

APPLICATIONS N° 26114/95 and N° 26455/95 (joined)

**CONSEJO GENERAL DE COLEGIOS OFICIALES DE ECONOMISTAS DE
ESPAÑA v/SPAIN**

DECISION of 28 June 1995 on the admissibility of the applications

Article 25, paragraph 1 of the Convention: *A public-law corporation (Spain) performing official duties such as the Governing Council of the Associations of a given profession, does not have locus standi to bring an application, as it is neither a "non governmental organisation" nor a "group of individuals".*

THE FACTS

1. *Particular circumstances of the case*

The applicant is the General Council of Official Economists' Associations in Spain, which was set up by Regulation (Orden) of 28 June 1971 and is situated in Madrid. It was represented before the Commission by Mr. Ramón C. Pelayo Jiménez, a lawyer practising in Madrid

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

1. Application No 26114/95

On 26 March 1991, the applicant filed an application with the Supreme Court for judicial review of Decree (Real Decreto) No 338/1990 of 9 March 1990 and its Implementing Regulation (Orden) of 14 March 1990 relating to the characteristics and method of use of tax registration numbers. The applicant contested the procedure

whereby the above-mentioned Decree and its Implementing Regulation had been promulgated and claimed that decrees were a matter for the legislature. It also claimed that the decree in question infringed the principle of respect for private life (*intimidad*) guaranteed under Article 28 of the Constitution.

On 7 October 1992 the Supreme Court ruled the application inadmissible on the ground that the applicant did not have *locus standi* to bring an action as it did not have a direct and legitimate interest in the outcome of the dispute. The judgment specified that the obligation on economists to use a tax registration number derives from their capacity as citizens and not from their profession.

On 16 December 1992 the applicant filed an "amparo" appeal with the Constitutional Court claiming that its rights to a fair hearing within a reasonable time and to respect for its private life (Articles 24 and 18 para. 4 of the Constitution) had been violated. In a judgment of 9 May 1994, which was served on 16 May 1994, the Constitutional Court dismissed the appeal on the ground that the appellant did not have *locus standi* to bring the action in question.

2. Application No. 26455/95

On an unspecified date, probably in 1988, the applicant applied to the Supreme Court for judicial review of the Regulation (*Orden*) of the Ministry for Economic Affairs and Finance of 8 April 1988 relating to the obligation to file tax returns and to the rules governing the declaration of income tax and real and personal property tax for the preceding year, seeking to have it annulled and declared unconstitutional.

On 4 November 1993 the Supreme Court ruled the application inadmissible on the ground that the applicant lacked *locus standi* to bring the action in so far as it did not have a direct and legitimate interest in the outcome of the dispute.

The applicant then filed an "amparo" appeal with the Constitutional Court claiming that the proceedings were unfair. In a decision of 23 May 1994, which became final on 24 June 1994, the Constitutional Court dismissed the appeal, referring to the 9 May 1994 judgment (see 1. above) in which the "amparo" appeal submitted by the applicant, in a case concerning essentially the same issue, had been dismissed on the ground that the applicant did not have *locus standi* to bring the action.

II *Relevant domestic law and practice*

(Original)

Ley de Colegios Profesionales (ley 2/1974 de 13 de Febrero de 1974)

Artículo 9

"Los Consejos Generales de los Colegios tienen a todos los efectos la condición de Corporación de Derecho Público, con personalidad jurídica propia y plena capacidad de obrar."

(Translation)

Professional Associations Law (Law 2/1974 of 13 February 1974)

Article 9

"The General Councils of Professional Associations are public-law corporations, endowed with legal personality and full legal capacity"

COMPLAINTS

1 Application No 26114/95

The applicant complains first that the refusal to recognise its capacity to bring legal proceedings in this case and its resulting inability to secure a ruling by the courts on the merits of the case violate its right to a fair hearing and its right of access to a court. It submits further that the courts have reached different decisions in other similar cases and considers that it did not have an effective remedy. It invokes Articles 6 para 1 and 13 of the Convention.

The applicant complains that the obligation to use a tax registration number and the lack of any control over the way in which it can be used through information technology infringes its right to respect for its private life. It alleges that there has been a violation of Article 8 of the Convention and considers that this interference is not justified under paragraph 2 of that Article.

2 Application No 26455/95

The applicant confines itself to re-submitting the arguments set out above in respect of the alleged violation of Article 6 para 1 of the Convention.

THE LAW

The applicant invokes Article 6 para 1 of the Convention, alleging that, on the facts, the refusal to recognise its capacity to bring legal proceedings and, consequently, its inability to secure a ruling on the merits violate its right to a fair hearing and its right of access to a court. On this point, it stresses that the courts have reached different decisions in similar cases.

In Application No 26114/95, the applicant considers that it did not have an effective remedy. It then complains that the obligation to use a tax registration number and the lack of any control over the way in which it can be used through information technology constitute an unjustified interference with its right to respect for its private life, contrary to Articles 13 and 8 of the Convention.

The Commission considers that it should examine first whether, under Article 25 of the Convention, the applicant has *locus standi* to introduce an application

That provision provides that the Commission may receive applications from any person, non-governmental organisation or group of individuals. The question therefore arises whether the applicant can be deemed to be a non-governmental organisation within the meaning of that provision

The Commission notes in this respect that the General Councils of Professional Associations are public-law corporations which perform official duties assigned to them by the Constitution and the legislation. They are quite clearly not non-governmental organisations within the meaning of Article 25 of the Convention (see No. 5767/22 and others, Dec. 31.5.74, Yearbook 17 pp 338, 352 and No. 15090/89, Dec. 7.1.91, D.R. 68 p 209). The Commission recalls in this respect that the restriction of the category to non-governmental organisations excludes both governments and the central organs of the State. Where powers are distributed along decentralised lines, no national authority exercising public functions can introduce an application. It is clear from an examination of the legislation applicable to the General Councils of Professional Associations that they fall into this category.

The Commission considers that the applicant cannot be considered as a person or a group of individuals within the meaning of Article 25 of the Convention. It notes that such an interpretation would not be compatible with the distinction drawn in that provision between non-governmental organisations, on the one hand, and individuals or groups of individuals on the other hand (No. 5767/72, *op cit* p.352)

It follows that the applicant could not at any time introduce an application under Article 25 of the Convention. The application is therefore incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 27 para. 2 of the Convention

For these reasons, the Commission, unanimously,

ORDERS THE JOINDER of Applications Nos. 26114/95 and 26455/95,

DECLARES THE APPLICATIONS INADMISSIBLE