

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 17455/09
David CAÑAS GÓMEZ
against Spain

The European Court of Human Rights (Third Section), sitting on 4 September 2012 as a Committee composed of:
Egbert Myjer, *President,*
Luis López Guerra,
Kristina Pardalos, *Judges,*
and Marialena Tsirli, *Deputy Section Registrar,*
Having regard to the above application lodged on 20 March 2009,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr David Cañas Gómez, is a Spanish national who was born in 1977 and lives in Nigrán (Pontevedra). He is represented before the Court by Mr M. Valero Yáñez, a lawyer practising in Madrid.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.
3. On 17 December 1998 the applicant suffered a serious work accident and was given temporary leave of absence from work, which ended on 22 June 1999.
4. On 11 April 2000 the applicant underwent a medical examination to determine his level of incapacity for work. In view of the results of that

medical examination, the Invalidities Assessment Board proposed that the applicant be declared to be totally and permanently incapable of work. That proposal was adopted by the Social Security Institute on 8 November 2000 and was later confirmed on 31 January 2001 following an administrative appeal introduced by the mutual insurance company with which the applicant's employer had taken out work accident insurance.

5. The mutual insurance company brought social proceedings before Vigo social-affairs judge no. 4, who on 30 March 2001 ruled against the applicant and reversed the administrative decision. The judge found, after examining the evidence produced in the hearing and the results of the medical examination cited above, that the after-effects of the accident on the applicant did not prevent him from making the necessary movements related to his work as an assistant sawyer (timber worker) and that accordingly he was not a total or permanent invalid. That decision was ultimately upheld on 28 January 2004 by the *Tribunal Superior de Justicia* of Galicia.

6. On 15 May 2003, upon a request by the applicant for a review of his invalidity status, the Social Security Institute declared him a total and permanent invalid on the basis of diagnosed chronic post-traumatic stress disorder. The mutual insurance company contested this decision before the social-affairs tribunal, the case being allocated to Vigo social-affairs judge no. 4, the same judge who had found against the applicant in 2001.

7. On 25 September 2003 the applicant requested the withdrawal of that judge from the case pursuant to section 219 § 10 of the Organic Law on the Judiciary then in force, as he was of the opinion that the fact that this judge had ruled in a previous and analogous set of proceedings in 2001 raised serious doubts as to her impartiality. The withdrawal file was allocated to Vigo social-affairs judge no. 1.

8. On 11 January 2007 the applicant was requested by Vigo social-affairs judge no. 1 to re-submit his request for withdrawal as his previous request could not be found. The applicant did so on 23 January 2007.

9. On 23 May 2007 the Galicia *Tribunal Superior de Justicia* dismissed the applicant's request for withdrawal. The court found that section 219 § 10 of the Organic Law on the Judiciary did not apply to this case, as that provision strictly referred to criminal proceedings, that in any case social-affairs judge no. 4 had not decided upon the case in previous instances and, ultimately, that the participation of the judge in previous and similar social security proceedings between the same parties in which the judge had ruled in favour of the mutual insurance company did not raise grounded doubts as to her impartiality.

10. On 28 June 2007, the applicant lodged an *amparo* appeal with the Constitutional Court in which he complained of bias on the part of Vigo social-affairs judge no. 4, and about the length of the proceedings. As to the first complaint, the applicant contended that there were sound grounds to

suspect that a judge who had decided upon certain facts and on certain evidence in previous proceedings which were later reproduced in very similar terms could be biased and that therefore social-affairs judge no. 4 should have withdrawn from the case. As to the second complaint, the applicant contended that despite his recurrent complaints of undue delays in relation to his request for withdrawal Vigo social-affairs judge no. 1 had remained inactive for almost three years and four months.

11. On 10 October 2007 social-affairs judge no. 4 found that the undisputed accident-related post-traumatic stress suffered by the applicant did not prevent him from performing any non-stressful or non-intellectually demanding work and declared that therefore the applicant was not in a situation of absolute permanent invalidity but of total permanent invalidity. To reach that conclusion the judge relied on a judgment of Vigo social-affairs judge no. 2, upheld by the Galicia *Tribunal Superior de Justicia* on 18 November 2005, which had found that the applicant's post-traumatic stress was indisputably related to the work accident he had suffered in 1998; the judge also relied on the mutual insurance company's medical report, which stated that the applicant's post-traumatic stress symptoms had worsened.

12. The applicant appealed against this decision before the Galicia *Tribunal Superior de Justicia*. This appeal was still pending at the time the applicant lodged his application with the Court. The applicant has not provided the Court with the final decision on the issue.

13. On 15 September 2008 the Constitutional Court dismissed the applicant's *amparo* concerning impartiality and length of proceedings as devoid of any special constitutional significance. That decision was served on 7 October 2008.

B. Relevant domestic law

14. Article 24 of the Constitution provides that:

> "1. Every person has the right to obtain the effective protection of judges and courts in the exercise of his or her legitimate rights and interests, and in no case may he or she go undefended.
>
> 2. Likewise, every person has the right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; to not make self-incriminating statements; to not declare themselves guilty; and to be presumed innocent...."

15. Article 15 of the Labour Procedure Code as in force at the time of the facts read as follows:

"The abstention and withdrawal [of senior and junior judges] will be governed as to their grounds by the Organic Law on the Judiciary and as to the proceedings by the Civil Procedure Code."

16. Article 109 of the Civil Procedure Code as in force at the time of the facts provided, in so far as relevant, that:

"...3. If the judge against whom the request for withdrawal has been introduced agrees on the grounds for withdrawal, a decision shall be taken immediately.

Otherwise, if the judicial body appointed to look into the case declares the request admissible, it shall order the production within a ten-day time-limit of the evidence requested and deemed relevant and necessary and, subsequently, it shall pass the file on to the court with jurisdiction to decide upon the request.

The file having been received by the court with jurisdiction to decide upon the request, it shall be sent to the public prosecutor for an opinion, which shall be produced within three days.

After the expiration of that time-limit, with or without the production by the public prosecutor of an opinion, a decision shall be taken within the following five days...."

17. Section 219 of the Organic Law on the Judiciary as in force at the time of the facts provided, in so far as relevant:

"Grounds for abstention and, if appropriate, for withdrawal, are:

...10. Having being the investigating judge of the case when the decision on the merits is attributed to another court or having judged the dispute or the case sitting in a previous instance...."

COMPLAINTS

18. The applicant complains under Article 6 § 1 of the Convention that the fact that Vigo social-affairs judge no. 4 had decided in previous and similar proceedings to those which ended with her judgment of 10 October 2007 raised serious doubts about the judge's impartiality and that accordingly the domestic courts' dismissal of his request for withdrawal had jeopardised his right to an impartial tribunal.

19. Under Article 6 § 1 of the Convention the applicant also complains of a violation of his right to a hearing "within a reasonable time". He considers that Vigo social-affairs judge no. 1 had remained inactive for almost three years and four months, despite his recurrent complaints seeking to have the withdrawal proceedings hastened, and that because of this delay it had taken him around four years to obtain a first-instance judgment.

THE LAW

A. Complaint under Article 6 § 1 of the Convention regarding the impartiality of the Vigo social-affairs judge no. 4

20. The applicant complains of bias on the part of Vigo social-affairs judge no. 4. He cites Article 6 § 1 which, as far as relevant, provides that:

> "1. 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. "

21. The Court reiterates that the existence of impartiality for the purposes of Article 6 § 1 is determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is to ascertain whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among many other authorities, *Gautrin and Others v. France*, 20 May 1998, § 58, *Reports of Judgments and Decisions* 1998-III).

22. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Padovani v. Italy*, 26 February 1993, § 26, Series A no. 257-B). As to the objective test, it consists in determining whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances may be of some importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of those claiming that he or she is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Delage and Magistrello v. France* (dec.), no. 40028/98, ECHR 2002-II).

23. In the instant case, the applicant's concerns relate to the question of the social-affairs judge's objective impartiality. His concerns stemmed from the fact that that judge had delivered a judgment in a previous set of proceedings between the same parties, in which the issue at stake was analogous to that in dispute in the second set of proceedings.

24. Even if this situation could have raised doubts in the applicant's mind, the Court must examine whether these doubts are objectively justified.

25. In this connection, the Court reiterates that the answer to this question depends on the circumstances and special features of each particular case (see *Hauschildt v. Denmark*, 24 May 1989, § 49, Series A

no. 154, and *Fatullayev v. Azerbaijan*, no. 40984/07, § 138-139, 22 April 2010).

26. The Court considers that in the assessment of the special features of the present case importance should be attached to the fact that even though both sets of proceedings concerned the same issue and the applicant had made essentially the same submissions in both of them, the evidentiary material the judge was called upon to assess was different, the applicant was allowed to submit further evidence in his favour and a new medical report has been produced by the Invalidities Assessment Board as required by domestic law when an individual submits a request for review of his or her invalidity status. In this connection, the Court notes that Vigo social-affairs judge no. 4 arrived at different conclusions in each set of proceedings. Whilst in the first set of proceedings she concluded in a judgment of 30 March 2001 that the applicant could not be considered totally and permanently disabled, in the second set of proceedings the judge found otherwise and declared him totally and permanently disabled.

27. In the light of these circumstances, the Court is not convinced that the applicant's fear of bias on the part of the judge could be considered objectively justified. Accordingly, this part of the application should be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 6 § 1 of the Convention regarding the length of the proceedings

28. The applicant further complains under Article 6 § 1 of the Convention of the length of the social proceedings.

29. The Court recalls its decision in the case of *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII, in which it concluded that there had been no violation of the applicant's right to a fair hearing within a reasonable time on the ground that the applicant had not exhausted domestic remedies since he had failed to file a claim for compensation for a malfunctioning of the judicial system under sections 292 et seq. of the Organic Law on the Judiciary.

30. The Court observes that, as in that case, the applicant raised the issue of the length of the proceedings before the Constitutional Court only after the main proceedings had ended. It further observes that from the documents submitted by the applicant it does not result that he had filed a claim for compensation for a malfunctioning of the judicial system.

31. In the light of these circumstances, the Court holds that, by failing to seek compensation by means of the aforementioned procedure, the applicant has not validly exhausted domestic remedies within the meaning of Article 35 of the Convention.

32. It follows that this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli	Egbert Myjer
Deputy Registrar	President