

APPLICATION N° 32849/96

GRUPO INTERPRES S A v/SPAIN

DECISION of 7 April 1997 on the admissibility of the application

Article 10, paragraph 1 of the Convention *This provision mainly concerns access to general sources of information but does not guarantee an absolute right of access to the archives of domestic court registries containing information on the assets of a third party and access to which is subject to a legitimate interest*

Article 10, paragraph 2 of the Convention *The scope of the right of access to information can be restricted where it infringes the rights of others, in particular the rights protected by Article 8*

In the instant case, the refusal to grant the applicant company, whose object was selling its customers information about third parties general access to the archives of domestic court registries may be considered as a necessary interference with the protection of the rights safeguarded by Article 8 and proportionate to the aim pursued

Article 26 of the Convention

- a) *In order to exhaust domestic remedies, the applicant must have submitted, at least in substance, the complaint which it brings before the Commission*
 - b) *In Spain, with regard to a complaint that court decisions are not pronounced in open court an appeal for protection of fundamental rights (amparo) to the Constitutional Court is a remedy which has to be exhausted*
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THE FACTS

The applicant is a public limited company providing services. It was formed on 11 September 1986 and is situated in Malaga. Its object is to sell its customers, which are banks and financial companies, information on the assets of individuals and artificial persons seeking loans. It was represented before the Commission by Mr Antonio García Ramírez, a lawyer practising in Madrid.

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

A *Particular circumstances of the case*

The applicant requested access to a number of court registries' archives in order to consult the decisions given in various civil proceedings and compile its data files. It relied, in support of its requests, on the principle laid down in the Constitution and the Judicature Act that court decisions are public.

On 13 June 1989, Barcelona Court of First Instance No. 20 requested an opinion from the President of Catalonia High Court. In a decision of 27 June 1989, Catalonia High Court (*sala de Gobierno* - division dealing with internal administrative matters) specified that, pursuant to section 266 of the Judicature Act, access to court archives was limited to interested parties.

That decision was upheld on appeal on 13 July 1989. The applicant appealed against both decisions to the General Council of the Judiciary, which, in a decision of 15 November 1989, reversed them and ruled that the applicant had a right of access to judgments held in court registries, in accordance with the principle that decisions and judgments are public.

In a decision of 21 December 1991, the Canary Islands High Court refused the applicant's request for access to all the decisions of Las Palmas First-Instance Court. It considered that the applicant's request exceeded the scope of the General Council of the Judiciary's decision of 15 November 1989.

On 7 February 1991 the applicant lodged a further appeal with the General Council of the Judiciary, which, in a decision of 10 April 1991, upheld the decision of the Canary Islands High Court on the basis of a report prepared by the Studies and Reports Commission. It found that the applicant's interest was not protected either by the principle that court decisions are public or by the right to receive information and concluded that the aim pursued by the applicant interfered with the right to respect for the private and family life of the persons concerned. The court specified, moreover, that "an interested party" was one who had a direct and legitimate personal interest and was directly affected by the final decision in court proceedings. It therefore concluded that the applicant could not claim to have an "interest" in obtaining access to decisions held at court registries given in proceedings concerning the assets of third parties.

The applicant then applied to the Supreme Court for judicial review of this decision. Its application was dismissed on 3 March 1995. The court held that a registry's records and archives could not be deemed to be a general source of information since access was limited to 'interested parties'. The court also held that an applicant had to prove a genuine interest in each request. It noted that, having regard to the applicant's object, blanket access to judgments delivered by first-instance courts in any type of proceedings, as had been requested, did not guarantee the right to respect for the private and family life of persons who had been the subject of the proceedings in respect of which the judgments were requested.

The applicant then lodged an appeal for protection of fundamental rights (*amparo*) with the Constitutional Court. In a decision of 18 December 1995, served on 22 December 1995, the Constitutional Court dismissed its appeal on the ground that its alleged right of access to court registries could not be justified on grounds of the right to impart and receive truthful information (Article 20 of the Constitution) in so far as the applicant's object - the sale of information - was not concerned with informing the public, which was the purpose of the provision in question.

B *Relevant domestic law*

(Original)

Ley Orgánica del Poder Judicial

Artículo 266 par 1

Las sentencias, una vez extendidas y firmadas por el Juez o por todos los Magistrados que las hubieran dictado, serán depositadas en la Secretaría del Juzgado o Tribunal y se permitirá a cualquier interesado el acceso al texto de las mismas.

(Translation)

Judicature Act

Section 266(1)

'Court judgments, after being pronounced and signed by the judge or judges having pronounced them, shall be held in the relevant court registry and access thereto shall be granted to any interested party.

COMPLAINTS

The applicant complains that the Spanish courts, in refusing it access to the court registry's archives, interfered with its right to receive information. It submits that decisions are not normally pronounced in open court and invokes Article 6 para. 1 and Article 10 of the Convention.

THE LAW

The applicant complains that the Spanish courts, in refusing it access to the court registry's archives, violated its right to receive information and submits that court decisions are not normally pronounced in open court. The applicant invokes Article 6 para. 1 and Article 10 of the Convention, the relevant parts of which read as follows:

Article 6

1 " Judgment shall be pronounced publicly.

Article 10

"1 Everyone has the right to freedom of expression. This right shall include freedom to receive information and ideas without interference by public authority and regardless of frontiers.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society for the protection of the rights of others [and] for preventing the disclosure of information received in confidence."

Regarding the applicant's submission that court decisions are not normally pronounced publicly, the Commission notes that it omitted to raise expressly, or even in substance, in its *amparo* appeal before the Constitutional Court, the complaint which it now brings before the Commission.

The applicant has not therefore exhausted domestic remedies. This part of the application must therefore be rejected, pursuant to Articles 26 and 27 para. 3 of the Convention.

In so far as the applicant complains, invoking Article 10 of the Convention, that it was refused access to the court registry's archives, the Commission recalls its previous case law (see No. 8383/78, Dec. 3 10 79, D.R. 17, p. 227) to the effect that the right to receive information mainly concerns access to general sources of information and is intended basically to prohibit a Government from restricting a person

from receiving information that others wish or may be willing to impart to him (see Eur Court HR, *Leander v Sweden* judgment of 26 March 1987, Series A no 116, p 29, para 74)

The Commission notes that it is clear from the actual wording of section 266 of the Judicature Act that a court registry's archives, where judgments are held, are not a generally accessible source of information since, in order to consult them, evidence of a legitimate interest must be furnished. It observes that the General Council of the Judiciary and the domestic courts adopted a narrow interpretation of the term "interested party", intended to protect the right to private life guaranteed by Article 18 of the Constitution. The Commission considers that its role is not to give a decision on whether the interpretation of the provisions of domestic law was or was not correct, as such an interpretation is a matter exclusively for the domestic courts.

The Commission notes that, in the instant case, the Supreme Court found that, having regard to the applicant company's object, blanket access to judgments delivered by first instance courts concerning any type of proceedings did not guarantee the right to respect for the private and family life of third parties who had been the subject of the proceedings in respect of which the judgments were requested. The Commission notes that the applicant was not requesting information which concerned it personally, but a right of access to general information (cf No 10392/83, Dec 13 4 88, D R 56, p 13) and recalls that the company's object was the sale to its customers, for money, of information which it sought to obtain from court registries.

The Commission notes, additionally, the Constitutional Court's finding that access to court registries could not be justified in terms of the right to impart and receive information (Article 20 of the Constitution) because the sale of commercial information, which was the applicant company's object, was not concerned with informing public opinion, which is the purpose of the provision in question.

The Commission notes that the Spanish courts provided full reasons for their decisions, which cannot be considered to be arbitrary. It considers that, in the instant case, Article 10 of the Convention neither confers on an individual or company (particularly one whose object is the sale to its customers of information concerning third parties obtained from court registries) an absolute right of access to archives containing information on the assets of a third party, nor obliges the authorities to impart such information to whomsoever should request it (cf No 11854/85, Dec 15 10 87, D R 54, p 153). Where the exercise of this right may interfere with the rights of others, and in particular with the rights protected by Article 8 of the Convention, the scope of the right of access to the information in question is limited by the wording of paragraph 2 of Article 10 of the Convention.

The Commission notes that the applicant was claiming a general right of access to the archives of court registries and not a right of access to specific decisions. The Commission recalls that the Contracting States enjoy a certain margin of appreciation in this area and have a duty to strike a balance between the protection of the freedom in question and the protection of the right to private life of individuals affected by the decisions and information contained in the court registry's archives to which the applicant requests access.

In the circumstances of this case and having regard to the margin of appreciation left to the States, to the limited interference with the exercise of the right and to the importance of protecting the rights guaranteed under Article 8 of the Convention, the Commission considers that the interference with the exercise of the applicant's rights cannot be deemed to have been disproportionate to the aim pursued since the applicant could have gained access to the information in question if it had been able to demonstrate a legitimate interest.

It follows that the application must be rejected as manifestly ill founded, pursuant to Article 27 para 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.