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

SECOND SECTION

DECISION

Application no. 56297/11
Sónia Maria MARTINS ALVES
against Portugal

The European Court of Human Rights (Second Section), sitting on 21 January 2014 as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
Peer Lorenzen,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Egidijus Kūris, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 31 August 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mrs Sónia Maria Martins Alves, is a Portuguese national who was born in 1947 and lives in São Paulo (Brazil). She was represented before the Court by Mr J. J. Ferreira Alves, a lawyer practising in Matosinhos (Portugal).

A. The circumstances of the case

2. On 15 November 2004 the E. company initiated civil liability proceedings against the applicant and 105 other persons, including the applicant's husband, before the District Court of Porto (domestic proceedings no. 5878 /04.6TVPRT).

3. When the application was lodged before the Court, on 31 August 2011, the proceedings were still pending at the domestic level and no hearing had been scheduled at that stage.

4. On 18 January 2011 the applicant's husband had lodged application no. 5340/11 before the Court, complaining about the length of the same set of civil liability proceedings.

5. On 2 April 2013 the Court considered that the length of those proceedings had been excessive and found a violation of Article 6 § 1 and Article 13 of the Convention (see *Ferreira Alves v. Portugal* [Committee], no. 5340/11, 2 April 2013). The Court also awarded the applicant's husband 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 for costs and expenses.

6. The applicant's representative in the present case, Mr Ferreira Alves, represented the applicant's husband in application no. 5340/11.

COMPLAINTS

7. Invoking Article 6 § 1 of the Convention, the applicant complained about the length of the domestic proceedings (case no. 5878/04.6TVPRT), which had lasted for almost seven years and which were still pending at the time the present application was lodged. Invoking Article 13 of the Convention, she complained that there was no effective remedy at the domestic level in respect of the unreasonable length of such proceedings.

THE LAW

8. The Court reiterates that an application may be rejected as an abuse of the right of individual application under Article 35 § 3 of the Convention if it was knowingly based on untrue facts (see, among other authorities, *Jian v. Romania*, (dec.), no. 46640/99, 30 March 2004, and *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006-V) or if incomplete and therefore misleading information was submitted to the Court (see, among other authorities, *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006, and *Basileo v. Italy* (dec.), no. 11303/02, 23 August 2011). Similarly, an application may be rejected as an abuse of the right of application if applicants – despite their obligation under Article 47 § 6 of the Rules of Court – fail to inform the Court of important new developments regarding their pending applications, given that such conduct prevents the Court from ruling on the matter in full knowledge of the facts (see *Bekauri v. Georgia*, (dec.) no. 14102/02, §§ 21-23, 10 April 2012).

9. The notion of abuse of the right of application is not limited to these scenarios, however. In general terms, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court, or the proper conduct of the proceedings before it, constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009).

10. The Court emphasises that under Rule 44 A: "The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice...". The Court has repeatedly held that the rules of procedure laid down in national laws are intended to ensure the proper administration of justice and the principle of legal certainty and that the parties must be able to rely on their application. The same observation applies, *a fortiori*, to the Convention and the Rules of Court (see *Miroļubovs*, cited above, § 66).

11. The Court reiterates that it cannot be its task to deal with manifestly improper conduct on the part of applicants or their authorised representatives which creates unnecessary work for the Court, that is incompatible with its proper functions under the Convention (see *Petrović v. Serbia* (dec.), no. 56551/11 and 10 other applications, 18 October 2011, and *Bekauri*, cited above, § 21).

12. The present application was lodged while the application lodged by the applicant's husband was still pending before the Court. The applicant in the present case and her husband in the previous application were represented before the Court by the same lawyer.

13. While lodging the present application, Mr Ferreira Alves, who has previously lodged numerous applications with the Court and is thus familiar with the procedure, omitted to inform the Court that the case related to the very same domestic proceedings which were under scrutiny in the context of the application lodged by the applicant's husband. Moreover, he omitted to inform the Court that the applicant in the present case was the wife of the applicant in the previous case and that they had appeared jointly before the Porto District Court.

14. The Court accepts that the lodging, at different times, of two separate applications which can be considered essentially the same does not *per se* constitute an abuse of the right of application (see, *mutatis mutandis*, *De Cristofaro v. Italy* (dec.), no. 30464/07, § 48, 10 July 2012). However, in the present case, the Court does not see any legitimate reason why the applicant's complaint was not lodged together with her husband's, particularly since both spouses had appeared jointly in the proceedings before the Porto District Court and both were represented by Mr Ferreira Alves. In addition, the applicant's representative submitted incomplete and therefore misleading information. This omission became all the more

important after the matter at issue in the present case was determined by the Court, on the merits, in its judgment of 2 April 2013, and the applicant's husband was awarded compensation under Article 41 of the Convention.

15. In this connection, the Court observes that if Mr Ferreira Alves had joined the present application to the application lodged by the applicant's husband, the Court would not have awarded any more than EUR 4,500 for non-pecuniary damage and EUR 1,000 for costs and expenses, [taking into account the fact that the subject matter of the case was the same, that the applicant and her husband were parties to the same domestic proceedings, that they formed a single household and that they were represented by the same lawyer.]

16. Finally, the Court notes that it has already held that two applications in which the applicants were represented by Mr Ferreira Alves constituted an abuse of the right of application (see *Aníbal Vieira & Filhos, Lda, and Ferreira da Costa v. Portugal* [Committee] (dec.), nos. 980/12 and 28385/12, 13 November 2012), while three other applications (brought by Mr Ferreira Alves himself) (see *Ferreira Alves v. Portugal* [Committee] (dec.), nos. 22888/11, 40940/12 and 43465/12) were considered to be essentially the same as previous applications. In this connection, the Court emphasises that lawyers must demonstrate a high level of professional prudence and genuine cooperation with the Court by avoiding the lodging of unmeritorious complaints. Otherwise, their credibility in the eyes of the Court will be undermined and – in the event of systematic abuses – they may be excluded from the proceedings under Rule 36 § 4 (b) and Rule 44D of the Rules of Court (see *Petrović* cited above, nos. 56551/11 and ten others, 18 October 2011; *Bekauri*, cited above; and *De Cristofaro,* cited above).

17. The Court considers that the conduct of the applicant's representative in the present case was contrary to the purpose of the right of individual petition as provided for in Article 34 of the Convention and that the application must therefore be rejected as an abuse thereof, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President