

In a preliminary decision (despacho saneador) the Administrative Court recognised the locus standi of the applicant in principle, but declared that he had not instituted proceedings within the time laid down in Article 498 para. 1 of the Civil Code. The action was therefore inadmissible on the grounds of prescription, a decision which was finally upheld in May 1986.

Before the Commission, the applicant complains of the length of the proceedings.

THE LAW (Extract)

1. The applicant alleges a violation of Article 6 para. 1 of the Convention as a result of the length of the civil proceedings which he instituted on 11 May 1972 in the Lisbon Administrative Court and which lasted until 4 May 1986, almost 14 years.
2. Article 6 para. 1 of the Convention provides *inter alia* that in the determination of his civil rights and obligations everyone is entitled to a hearing within a reasonable time by a tribunal.

a. The Commission's competence ratione personae

The respondent Government contend in the first place that the applicant cannot claim to be a "victim" within the meaning of Article 25 of the Convention. The Government argue that the applicant is a minority shareholder in the commercial company to which the administrative act contested in the domestic courts was addressed and that, accordingly, he can only claim to be an "indirect victim". The Government note in this respect that the Commission expressly refused to extend the notion of "indirect victim" to minority shareholders in the case *Yarrow et al. v. United Kingdom* (No. 9266/81, Dec. 28.1.83, D.R. 30 p. 155).

The applicant claims that his *locus standi* ("legitimidade") was expressly recognised in the domestic proceedings and that this finding in the "despacho saneador" (preliminary decision) had become final.

The Commission would observe that the applicant holds only 30% of the share capital of the commercial company "Póvoa Mar, Lda", and that, accordingly, he does not appear to have a "controlling interest" in this company.

The Commission notes however that, unlike the situation existing in the *Yarrow* case, cited by the respondent Government, the applicant's *locus standi* was expressly recognised in the domestic proceedings. As the applicant stressed, in its preliminary decision, the court found that the applicant had *locus standi* and this finding, from which no appeal was made, became final.

The Commission observes, moreover, that under Portuguese procedural law (Article 26 paras. 1 and 2 of the Code of Civil Procedure), a plaintiff is regarded

as having *locus standi* ("parte legitima") where he has a direct interest in the action and this interest corresponds to the value for the plaintiff of a finding in his favour on the merits of the case.

The Commission therefore considers that the applicant's direct interest in the proceedings which he instituted was recognised by the Court and that, in addition, this decision became final.

In these circumstances the Commission takes the view that the applicant's status as a "victim" within the meaning of Article 25 of the Convention cannot validly be challenged. The Commission therefore considers that the application cannot be dismissed as incompatible *ratione personae* with the Convention.

b. The Commission's competence ratione materiae

The respondent Government contend in the first place that if the national court had not given a preliminary decision on the objection that the right relied on by the applicant was time-barred, it would have found that he lacked *locus standi* and, consequently, would have refused to hear the case on its merits. On this point, the Government cite the Commission's case-law (No. 6916/75, Dec. 8.10.76, D.R. 13 p. 81) according to which Article 6 of the Convention does not apply where the court does not examine the merits of a case.

The Commission considers the Government's argument unconvincing because, in this case, as has been pointed out above, the domestic court expressly found in its preliminary decision that the applicant had *locus standi*.

The respondent Government contend in addition that if the courts had been called upon to rule on the merits of the case, Article 6 of the Convention would not have been applicable since they would not have had to rule on a "contestation" (dispute) involving the determination of civil rights and obligations within the meaning of the above-mentioned Article of the Convention.

According to the Government, the administrative act impugned in the domestic courts was a discretionary act which could not have had a direct and decisive effect on the civil law relations of the applicant, who "had never been a party to the public law relationship established between the State and the company 'Póvoa Mar, Lda'". The Government conclude from this that the issue before the national courts concerned the lawfulness of a discretionary act of the public authorities and was strictly a question of public law.

The applicant contests the respondent Government's arguments, pointing out that the Portuguese legislation on remedies available against the acts of the authorities makes the classic distinction between, on the one hand, the review of the lawfulness of an administrative act and, on the other, the protection of the personal rights of any person aggrieved by the acts of an organ or an official of the public

authorities. Thus, whereas the review of lawfulness is carried out by means of a public law remedy in the administrative courts ("recurso contencioso"), the liability of the authorities is determined in proceedings between parties by means of a civil action ("acção"). In this case, and contrary to the Government's contention, the domestic proceedings did not seek to obtain the review of the lawfulness of the administrative act but to establish the non-contractual liability of the authorities arising from an unlawful act carried out by one of their officials.

The applicant stresses further that the administrative act in question prevented him from taking up an economic activity and, consequently, infringed a private law right. He draws the conclusion that the action which he brought does concern "civil rights".

The Commission notes that according to the constant case-law of the Court, the expression "determination of ... civil rights and obligations" covers all proceedings, the result of which is decisive for private rights and obligations (see; *inter alia*, Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A no. 13, para. 94). The Court has added however that a tenuous connection or remote consequences do not suffice for Article 6 para. 1, that civil rights and obligations must be the object — or one of the objects — of the "contestation" (dispute) and that the result of the proceedings must be directly decisive for such a right (Eur. Court H.R.; Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, para. 47).

In the present case the applicant brought an action for damages against the State in respect of economic loss sustained as a result of the act of an official of the public authorities.

The Commission is thus required to rule on the question whether or not the proceedings instituted by the applicant had direct and decisive consequences on the private law relations of the person concerned.

The Commission considers that the problems raised in the present application regarding the applicability of Article 6 para. 1 are, *mutatis mutandis*, the same as those which arose in connection with Application No. 10092/82, Baraona v. Portugal. In that case the Commission took the view that the action for compensation brought against the State in respect of damage allegedly sustained as a result of an act carried out by a State official could be regarded as concerning a "civil right" within the meaning of Article 6 para. 1 of the Convention (see Baraona v. Portugal, Comm. Report 8.10.85, para. 118; Eur. Court H.R. Series A no. 122, p. 27).

The Commission considers that Article 6 para. 1 of the Convention is applicable in this case and that, accordingly, the Government's objection concerning its competence *ratione materiae* must be dismissed.

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