

February 2014

Martins Alves v. Portugal (dec.) - 56297/11

Decision 21.1.2014 [Section II]

Article 35

Article 35-3

Abuse of the right of petition

Representative's failure to inform Court that he had lodged two separate applications concerning the same facts on behalf of a husband and wife:
inadmissible

Facts – In 2004 a private company initiated civil liability proceedings against the applicant and several other persons, including the applicant's husband.

In January 2011 the husband lodged an application (5340/11) with the Court, complaining about the length of the proceedings. The instant application was lodged in August 2011, while the application lodged by the applicant's husband was still pending. The same lawyer acted in respect of both applications.

In 2013 the Court examined the husband's application and found a violation of Article 6 § 1 and Article 13 on account of the length of the proceedings. The Court awarded him EUR 4,500 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses.

Law – Article 35 § 3: When lodging the instant application, the applicant's representative, who had previously lodged numerous applications with the Court and was thus familiar with the procedure, had omitted to inform the Court that the case related to the same domestic proceedings as in the husband's application, or that the applicant in the instant case was the wife of the applicant in the previous case and that they had appeared jointly before the domestic courts.

The lodging, at different times, of two separate applications which could be considered essentially the same did not *per se* constitute an abuse of the right of application. However, the Court did not see any legitimate reason why the applicant's complaint had not been lodged with her husband's, particularly since both spouses had appeared jointly in the proceedings before the domestic courts and both had been represented by the same lawyer. In addition, the applicant's representative had submitted incomplete and therefore misleading information. This omission had become all the more important after the matter at issue in the present case was determined by the Court, on the merits, in its judgment of 2 April 2013, and the applicant's husband was awarded compensation under Article 41. If the lawyer concerned had joined the present application to the application lodged by the applicant's husband, the Court would not have made any greater award in respect of non-pecuniary damage and costs and expenses, as the subject matter was the same, and the applicant and her husband had been parties to the same domestic proceedings, formed a single household and were represented by the same lawyer.

Finally, the Court had already held that two applications in which the applicants were represented by the lawyer in question had constituted an abuse of the right of application, while three other applications brought by that lawyer himself had been considered to be essentially the same as previous applications. In this connection, the Court emphasised that lawyers had to demonstrate a high level of professional prudence and genuine cooperation with the Court and avoid lodging unmeritorious complaints. Otherwise, their credibility would be undermined and – in the event of systematic abuses – they might be excluded from the proceedings under Rule 36 § 4 (b) and Rule 44D of the Rules of Court.

The conduct of the applicant's representative in the instant case had been contrary to the purpose of the right of individual petition as provided for in Article 34 and the application was therefore to be rejected as an abuse thereof.

Conclusion: inadmissible (abuse of the right of application).

(See [Ferreira Alves v. Portugal](#), 5340/11, 2 April 2013)

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