

APPLICATION/REQUÊTE N° 11889/85

Generoso VERNILLO and Maria SICILIANO v/France

Generoso VERNILLO et Maria SICILIANO c/France

DECISION of 10 March 1989 on the admissibility of the application

DÉCISION du 10 mars 1989 sur la recevabilité de la requête

Article 26 of the Convention :

- a) The obligation to exhaust domestic remedies requires only that an applicant make use of remedies likely to be effective and adequate.*
- b) In France, an action alleging State responsibility on the basis of Article L 781.1 of the Code on Judicial Organisation does not constitute an effective remedy in respect of excessive length of proceedings.*

Article 26 de la Convention :

- a) L'obligation d'épuiser les voies de recours internes se limite à celle de faire un usage des recours internes vraisemblablement efficaces et suffisants.*
 - b) En France, l'action en responsabilité de l'Etat fondée sur l'article L 781.1 du Code de l'organisation judiciaire ne constitue pas un recours efficace contre la durée excessive d'une procédure.*
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Summary of the relevant facts

On 10 October 1967 the applicants purchased an apartment in Nice in return for payment of a life annuity. The terms of the contract specified that the contract would be annulled ipso jure in the event of failure to pay a single monthly instalment on the due date and expiry of one month after a simple formal notice to pay without payment. A formal notice to pay dated 18 July 1977 having had no effect, the applicants were summonsed by a citation of 12 December 1977 to appear before Nice Regional Court. In a judgment of 16 June 1981, the Court refused to pronounce annulment of the contract of sale in return for a life annuity.

The annuitant appealed. In a judgment of 29 June 1983, the Aix-en-Provence Court of Appeal pronounced the annulment of the contract. The applicants' appeal to the Court of Cassation was rejected on 5 June 1985.

The applicants complain about the excessive length of the proceedings and invoke Article 6 para. 1 of the Convention.

THE LAW (Extract)

The applicants complain of the length of the proceedings for annulment of a contract of sale in return for a life annuity before the civil courts and rely on Article 6 para. 1 of the Convention.

The Government first of all raise an objection to admissibility, arguing that the applicants had access to the remedy provided for under Article L 781.1 of the Code on Judicial Organisation, whereby they could have brought an action for compensation against the State based on the alleged deficiencies in the administration of justice.

They cite in this connection a judgment delivered by the Paris Court of Appeal (*Fuchs v. the French State*) dated 10 May 1983, in which the State was ordered to pay the petitioner 50,000 FF on the grounds of delays in bankruptcy procedures which lasted from 1960 to 1977, namely 17 years.

The applicants specify that this provision applies only in cases of gross negligence or denial of justice, and that, in any case, an action of this kind alleging the State's civil liability would also in itself have added to the delay. They conclude that such a course of action could not therefore be construed as an effective remedy.

The Commission notes that the exhaustion of domestic remedies refers only to those which are effective and sufficient (see *Eur. Court H.R., De Jong, Baljet and Van den Brink* judgment of 22 May 1984, Series A no. 77, p. 19, para. 39).

To determine the effectiveness of a remedy, it has to be considered whether it was capable of remedying the applicants' complaint by providing a direct and speedy, and not merely indirect, protection of the rights guaranteed in Article 6 para. 1 of the Convention (cf. No. 8990/80, *Guincho v. Portugal*, Dec. 6.7.82, D.R. 29 pp. 135-141).

The Commission has already had the opportunity to deliver an opinion on the effectiveness of the civil action referred to by the Government in respect of a case pending before the national courts (cf. No. 10673/83, Dec. 7.5.85, D.R. 42 p. 239). It considered that such an action could not be construed as an effective remedy which the applicants were required to use before bringing their case before the Commission.

In the present case, the applicants brought before the Commission a complaint based on an alleged violation of Article 6 para. 1 of the Convention after the final domestic decision putting an end to the dispute, namely the judgment of the Court of Cassation of 5 June 1985. The question is therefore whether the applicants would have had to bring against the French State the civil action for damages and interests provided for under Article L 781.1 of the Code on Judicial Organisation in order to satisfy the condition of exhaustion of domestic remedies under Article 26 of the Convention.

This remedy has admittedly already been used before the French courts where litigants considered that the legal authorities had failed to observe the rule of a reasonable time. It has given rise to a decision, referred to by the Government, acknowledging the unreasonableness of the length of the proceedings in that case.

However, the Commission notes that this decision has apparently remained an isolated one and that the Government have not been able to point to a genuinely established case-law which would have provided the applicants with an effective remedy, in the circumstances, for the complaint based on Article 6 para. 1 of the Convention (cf. No. 10828/84, Dec. 6.10.88, D.R. 57 p. 5).

This being so, the objection to admissibility on the grounds of failure to exhaust domestic remedies raised by the French Government cannot be upheld.

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