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

Press Release
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ECHR 097 (2024)
18.04.2024

Complaint about subsidies for energy provider inadmissible

In its decision in the case of Energyworks Cartagena S.L. v. Spain (application no. 75088/17) the European Court of Human Rights has unanimously declared the application **inadmissible**. The decision is final.

The case concerned the changes to the regulations of the electricity sector and, particularly, to the subsidy regime for investment, which had affected the applicant company, an energy producer.

In rejecting the application, the Court found that there had been no retroactive deprivation of the subsidies. The changes to the system had affected future income only, and the subsidies could not be qualified as "possessions" that the applicant company had been deprived of.

Principal facts

The applicant, Energyworks Cartagena S.L., is a Spanish company based in Cartagena (Spain). It is a cogeneration facility (one that produces heat and electricity).

In 1997 the Spanish Parliament passed Law no. 54/1997 with a view to progressively liberalising the electricity market, improving energy efficiency, reducing electricity consumption and protecting the environment. Under that Law's special regime, renewable energy and cogeneration plants were able to access subsides to ensure a reasonable return on investment. The subsidies system was amended several times in the subsequent years, with the Spanish Supreme Court ruling, following challenges by energy producers, that the Government had broad powers to modify it.

Pursuant to changes introduced in 2013 and 2014, among other modifications, remuneration under the system was not to exceed the minimum level required to allow those facilities to obtain a reasonable return, taken over the lifetime of the facility. As a result of the changes, Energyworks received no subsidies for investment for the period 2013-16. Payments were resumed in the subsequent period.

In July 2014 Energyworks challenged the regulations adopted in 2013 and 2014 before the Administrative Disputes Division of the Supreme Court. It argued that the reclassification of a portion of past profits as unreasonable and their subsequent offset against future remuneration amounted to retroactive changes prohibited by Article 9 § 3 of the Constitution, and meant a lack of legal certainty. The case was dismissed. The court held that while "[i]t was true that the calculation of the reasonable return took into consideration the remuneration already received in the past, ... [that] only implied that the reasonable return that the owners of such facilities were entitled to receive was calculated over their entire 'regulatory useful lives' without the amounts already received in the past having to be reimbursed ... not resulting in prohibited retroactivity ... [The court] did not consider that the changes to the facility remuneration system violated the principles of legal certainty and legitimate expectations."

A later action for the annulment of the proceedings and an *amparo* appeal were rejected by the Supreme Court and Constitutional Court respectively.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 October 2017.

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicant company complained of the loss of State subsidies.

The decision was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar.*

Decision of the Court

The Court was satisfied that the special regime had applied to Energyworks and so it could reasonably claim to have been a victim of the alleged violation. The Court reiterated that the retrospective application of legislation whose effect was to deprive someone of a pre-existing "asset" that was part of his or her "possessions" could disrupt the balance between the interests of the public on the one hand and the right to peaceful enjoyment of possessions on the other.

The new legal framework had included specific safeguards preventing the reimbursement of subsidies paid before July 2013, even if the reasonable return had been exceeded. The applicant company had failed to evidence that those safeguards had not been applied in practice in its case or that it had actually been asked to reimburse any sums previously received. There had been no retrospective deprivation of the subsidies.

The Court noted that the subsidy system had not set a specific return on investment. Instead it had been supple and could react to changes in the trading environment. It had not created a "legitimate expectation" that the return on investment would remain the same throughout the life of the facility.

Overall, the system had affected future income only (not retroactively), and the relevant Spanish law in any case meant that subsidies had not been "possessions" within the meaning of the European Convention. The Court rejected the application.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.