respective parties.*

Article 14 de la Convention, combiné avec l'article 6, paragraphe 1, de la Convention *: Il n'est pas discriminatoire d'exiger des seuls employeurs une caution judicatum solvi pour interjeter appel dans une procédure prud'homale, la distinction trouvant une justification objective et raisonnable dans les inégalités de fait entre employeurs et travailleurs et dans les conséquences différentes qu'une procédure d'appel peut avoir pour les uns et les autres.*

Summary of the relevant facts

In January 1986 the Barcelona Labour Court ordered the applicant to pay compensation to a dismissed employee.

The applicant lodged an appeal which the Central Labour Court declared inadmissible on the ground that the applicant had failed to consign the sum of 2,500 pesetas pursuant to the obligation imposed on employers making an appeal by Article 181 of the Law on Procedure in Industrial Disputes.

The applicant's "amparo" appeal was declared inadmissible on 25 March 1987 by the Constitutional Court.

(TRANSLATION)

THE LAW (Extract)

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2. The applicant [also] alleges that only employers are subject to the requirement under Article 181 of the Law on Industrial Disputes Procedure in that on appeal they must make a payment into court of the sum mentioned above. He therefore considers that employers are discriminated against in relation to workers regarding access to justice, contrary to Article 14 of the Convention, taken in conjunction with Article 6 para. 1.

Although it is true that Article 14 prohibits all forms of discrimination in relation to enjoyment of the rights and freedoms set forth in the Convention, differential treatment is not discriminatory where it is based on an objective and reasonable justification (cf., *inter alia,* Müller v. Austria, Comm. Report 1.10.75, D.R. 3 p. 25).

The Commission observes in this connection that the specific formalities imposed by the law on employers take into account the *de facto* inequalities between employers and workers and the potentially different consequences of appeal proceedings for the situation of the respective parties. Consequently, the Commission considers that the difference in treatment resulting from the formality complained of is based on an objective and reasonable justification and satisfies the criterion of proportionality. This differential treatment is accordingly not contrary to the requirements of Article 14 taken in conjunction with Article 6 para. 1 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.