

**APPLICATION/REQUÊTE N° 11681/85**

**UNION ALIMENTARIA SANDERS S A v/SPAIN**

**UNION ALIMENTARIA SANDERS S A c/ESPAGNE**

**DECISION** of 11 December 1987 on the admissibility of the application

**DÉCISION** du 11 decembre 1987 sur la recevabilite de la requête

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**Article 26 of the Convention**

- a) The exhaustion of domestic remedies rule requires the exhaustion of those remedies that relate to the breaches alleged and that are available and sufficient. It does not require that an appeal be introduced which would have no chance of success*
- b) An applicant who complains of the excessive length of proceedings before a Spanish court has satisfied the requirement to exhaust domestic remedies if he has made an "amparo" appeal under Article 24 of the Spanish Constitution. He is not required to make use of the remedy afforded by the Judicature Act 1985 providing for compensation for a deficiency in the administration of justice*

**Article 26 de la Convention**

- a) La regle de l'épuisement des voies de recours internes exige l'épuisement des seuls recours relatifs à la violation incriminée, accessibles et adéquats. Elle n'exige pas l'exercice d'un recours manifestement depourvu de toutes chances de succes*
  - b) Un requerant qui se plaint de la durée excessive d'une procédure devant une juridiction espagnole satisfait à l'exigence de l'épuisement des voies de recours internes s'il a forme un recours d'amparo fonde sur l'article 24 de la Constitution espagnole. Il n'est pas tenu d'exercer le recours prévu par la loi organique de 1985 sur le pouvoir judiciaire, tendant à l'indemnisation pour fonctionnement defectueux de l'administration de la justice*
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(TRANSLATION)

## THE FACTS

The applicant is a limited company registered in the Madrid commercial register. Its registered office is in Madrid. In the proceedings before the Commission it is represented by Mr. Francisco Ramos Mendez, a lawyer practising in Barcelona.

The facts of the case may be summarised as follows:

On 2 May 1979, the applicant company brought an action ("juicio de mayor cuantía") in the Barcelona District Court, *inter alia* claiming payment of a sum owed to it. The statement of claim was made out against a limited company and four private individuals. The case was assigned to the 9th Court of First Instance (Juzgado de 1ª Instancia No. 9), in Barcelona.

By decision of 28 December 1981, judgment was reserved.

On 10 July 1983, the applicant wrote to the Court complaining of a violation of Article 24 para. 2 of the Constitution (right to a fair trial within a reasonable time).

When the Court gave no ruling, the applicant on 21 October 1983 lodged an amparo appeal with the Constitutional Court, alleging a breach of Article 24 para. 2 of the Constitution.

In a judgment of 17 December 1983, the 9th Court of First Instance in Barcelona ordered the defendant company and Mrs. P. one of the co-defendants to pay jointly to the applicant the sum of 1,852,343.67 pesetas, together with interest and dismissed the applicant's other claims.

The applicant appealed against this judgment. The case was assigned to the first civil chamber of the Barcelona Court of Appeal (Audiencia Territorial). After taking various procedural steps, the chamber decided on 13 September 1984 that the case was ready to be heard, but set no date for a hearing.

In September 1985, the case was assigned to the third civil chamber, which on 17 March 1986 directed that the hearing be held on 6 May 1986. In a judgment of 12 May 1986 it declared the appeal partly admissible and set aside that part of the challenged judgment which dismissed the applicant's claims against Mrs. B. one of the co-defendants.

In the meantime, in a judgment dated 23 January 1985, the Constitutional Court had rejected the applicant's amparo appeal. Having considered the complexity of the case, the conduct of the applicant and of the authorities, and the consequences that the delay in the proceedings might have had for the applicant, and taking into account the exceptional backlog of business in the 9th Court of First Instance in

Barcelona, the Constitutional Court considered that the case did not warrant priority treatment

On 18 October 1986, the applicant applied to the 9th Court of First Instance of Barcelona for enforcement of the judgment of 17 December 1983. That application has not to date yielded any result.

## COMPLAINTS

Before the Commission, the applicant company complains of the length of the proceedings in the civil courts and alleges that it was denied the right to have its case heard within a reasonable time. In particular, it points out that a period of two years elapsed between the date on which the Court of First Instance reserved judgment on the case (28 December 1981) and the date on which judgment was pronounced (17 December 1983). In addition, it emphasises that the length of the appeal proceedings was excessive. The applicant relies on Article 6 para. 1 of the Convention.

## THE LAW (Extracts)

Before the Commission, the applicant alleges a violation of Article 6 of the Convention, on the ground that the duration of the proceedings instituted in May 1979 in the Spanish civil courts fails to satisfy the "reasonable time" requirement laid down in paragraph 1 of that provision. In particular, it argues that two years elapsed between the date on which the Court of First Instance reserved judgment and the date on which judgment was given. In addition, it submits that the duration of the appeal proceedings was excessive.

### *a. The exhaustion of domestic remedies*

The Government have put forward a defence based on non-exhaustion of domestic remedies. In this connection, they argue first of all that the applicant did not use the remedy afforded by the Judicature Act, which entered into force on 3 July 1985, in order to claim compensation from the State for the damage caused by a deficiency in the administration of justice. Under Sections 292 and 293 of that Act, the victims of damage caused by a deficiency in the administration of justice are entitled to compensation from the State. In particular, the Government maintain that this Act is retroactive in effect.

The applicant disputes the Government's assertion that the Act in question is retroactive in effect, and furthermore points out that the remedy afforded by the Judicature Act is designed to obtain compensation, whereas the applicant's claims were aimed at establishing, through the "amparo" appeal which it lodged, that its case had not been heard within a reasonable time.

In the instant case, the Commission notes that, before the Court of First Instance had rendered a decision, the applicant lodged an "amparo" appeal with the Constitutional Court in October 1983, complaining of the delay in the proceedings and relying on Article 24 para 2 of the Constitution, which guarantees the right to a fair trial within a reasonable time ("sin dilaciones indebidas"). The applicant therefore used the specific remedy available in Spanish law to complain of the excessive length of proceedings. In particular, the Commission notes that the Constitutional Court did not say that the applicant should have sought a different remedy.

The Commission is of the opinion that the Government have not shown that an appeal based on the Judicature Act could be considered as an effective remedy in a case in which the highest court in the land, namely the Constitutional Court, had already decided that the proceedings had not exceeded a reasonable length of time.

Moreover, the Government note that the applicant's complaint to the Constitutional Court concerned only the duration of the proceedings at first instance. Insofar as the applicant's complaint to the Commission also concerns the length of the appeal proceedings, the question arises whether it should have lodged a separate "amparo" appeal to complain of the length of those proceedings also.

The only remedies that Article 26 of the Convention requires to be exhausted are those that relate to the breaches alleged and that are available and sufficient (Eur. Court H.R., de Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no 77, p 19, para 39, Englert judgment of 25 August 1987, Series A no 123 p 52, para 32).

In the instant case, the Commission notes that the Constitutional Court, to which the applicant had referred an "amparo" appeal in October 1983 complaining of the excessive length of proceedings instituted four years earlier, had found that having regard to the possible consequences of the delay in the proceedings for the applicant and the backlog of cases in the 9th Court of First Instance in Barcelona the case did not justify priority treatment, and it had therefore dismissed the petition. It therefore does not seem likely that the applicant would have had any chance of success with a further "amparo" appeal complaining of the delay in the appeal proceedings, which lasted approximately two years and five months. In this connection, the Commission recalls its case-law to the effect that "the rule concerning exhaustion of domestic remedies does not require that an appeal be introduced which would have no chance of success" (No 7308/75, Dec 12 10 78 D R 16 p 32).

In the circumstances, the Commission expresses the view that the applicant must be considered as having exhausted all domestic remedies.