

Pérez de Rada Cavanilles v. Spain - 28090/95

Judgment 28.10.1998

Article 6

Civil proceedings

Article 6-1

Access to court

Inadmissibility, for being out of time, of *reposición* application against court decision whereby a settlement agreement which the applicant had sought to enforce had been declared void: *violation*

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I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability of Article 6

Proceedings to enforce the agreement had been decisive for whether applicant's right actually became effective or not – common ground.

B. Compliance with Article 6

Recapitulation of case-law: primarily for national authorities to interpret domestic legislation – the domestic courts had held that a *reposición* application dispatched within the three days prescribed by law but received two days after expiry of that period was inadmissible as being out of time, on ground that applications had to be made to appropriate court or to duty judge of same town, particularly where person making it was assisted by counsel – Court's role confined to ascertaining whether effects of such an interpretation were compatible with Convention.

Recapitulation of case-law on "right to a court" – the limitations permitted by implication 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 – in instant case the particularly rigorous application of a procedural rule by domestic courts had deprived applicant of right of access to a court.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

Non-pecuniary damage: sufficiently compensated by finding of violation.

Costs and expenses: specified sum awarded.

Conclusion: respondent State to pay specified sum to applicant for costs and expenses (unanimously).

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