

APPLICATION N° 23784/94

Maria Alice PIRES NENO v/PORTUGAL

DECISION of 10 January 1995 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) Inapplicable when the person concerned cannot assert on arguable grounds that the domestic law recognises the right claimed, that the right is the subject of a dispute ("contestatton") and that it is "civil".*
 - b) This provision does not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States*
 - c) Inapplicable, for want of an arguable right, to proceedings in which the applicant invokes before the domestic courts a right already successfully invoked before the Convention organs*
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THE FACTS

The applicant is a Portuguese citizen. She was born in 1950 and lives in Amadora (Portugal).

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 12 September 1991, acting in her own right and as legal guardian of her two children, the applicant brought a summons in Porto Administrative Court (tribunal administrativo do círculo do Porto) against the State in tort pursuant to legislative

decree No 48051 of 21 November 1967. She claimed compensation for the excessive length of the proceedings she had brought, together with her two children, in Alfândega da Fé Court on 20 July 1982 seeking damages in relation to a road accident. Those proceedings had terminated on 19 September 1989.

After pleadings had been exchanged, the hearing was held on 16 June 1993.

The proceedings are still before Porto Administrative Court pending the Commission's decision.

On 4 September 1989, the applicant and her two children had lodged an application (No 15585/89) with the Commission in which they complained of the excessive length of the proceedings they had commenced in Alfândega da Fé Court on 20 July 1982.

The part of the application relating to the length of proceedings was held admissible on 9 November 1990. On 13 January 1992, the Commission (Second Chamber) adopted a report pursuant to Article 31 of the Convention and held unanimously that there had been a violation of Article 6 para 1 of the Convention owing to the excessive length of the proceedings in question.

In a Resolution of 18 May 1983 (HR (93) 18), the Committee of Ministers upheld the opinion of the Commission, noted that the Portuguese Government had paid the applicants 540,000 escudos (ESC) in just satisfaction on 5 April 1993 and concluded the examination of the case.

COMPLAINTS

The applicant complains that the length of the proceedings she brought before Porto Administrative Court cannot be deemed to be reasonable. She invokes Article 6 para 1 of the Convention.

THE LAW

The applicant complains that the length of the proceedings she brought before Porto Administrative Court cannot be deemed to be reasonable and invokes Article 6 para 1 of the Convention.

The relevant part of this provision of the Convention reads as follows:

"In the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by a tribunal."

The Commission notes firstly that the applicant brought the proceedings of which she complains in order to obtain compensation for the excessive length of the proceedings she had brought, together with her two children, in Alfândega da Fé Court and in respect of which they had lodged an application with the Commission on 4 September 1989. The subject of their complaint in that application was the excessive length of the same proceedings before Alfândega da Fé Court.

The applicant and her two children subsequently obtained compensation from the Portuguese Government for the excessive length of these proceedings, as determined by the Committee of Ministers of the Council of Europe pursuant to Article 32 of the Convention. In its Resolution (HR (93) 18), adopted on 18 May 1993 pursuant to Article 32 of the Convention, the Committee of Ministers concluded the examination of the case.

The question at issue in this case is whether the proceedings which are the subject of this application concerned the determination of "civil rights" within the meaning of Article 6 para 1 of the Convention. According to the established case-law of the Convention organs, this provision will apply only if three conditions are met: there must be, at least on arguable grounds, a right at issue, the right at issue must have been the subject of a genuine and serious "dispute" and must be of a "civil nature" (see Eur. Court H R , W. judgment of 8 July 1987, Series A no 121, pp. 34 *et seq* , para 77 *et seq*.).

The Commission further notes that Article 6 para 1 does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States (see the above-mentioned W judgment, pp. 32-33, para 73)

The Commission notes that, in the instant case, the applicant brought proceedings in Porto Administrative Court in an attempt to secure additional compensation, based on precisely the same facts and the same grounds as that awarded her as a result of the application lodged with the Commission.

The Commission is of the opinion that the applicant cannot validly plead before the domestic courts a right which she has already pleaded before the Commission and for which she has already obtained satisfaction. There are therefore no arguable grounds on which the applicant can claim a right.

The Commission concludes that the first of the conditions required to invoke Article 6 para 1 is not met in the particular circumstances of this case because the applicant cannot assert, at least on arguable grounds, the existence of a right. This provision of the Convention is therefore inapplicable to the proceedings in question.

The application must therefore be rejected pursuant to Article 27, para. 2 as incompatible *ratione materiae* with the provisions of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.