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

CASE OF PÉREZ DE RADA CAVANILLES v. SPAIN

(116/1997/900/1112)

JUDGMENT

STRASBOURG

28 October 1998

In the case of Pérez de Rada Cavanilles v. Spain[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr F. GÖLCÜKLÜ,
Mr N. VALTICOS,
Mrs E. PALM,
Mr J.M. MORENILLA,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr K. JUNGWIERT,
Mr U. LÕHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 30 June and 25 September 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 December 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 28090/95) against the Kingdom of Spain lodged with the Commission under Article 25 by a Spanish national, Mrs María Gloria Pérez de Rada Cavanilles, on 20 June 1995.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1.

Notes by the Registrar

1. The case is numbered 116/1997/900/1112. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30), Mr M. Dopico Fradrique, of the Madrid, Pamplona, Oviedo and Alcalá de Henares Bars. Having been designated before the Commission by the initials M.P., the applicant subsequently agreed to the disclosure of her identity.

3. On 26 January 1998 the Agent of the Spanish Government ("the Government") was given leave by the President to use the Spanish language at the hearing (Rule 27 § 2).

4. The Chamber to be constituted included *ex officio* Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, the Vice-President of the Court, Mr R. Bernhardt, drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr N. Valticos, Mrs E. Palm, Mr G. Mifsud Bonnici, Mr J. Makarczyk, Mr K. Jungwiert and Mr U. Lõhmus (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr Bernhardt replaced Mr Ryssdal, who had died on 18 February 1998 (Rule 21 § 6, second sub-paragraph).

5. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 14 and 17 April 1998 respectively.

6. On 23 April 1998 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In a letter of 5 May 1998 counsel for the applicant informed the registry that the applicant would not be taking part in the hearing on 23 June 1998 and would not be represented at it.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on 23 June 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr J. BORREGO BORREGO, Head of the Legal Service for the
European Commission and Court of Human Rights,
Ministry of Justice, *Agent*;

(b) *for the Commission*
M. F. MARTÍNEZ, *Delegate*.

The Court heard addresses by Mr Martínez and Mr Borrego Borrego.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

9. The applicant had been in dispute with a neighbour concerning a view over her property at Lumbier in the province of Navarre. On 28 July 1992 a settlement agreement was concluded between the parties before the deputy judge of first instance at Aoiz (province of Navarre). In the agreement the neighbour, who had only a life interest in the building he occupied, undertook to block the view from his patio over the applicant's property within six months.

10. When, on 6 May 1993, that period expired without the neighbour having carried out his undertaking, the applicant applied to the Aoiz Court of First Instance for enforcement of the agreement.

B. Proceedings before the Aoiz Court of First Instance

11. On 25 May 1993 the court gave judgment for the applicant and allowed the defendant an additional period of fifteen days to perform the undertakings made in the agreement.

12. On 11 June 1993 the defendant informed the Aoiz Court of First Instance that as he was not the owner of the building he occupied, he could not carry out the works needed to fulfil the terms of the agreement. On 24 August 1993 the applicant renewed her application, stating that the defendant had not brought any action to have the agreement in question set aside under Article 477 of the Code of Civil Procedure (see paragraph 27 below).

13. In a decision (*auto*) of 7 September 1993 the deputy judge of the Aoiz Court of First Instance (not the same judge as before) dismissed the applicant's application and held that the agreement was void on the ground that the neighbour, who was merely a life tenant, could not carry out the works needed to block the view without the consent of the reversioner, since they would change the appearance and structure of the building. The judge added that there was nothing to prevent an agreement being concluded with the person who had the necessary capacity.

As regards the applicant's allegation that the defendant had not raised the nullity of the agreement within the prescribed time (see paragraph 27 below), the judge held that Article 477 of the Code of Civil Procedure covered only cases in which the actual conclusion of the agreement had not complied with the conditions or formalities laid down by law, and not defects such as to negate a *consensus ad idem*. The agreement was defective because one of the parties had no capacity to conclude such an agreement.

1. Service of the decision of 7 September 1993 at Lumbier

14. On 8 September 1993 the registrar of the Aoiz Court of First Instance ordered that the decision should be served at the applicant's home in the village of Lumbier, some twenty kilometres from Aoiz.

15. On 27 September 1993 the magistrate at Sangüesa (under whose jurisdiction the village of Lumbier came) recorded that the applicant was not at her home at Lumbier and informed the registry at Aoiz that her husband, who was at the same time her lawyer, had requested by telephone that the decision should be served at the applicant's home in Madrid.

16. On 6 October 1993 the decision in question was served on the defendant.

2. Service of the decision of 7 September 1993 in Madrid

17. In an order of 21 October 1993 the Court of First Instance at Aoiz (some four hundred kilometres from Madrid) ordered that the decision should be served at the applicant's home in Madrid; on 26 November 1993 the decision was at last served on the applicant in the person of her domestic help, since she herself was out at the time.

3. Appeal against the decision of 7 September 1993

18. On 30 November 1993 the applicant lodged a *reposición* application and, in the alternative, an ordinary appeal against the decision of 7 September 1993 with the registry of the duty court in Madrid, which initially stamped the document. Noticing, however, that the application

should have been lodged at the Aoiz Court of First Instance, the head of the registry crossed out the stamp, thereby invalidating it.

On the same day, the applicant sent, by registered letter with advice of delivery, the same *reposición* application and, in the alternative, an ordinary appeal to the Aoiz Court of First Instance. The application was dated 27 November 1993 and had been signed by the applicant and her counsel at Lumbier. The first page was postmarked 30 November 1993.

19. The registry of the Aoiz Court of First Instance received the application on 2 December 1993.

20. In a decision (*providencia*) of 13 December 1993 the Court of First Instance declared the *reposición* application and appeal in the alternative inadmissible as being out of time. After a number of unsuccessful attempts by the Sangüesa magistrate and the Aoiz Court of First Instance to serve this decision within their jurisdictions, it was served on the applicant at her home in Madrid on 15 April 1994.

4. Application against the decision of 13 December 1993

21. On 15 April 1994 the applicant sent to the Aoiz Court of First Instance, by registered letter with advice of delivery, a *reposición* application against the aforementioned decision and this was received at the registry on the following day.

22. On 25 May 1994 the Court of First Instance dismissed the application and upheld the impugned decision, on the ground that the application against the decision of 7 September 1993 should have been registered at the court registry within the prescribed period of three days, that is to say on 30 November 1993 at the latest. The court also noted that the legislation on administrative matters cited by the applicant (see paragraph 30 below) was not applicable in the case as proceedings in the ordinary courts were governed by the Judicature Act and the Code of Civil Procedure (see paragraphs 27–29 below). Lastly, the Court held that allowing an application to be lodged by post would undermine "judicial authenticity", thereby breaching the principle of legal certainty, inasmuch as a post office (an administrative entity) could not be equated with a judicial body.

As to the ordinary appeal, the court added that it could not be lodged until the *reposición* application had been determined and not at the same time as that application, and that it was accordingly pointless to consider whether it had been lodged timeously.

C. Proceedings in the Navarre *Audiencia Provincial*

23. On 7 September 1994 the applicant lodged an appeal with the Navarre *Audiencia Provincial*, which dismissed it in a decision (*auto*) of 23 December 1994, emphasising that applications had to be made to the

appropriate court or to the duty judge of the same town, particularly where the person making it was assisted by counsel.

D. *Amparo* appeal to the Constitutional Court

24. On 20 January 1995 the applicant lodged an *amparo* appeal with the Constitutional Court, relying on the right to protection by the courts (Article 24 § 1 of the Constitution).

25. In a decision of 8 May 1995 the application was declared inadmissible on the following grounds:

> "… This Court's case-law on the filing of applications ([see,] as a recent authority, the Constitutional Court's judgment no. 287/1994) applies to the instant case. Applications are normally to be filed with the registry of the court applied to or with the duty judge and filing [of an application] at the headquarters of administrative bodies is, as an exception, permissible only where the litigant is not represented by a lawyer (*abogado* or *procurador*). In the instant case the applicant, assisted by counsel, filed her application at a post office; the ordinary courts, applying the rules of procedure and relying on decisions such as the Constitutional Court's judgment no. 341/1993, held, in reasoned decisions, that there was no justification for failing to file [the application] at the registry of the court itself or with the duty judge in the town."

II. RELEVANT DOMESTIC LAW

A. The Constitution

26. Article 24 § 1 of the Constitution provides:

> "Everyone has the right to effective protection by the courts in the exercise of his rights and his legitimate interests, and in no circumstances may there be any denial of defence rights."

B. The Code of Civil Procedure

27. The relevant provisions of the Code of Civil Procedure which concern settlement agreements read as follows:

Article 476

> "The terms agreed by the parties to a settlement agreement shall be enforced by the same court before which the agreement was concluded and according to the procedure (*juicio verbal*) laid down for the execution of judgments delivered by a court of first instance where the cases are within the jurisdiction of that court.
>
> …"

Article 477

"An action to have the terms of a settlement agreement declared void may be brought on the same grounds as one for annulling contracts.

Such an action must be brought in the appropriate court within fifteen days of the conclusion of the agreement, using the procedure corresponding to the amount in dispute."

28. The relevant provisions of the Code of Civil Procedure concerning time-limits and the filing of applications are worded as follows:

Article 249

"To be valid, judicial acts must be authorised by the public officer responsible for authenticating or certifying the act."

Article 250

"Registrars and secretaries [of courts] shall enter the date and time of filing of applications only where it is necessary for checking that a mandatory time-limit (*plazo perentorio*) has been complied with. …"

Article 377

"*Reposición* applications must be filed within three days and must specify the provision of this Code that is alleged to have been infringed.

Where these two requirements have not been satisfied, the court shall, without further consideration, make a declaration, against which no appeal shall lie, that no ruling will be made on the application."

C. The Judicature Act (Law no. 6/1985 of 1 July1985)

29. The relevant provisions of the Judicature Act are the following:

Section 11

"1. The rules of good faith must be complied with in all proceedings.

2. …

3. In accordance with the principle of effective protection laid down in Article 24 of the Constitution, the courts shall always rule on claims and may only dismiss them on the ground of a formal defect where that defect cannot be remedied, or at least not in accordance with the procedure laid down by law [for that purpose]."

Section 268(1)

"All judicial acts shall be carried out at the seat of the judicial body."

Section 270

"Procedural documents, decisions and judgments shall be served on all the parties to a case and also, where expressly so provided in such decisions in accordance with the law, on any persons referred to in them or who may be prejudiced thereby."

Section 271

"Service may be effected by post, telegraph or any other technical means which record its accomplishment and the circumstances thereof in accordance with the laws on procedure."

Section 272

"1. In municipalities in which there are several courts …, a common service, under the authority of the Chairman of the Bar, may be established in order to effect service where this is the court's responsibility.

2. …

3. General registration departments may likewise be set up for the filing of instruments or other documents intended for judicial bodies."

Section 283(1)

"Registrars shall record the date and time of lodging of applications, writs and originating summonses and any other document which must be filed within a mandatory (*perentorio*) time-limit."

D. The legislation on administrative matters

30. The relevant provision of Law no. 30/1992 of 26 November 1992 on the rules governing public authorities and on common administrative procedure lays down:

Section 38(4)

"Applications, pleadings and communications sent by members of the public to public administrative bodies may be filed:

…

(c) at post offices, in accordance with the formal requirements laid down in regulations."

31. The rules on the postal service, as enacted in Decree no. 1653/1964 of 14 May 1964 and amended by the Order of 14 August 1971 and Decree no. 2655/1985 of 27 December 1985, provide:

Article 205

"*Acceptance of applications and documents sent to administrative institutions*

…

2. The documents and applications in question shall be submitted in an open envelope…

3. The official who accepts the item for despatch shall stamp it with the date in the upper left-hand corner of the main document, so that the name of the post office and the date of submission are clearly visible…"

E. Case-law of the Constitutional Court

32. In a judgment of 31 January 1991 (no. 20/1991, Official Gazette (*Boletín oficial del Estado*) of 25 February 1991) the Constitutional Court, citing its own case-law, held that the right to effective protection by the courts was infringed "where a member of the public found it impossible to lodge an application on account of undue hindrances or of unjustified and unexplained refusal or of a mistake attributable to the judicial body".

In two judgments of 14 February 1991 (no. 32/1991, Official Gazette of 18 March 1991) and 6 June 1991 (no. 128/1991, Official Gazette of 8 July 1991) the Constitutional Court held, *inter alia*, that the rules of procedure on the acceptance of applications must not prevent the practical exercise of the right to effective protection by the courts. The interpretation of them was not to be excessively or unreasonably strict, regard was to be had to their purpose at the time they were adopted and remedies were to be made as accessible as possible.

33. In two judgments of 18 November 1993 (no. 341/1993, Official Gazette of 10 December 1993) and 27 October 1994 (no. 287/1994, Official Gazette of 29 November 1994) the Constitutional Court held that applications were to be filed with the registry of the court applied to or the duty judge of the town – in these cases the appeals had been to the Constitutional Court itself – and posting an application was, as an exception, permissible only where the litigant was not represented by a lawyer (*abogado* or *procurador*) and lived at a distance from the seat of the court.

PROCEEDINGS BEFORE THE COMMISSION

34. Mrs Pérez de Rada Cavanilles applied to the Commission on 20 June 1995. She alleged that the Spanish courts' strict application of the rules of procedure had prevented her from availing herself of the existing remedies and had consequently deprived her of the possibility of defending her legitimate interests in the courts. She relied on Article 6 § 1 of the Convention.

35. The Commission declared the application (no. 28090/95) admissible on 25 November 1996. In its report of 21 October 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

36. In their memorial the Government asked the Court to hold that the dismissal of the applicant's *reposición* application against the judgment of 7 September 1993 had not violated the rights guaranteed in Article 6 § 1 of the Convention.

37. The applicant requested the Court to hold that there had been a violation of Article 6 § 1 and to award her just satisfaction under Article 50 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant complained that the dismissal of her *reposición* application as being out of time had deprived her of the possibility of appealing and of thereby defending her legitimate interests in the courts. She alleged that there had been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

"In the determination of his civil rights and obligations …, everyone is entitled to a … hearing … by [a] … tribunal…"

The Commission considered that there had been a violation of that provision. The Government argued the contrary.

A. Applicability of Article 6

39. The Court observes that by Article 476 of the Code of Civil Procedure, the execution of a settlement agreement is the responsibility of the judge before whom it was concluded. It had been judicially acknowledged that the applicant had a right to the peaceful enjoyment of her property and that the right was enforceable through the courts. It follows that the right arising from the agreement and the judicial enforcement proceedings were closely bound up with each other since the effectiveness of the former ultimately depended on the bringing of the latter.

According to the Court's case-law, it is the moment when the right asserted actually becomes effective which constitutes determination of a civil right (see the Di Pede v. Italy and Zappia v. Italy judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1384, §§ 22–24, and p. 1411, §§ 18–20, respectively), regardless of the form of the authority to execute (see the Estima Jorge v. Portugal judgment of 21 April 1998, *Reports* 1998-II, pp. 772–73, §§ 37–38). In the instant case the proceedings to enforce the agreement were decisive for whether the applicant's right actually became effective or not. Article 6 § 1 of the Convention therefore applies.

This point was not disputed before the Court.

B. Compliance with Article 6

1. Submissions of those appearing before the Court

(a) The applicant

40. Mrs Pérez de Rada Cavanilles alleged that her *reposición* application was lodged by post within the three-day period allowed by Article 377 of the Code of Civil Procedure (see paragraph 28 above). She stated that she had tried in vain to lodge the application with the Madrid duty judge and that it had been impossible for her to travel as far as Aoiz within the prescribed three-day period and that no one had earlier advised her to appoint a legal representative at Aoiz. The applicant also noted that the application was against a decision that was contrary to Article 477 of the Code of Civil Procedure (see paragraph 27 above) in that no action to have

the settlement agreement declared void had been brought by her opponent by means of the prescribed procedure within the fifteen-day period allowed.

Furthermore, the applicant pointed out that section 38(4)(c) of Law no. 30/1992 of 26 November 1992 (see paragraph 30 above) provided for the possibility of lodging by post any document or communication intended for an administrative authority and that section 271 of the Judicature Act (see paragraph 29 above) permitted use of the post for serving process. She insisted that she had clearly demonstrated her firm intention of appealing against the aforementioned decision.

(b) The Government

41. The Government observed that from the outset of the proceedings the applicant had indicated as her address for service her home at Lumbier in Navarre, where her opponent also had his address for service. They pointed out that the applicant's lawyer and husband knew of the decision of 7 September 1993 as early as 27 September 1993, since he had himself requested the Aoiz judicial authorities to serve the decision at the applicant's home in Madrid. They noted that the applicant, who was represented by a lawyer (her husband), had waited until the last day, 30 November 1993, before posting her application from Madrid to Aoiz, although it was signed at Lumbier on 27 November. At all events, the applicant could have used means of transport or an express delivery service to ensure that her letter arrived in time.

The Government added that the Aoiz Court of First Instance, the Navarre *Audiencia Provincial* and the Constitutional Court duly gave reasons for dismissing the *reposición* application and that the provisions on administrative proceedings did not apply to the case.

(c) The Commission

42. The Delegate of the Commission said that in the decision of 7 September 1993 an agreement in which a right of the applicant's had been acknowledged had been declared void, although no one had brought an action to set it aside on the ground of nullity, as provided in Article 477 of the Code of Civil Procedure, within the prescribed time (see paragraph 27 above). Furthermore, the applicant had not been able to present argument on the grounds of nullity in adversarial proceedings. The decision in question had therefore deprived her of a right that she had lawfully acquired.

The Delegate reiterated that the only means of challenging the decision concerned was a *reposición* application, failing which no application could be made to the appellate court. The essential issue was therefore where the *reposición* application had to be lodged. While in normal circumstances, that is to say where service was effected at the seat of the court, the

application was lodged with the registry, in the special case of notification from a distance, some flexibility was called for, since time had to be allowed for drafting the pleading and sending it to the seat of the court. A period of three days for making an application to the Aoiz Court of First Instance from Madrid was, in the instant case, an unreasonable requirement.

2. The Court's assessment

43. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many other authorities, the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 31, and the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals (see, *mutatis mutandis*, the Tejedor García v. Spain judgment of 16 December 1997, *Reports* 1997-VIII, p. 2796, § 31).

44. Further, it is apparent from the Court's case-law that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, the Brualla Gómez de la Torre and the Edificaciones March Gallego S.A. judgments cited above, p. 2955, § 33, and p. 290, § 34, respectively).

45. The rules on time-limits for appeals are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Those concerned must expect those rules to be applied. However, the rules in question, or the application of them, should not prevent litigants from making use of an available remedy.

46. In the instant case the *reposición* application, although it had been posted within the three days laid down by law, was received at the registry of the Aoiz Court of First Instance two days after that period had expired (see paragraphs 18–19 and 28 above). In view of the usual time taken to deliver mail, however, it seems unlikely that a letter could reach its

destination more quickly. Even supposing that it had been physically possible for the applicant to prepare her application and send it on the day after she received notification of the impugned decision, that is to say on 27 November 1993, there is no guarantee that the registry of the Aoiz Court of First Instance would have received it by 30 November 1993, the time-limit for registering it.

The Court points out, as regards the use of technical means of serving process, that section 271 of the Judicature Act (see paragraph 29 above) permits courts to use the post in order to serve process. Furthermore, the Court notes that the applicant attempted to avail herself by analogy of the legislation applicable in administrative matters (see paragraphs 30–31 above), which allows any document or communication intended for an administrative authority to be lodged by post.

47. In the light of the foregoing, the applicant cannot be accused of having acted negligently, in view of the short period of time available to her for submitting her application (see paragraph 28 above), for which sufficient grounds had to be given. Under the relevant domestic legislation (see paragraph 27 above), the decision in issue could not be regarded as foreseeable in the context of proceedings to enforce an agreement. The applicant also tried to lodge the application, within the time-limit, with the registry of the Madrid duty court; noticing, however, that the application should have been lodged at the Aoiz Court of First Instance, the head of the registry crossed out the stamp with which it had been marked, thereby invalidating it (see paragraph 18 above). She also applied unsuccessfully to the Aoiz Court of First Instance to set aside its decision of 13 December 1993 (see paragraph 20 above) whereby, in declaring the *reposición* application inadmissible as being out of time, it had barred any appeal to the Navarre *Audiencia Provincial*.

It is true that, as the Navarre *Audiencia Provincial* and the Constitutional Court noted, the applicant was represented by a lawyer. However, the applicant's husband, who was also her legal representative, had explicitly and successfully asked the registry of the Aoiz Court of First Instance for the decision in issue to be served at the applicant's home in Madrid as she was not at her home in Lumbier at the time.

48. The Court considers that to require the applicant to travel to Aoiz (see paragraph 17 above) in order to lodge her application within the prescribed time, when the decision in question had been served on her in Madrid, would in this instance have been, as the Commission pointed out, unreasonable.

49. In view of the fact that the applicant demonstrated her clear intention of lodging a *reposición* application against the decision of 7 September 1993 whereby the Aoiz Court of First Instance declared the agreement

concluded with her neighbour to be void, and that the dismissal of that application as being out of time prevented her from appealing, the Court considers that in this instance the particularly strict application of a procedural rule by the domestic courts deprived the applicant of the right of access to a court.

50. There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

51. Article 50 of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

52. The applicant sought 20,000,000 pesetas for non-pecuniary damage, having regard to the fact that the dismissal of the *reposición* application had prevented execution of the agreement concluded on 28 July 1992.

53. The Delegate of the Commission did not express a view.

54. Like the Government, the Court considers that in the circumstances of the case the present judgment constitutes in itself sufficient just satisfaction.

B. Costs and expenses

55. The applicant also claimed 1,500,000 pesetas for costs and expenses incurred before the Convention institutions.

56. The Government considered that sum to be excessive.

57. The Delegate of the Commission did not express a view.

58. The Court notes that the applicant did not provide any particulars of the expenses for which she sought reimbursement. As it is not persuaded that the entire sum claimed was incurred necessarily or that it is reasonable as to quantum, it decides to award 1,000,000 pesetas under this head.

C. Default interest

59. According to the information available to the Court, the statutory rate of interest applicable in Spain at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 § 1 of the Convention applies in the case and that there has been a violation of it;

2. *Holds* that the present judgment constitutes in itself sufficient just satisfaction for non-pecuniary damage;

3. *Holds* that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) pesetas for costs and expenses, on which sum simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 October 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar