

## APPLICATION N° 24469/94

José Maria Ruiz-Mateos and others v/SPAIN

DECISION of 2 December 1994 on the admissibility of the application

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**Article 6, paragraph 1 of the Convention** *This provision does not oblige the States to grant individuals the right of appeal against a res judicata judgment*

**Article 54 of the Convention** *Regarding a further petition in which the applicants complain that a judgment of the European Court of Human Rights passed in respect of their preceding petition was not fully executed the Commission is not competent to exercise a supervisory function, which was discharged by the Committee of Ministers*

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## THE FACTS

The applicants are brothers and sister and all Spanish citizens. They are represented before the Commission by Mr Garcia Montes, Mr Camara Del Castillo and Mr Garcia Martin de Madrid.

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

The applicants are the same individuals as those who submitted Application No 12952/87, declared admissible on 6 November 1990 (1). This application resulted in the judgment of the European Court of Human Rights, Ruiz Mateos against Spain,

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(1) See D.R. 67 p. 175

delivered on 23 June 1993 (Series A no. 262). In its judgment, the Court found that there had been a violation of the applicants' right to have their case heard within a reasonable time and of their right to a fair hearing in accordance with Article 6 para. 1 of the Convention.

On 14 July 1993, the applicants lodged two *amparo* appeals before the Constitutional Court, applying both for the judgment of the Constitutional Court of 2 December 1983 to be set aside (this judgment had dismissed the appeal lodged by a group of members of the Chamber of Deputies contesting the constitutional validity of the Act expropriating the RUMASA group) and for the two judgments of the Constitutional Court rendered on 19 December 1986 and 15 January 1991 to be set aside (these judgments had dismissed the questions of unconstitutionality referred to them by the judges of the lower courts relating to the constitutionality of the expropriation of RUMASA). The applicants requested a strict execution of the Court judgment, i.e. setting aside of the part of the proceedings for unconstitutionality brought by them against the Act expropriating the RUMASA group, declared by the Court in the aforementioned judgment to be contrary to the principle of equality of arms guaranteed by Article 6 para. 1 of the Convention. In this respect, the applicants referred to the judgment of the Constitutional Court rendered on 16 December 1991 in the Barberà, Messegue and Jabardo case following the judgment of the European Court of Human Rights (Eur. Court H.R., judgment of 6 December 1988, Series A no. 146). The applicants also claimed damages for the excessive length of the proceedings and requested that the President of the Constitutional Court withdraw from the case.

As common questions arose in both *amparo* appeals, the Constitutional Court decided to refer them to its second chamber.

In two separate and reasoned decisions (*providencias*) rendered on 31 January 1994, the Constitutional Court ruled both *amparo* appeals inadmissible. Regarding the question of execution of the Court judgment, the court held that the European Court of Human Rights and the Constitutional Court discharged their respective duties within different branches of law. The court added that in addition to the task of interpreting fundamental rights in accordance with international treaties and agreements on human rights ratified by Spain (Article 10 para. 2 of the Constitution), it was subject only to the Constitution and the constitutional amendment (*ley organica*) which determined its powers. The court held that there was nothing in Article 53 which made it hierarchically subordinate to the European Court and thereby obliged it to execute European Court judgments in its domestic law. Neither was there any provision to this effect in the constitutional amendment of the Constitutional Court (LOTC), especially as the applicants' claims required the Constitutional Court to set aside its own judgments which were final decisions and, moreover, not open to any form of appeal.

On 21 March 1994, the Committee of Ministers adopted Resolution DH (94) 27 pursuant to Article 54 of the Convention in the Ruiz-Mateos against Spain case. In that resolution, the Committee of Ministers arrived at the following conclusion.

"Having invited the Government of Spain to inform it of the measures which had been taken in consequence of the judgment of 23 June 1993, having regard to its obligation under Article 53 of the Convention to abide by it;

Whereas, during the examination of the case by the Committee of Ministers, the Government of Spain gave the Committee of Ministers information about the measures taken in consequence of the judgment, which information appears in the Appendix to this Resolution;

Declares, after having taken note of the information supplied by the Government of Spain, that it has exercised its functions under Article 54 of the Convention in this case "

The Appendix to Resolution DH (94) 27 was worded as follows

"Information provided by the Government of Spain during the examination of the case of Ruiz-Mateos against Spain by the Committee of Ministers

The legislation at issue in the Ruiz-Mateos case, Act No. 7/1983 dated 29 June 1983 concerning the expropriation on the grounds of public utility and social interest of the firms belonging to the RUMASA group, was unique and the Ruiz-Mateos case was, accordingly, an exceptional case

The judgment of the Court has received the widest possible publicity in Spain, including extensive reports in mass media

The violation of Article 6 paragraph 1, which resulted from the excessive length of the domestic proceedings, has been remedied by the developments which have taken place in Spain as far as the situation before the Audiencia Provincial is concerned, this appears already from paragraph 48 of the Court's judgment; as regards the situation before the Constitutional Court, statistics show that the workload of this court has considerably decreased after 1986 as a result of the maturing of the Spanish democracy, a clearer legal situation, particularly as far as the distribution of competences within the new State of the Autonomous Regions (el nuevo Estado de las Autonomías) is concerned, and the adoption of the constitutional amendment (ley organica) 6/1988, of 9 June 1988, which allowed the Constitutional Court to reject inadmissible *amparo* appeals by means of a summary procedure

In view of the unique character of the Ruiz-Mateos case, the violation of the same Article which resulted from the fact that the applicants were not allowed to participate in the proceedings before the Constitutional Court, will also not

reoccur. In the unlikely event of a new case, comparable to that of the Ruiz-Mateos case, the Constitutional Court would be empowered by Article 96 of the Spanish Constitution to adopt a procedure complying with the requirements of the Convention as laid down in the European Court's judgment in the Ruiz-Mateos case, considering the status of the Convention in Spanish law there is also every reason to believe that, in such a case, the Constitutional Court would adopt such a procedure.

In reply to a letter from the applicants' representative, the director delegated to the Secretariat of the Committee of Ministers informed the applicants' lawyer, Mr Garcia Montes, in a letter of 9 May 1994, that Resolution DH (94) 27 was final.

## COMPLAINTS

The applicants complain that neither the respondent Government nor the Constitutional Court executed the judgment rendered by the Court in the Ruiz-Mateos case. They allege in particular a violation by the Constitutional Court of Articles 46 and 53 of the Convention. The applicants invoke Article 50 of the Convention and submit that the Spanish State should be ordered, in just satisfaction of this provision of the Convention, to pay two thousand billion (2,000 000 000,000) pesetas, being the value of the expropriated property, plus interest and the costs of the proceedings. The applicants also consider that the Constitutional Court violated Article 1 of Protocol No. 1 to the Convention guaranteeing the right of property, which was in force at the material time in Spain, which ratified it on 2 November 1990. They consider that the Constitutional Court should have dealt with the question as to whether the expropriation of RUMASA was constitutional.

The applicants also complain that Article 50 para. 2 of the LOTC allows an *amparo* appeal to be dismissed by a simple committee (seccion) composed of three members of the Constitutional Court with no public hearing or possibility of subsequent appeal. They argue that in the present case the two appeals were joined arbitrarily and referred to the same chamber without having been heard as required by Article 83 of the LOTC. The applicants consider that the two *amparo* appeals were not given a fair hearing and invoke Article 6 para. 1 of the Convention.

The applicants also complain that the Constitutional Court did not examine the appeals within a reasonable time since nearly nine months elapsed between the date of introduction of the appeals and the date on which they became final, i.e. 4 March and 7 April 1994 respectively. They invoke Article 6 para. 1 of the Convention.

## THE LAW

1. The applicants complain that the Constitutional Court dismissed their *amparo* appeals in which they asked the Constitutional Court to execute the judgment of the European Court of Human Rights of 23 June 1993 rendered in the Ruiz-Mateos against

Spain case and in particular to examine the constitutionality of the Act expropriating the RUMASA group. They invoke Articles 46, 50 and 53 of the Convention and Article 1 of Protocol No. 1 to the Convention.

The Commission notes that the two sets of proceedings concern the dismissal of the two *amparo* appeals submitted by the applicants to the Constitutional Court in which they asked the Constitutional Court to execute the judgment of the European Court of Human Rights rendered on 23 June 1993 in the Ruiz Mateos case. In so far as the applicants' complaints concern their preceding application, No. 12952/87, and the allegation that the respondent Government and the Constitutional Court failed to execute the judgment of the European Court of Human Rights, the Commission observes that under the terms of Article 54 of the Convention, supervision of the execution of judgments of the Court is a matter exclusively within the competence of the Committee of Ministers of the Council of Europe. The Committee of Ministers discharged its functions in this respect by the adoption of Resolution DH (94) 27 of 21 March 1994. It follows that the Commission is not competent to deal with this question and this part of the application must be dismissed as incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para. 2 of the Convention (see No. 10243/83, Dec. 6 3 85, D.R. 41 pp. 123, 137).

As regards the complaint based on Article 1 of Protocol No. 1 to the Convention, the Commission considers that it is related to execution of the Court judgment and must therefore be dismissed likewise for incompatibility *ratione materiae* with the provisions of the Convention pursuant to Article 27 para. 2.

2. The applicants complain that the Constitutional Court failed to hear their submissions before deciding to refer both *amparo* appeals to the same chamber and of the length of time taken by the Constitutional Court to examine these appeals, and invoke Article 6 para. 1 of the Convention.

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 fair and public hearing within a reasonable time by a tribunal.

In so far as the applicants complain of the proceedings in which their *amparo* appeals were examined, the Commission notes that, in these appeals, the applicants requested that the Constitutional Court set aside its own previous decisions which had become final and *res judicata*. It finds that in the light of the decisions of the Constitutional Court, Article 6 of the Convention does not guarantee the right of appeal against a decision which has become final. This part of the application must therefore be dismissed as incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 27 para. 2.

For these reasons, the Commission, unanimously,  
DECLARES THE APPLICATION INADMISSIBLE.