BGE 20130409_10296_10 vom 9. April 2013

Bundesgericht (BGE), 2013-04-09, FR

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Accès à un tribunal. Refus du Tribunal fédéral d'entrer en matière sur un recours pour défaut de motivation. Dans son recours, la requérante, non représentée par un avocat, a critiqué l'appréciation des preuves de l'autorité inférieure et requis une aide sociale de manière générale, sans préciser qu'elle demandait une rente d'invalidité. Elle n'a pas fait valoir de raisons particulières l'ayant empêchée de le faire si ce n'est le peu de temps à disposition, et n'a pas informé le Tribunal fédéral de ses difficultés. Quoi qu'il en soit, elle n'avait pas droit à un délai supplémentaire, de sorte que le Tribunal fédéral n'a pas fait preuve de formalisme excessif ni enfreint son droit d'accès à un tribunal en refusant d'entrer en matière. Conclusion: requête déclarée irrecevable. Inhaltsangabe des BJ(2. Quartalsbericht 2013) Recht auf ein faires Verfahren (Art. 6 Abs. 1 EMRK); Nichteintreten auf eine Beschwerde wegen ungenügendem Rechtsbegehren. Die Beschwerdeführerin rügte gestützt auf Art. 6 Abs. 1 EMRK, das Bundesgericht habe exzessiven Formalisums angewendet, indem es ihre Beschwerde nicht zur Entscheidung annahm. Das Bundesgericht war auf die Beschwerde nicht eingetreten, weil diese kein den gesetzlichen Vorgaben genügendes Rechtsbegehren enthielt. Der Gerichtshof hielt fest, dass die Beschwerdeführerin in ihrer Beschwerde an das Bundesgericht bloss in allgemeiner Weise auf Sozialleistungen verwies, ohne genau anzugeben, welche Art von Leistungen sie beantragte. Er befand, dass diese Angabe für die Beurteilung der Beschwerde relevant gewesen wäre, weshalb nicht gesagt werden könne, der Entscheid, auf die Beschwerde nicht einzutreten, sei formalistisch. Unzulässigkeit infolge offensichtlicher Unbegründetheit (Mehrheit).

Regeste DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Accès à un tribunal. Refus du Tribunal fédéral d'entrer en matière sur un recours pour défaut de motivation. Dans son recours, la requérante, non représentée par un avocat, a critiqué l'appréciation des preuves de l'autorité inférieure et requis une aide sociale de manière générale, sans préciser qu'elle demandait une rente d'invalidité. Elle n'a pas fait valoir de raisons particulières l'ayant empêchée de le faire si ce n'est le peu de temps à disposition, et n'a pas informé le Tribunal fédéral de ses difficultés. Quoi qu'il en soit, elle n'avait pas droit à un délai supplémentaire, de sorte que le Tribunal fédéral n'a pas fait preuve de formalisme excessif ni enfreint son droit d'accès à un tribunal en refusant d'entrer en matière. Conclusion: requête déclarée irrecevable. Synthèse de l'OFJ(2ème rapport trimestriel 2013) Droit à un procès équitable (art. 6 § 1 CEDH); irrecevabilité d'un recours en raison de conclusions insuffisantes. La requérante fit valoir que le Tribunal fédéral avait agi avec formalisme excessif en déclarant irrecevable son recors. Le Tribunal fédéral n'était pas entré en matière parce que le recours ne contenait pas de conclusions telles qu'exigées par la législation applicable. La Cour constata que, dans son recours, la requérante n'avait mentionné que de manière générale des prestations sociales, sans indiquer quel type de

prestations elle demandait. Elle estima que ces précisions étaient pertinentes pour l'examen du recours et que la décision du Tribunal fédéral n'apparaissait ainsi pas comme formaliste. Irrecevable pour défaut manifeste de fondement (majorité).

Regesto Questo riassunto esiste solo in francese. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH. Accès à un tribunal. Refus du Tribunal fédéral d'entrer en matière sur un recours pour défaut de motivation. Dans son recours, la requérante, non représentée par un avocat, a critiqué l'appréciation des preuves de l'autorité inférieure et requis une aide sociale de manière générale, sans préciser qu'elle demandait une rente d'invalidité. Elle n'a pas fait valoir de raisons particulières l'ayant empêchée de le faire si ce n'est le peu de temps à disposition, et n'a pas informé le Tribunal fédéral de ses difficultés. Quoi qu'il en soit, elle n'avait pas droit à un délai supplémentaire, de sorte que le Tribunal fédéral n'a pas fait preuve de formalisme excessif ni enfreint son droit d'accès à un tribunal en refusant d'entrer en matière. Conclusion: requête déclarée irrecevable. Sintesi dell'UFG(2° rapporto trimestriale 2013) Diritto ad un processo equo (art. 6 cpv. 1 CEDU); non entrata nel merito di un ricorso per richiesta insufficiente. Appellandosi all'art. 6 cpv. 1 CEDU, la ricorrente ha contestato che il Tribunale federale ha adottato un eccessivo formalismo decidendo di non entrare nel merito del suo ricorso. Il Tribunale federale aveva deciso in tal senso, in quanto il ricorso non conteneva alcuna richiesta sufficiente secondo le disposizioni di legge. La Corte ha constatato che nel ricorso presentato al Tribunale federale la ricorrente aveva fatto riferimento a prestazioni sociali in generale, senza indicare precisamente che tipo di prestazioni chiedeva. La Corte ha ritenuto che tale indicazione sarebbe stata rilevante per la valutazione del ricorso, per cui non si può dire che la decisione di non entrata nel merito sia stata formalistica. Il ricorso è irricevibile per manifesta mancanza di fondamento (maggioranza).

Erwägungen

E. 1

The applicant, Ms Ida Mariani-Bellucci, is an Italian national, who was born in 1949 and lives in Biel. She was represented before the Court by Ms E. Megévand, a lawyer practising in Bern. A. The circumstances of the case

E. 2

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

E. 3

On 7 February 2008 the competent authority rejected the applicant's request to be granted a disability pension(Invalidenrente).

E. 4

On 12 March 2008 the applicant lodged a complaint in which she requested that the decision of 7 February 2008 be quashed and that she be granted a disability pension. On 28 May 2009 the Administrative Court of the Canton of Bern rejected her complaint.

E. 5

On 25 June 2009 the applicant's counsel informed the applicant that she would not lodge an appeal with the Federal Supreme Court. She referred to a conversation with the applicant's daughter in this respect.

E. 6

On 27 June 2009 the applicant, who had been unable to find new counsel before the expiry of the time-limit for a complaint to the Federal Supreme Court on 28 May 2009, personally lodged her complaint with the Federal Supreme Court. In her complaint she requested the Federal Supreme Court to quash the judgment given by the Administrative Court on 28 May 2009. She submitted that the relevant amount in dispute had been attained as the case concerned social benefits(Sozialversicherungsleistungen) to be granted retroactively as from the year 2002. She further submitted that the Administrative Court had failed correctly to assess the available evidence.

E. 7

On 21 July 2009 the Federal Supreme Court refused to accept the applicant's complaint for adjudication as being inadmissible. The Federal Supreme Court observed that under Article 42 § 1 of the Federal Act on the Federal Supreme Court (see paragraph 9, below) the legal petition had to contain the request for relief. Relying on its own case-law, the Federal Supreme Court further recalled that it was, as a rule, not sufficient to request the impugned decision to be quashed, but that the petition had to contain a request on the merits (materieller Antrag). This request for relief could also be contained in the reasoning of the petition.

E. 8

The Federal Supreme Court considered that the applicant's request to quash the Administrative Court's judgment was insufficient, as it did not contain a statement as to how the court should decide on the merits. The Federal Supreme Court further considered that the reasoning submitted by the applicant did not contain a sufficient request on the merits. The applicant had completely failed to submit which sort of benefits she claimed (e.g. medical or professional rehabilitation measures, disability pension, respectively the starting point and the amount of pension rights claimed). There was no room for setting an appropriate time-limit, as this was only permitted under the circumstances enumerated in Article 42 §§ 5 and 6 of the Federal Law on the Federal Supreme Court, which did not apply to the instant case of clearly insufficient reasoning of the petition. B. Relevant domestic law

E. 9

Article 42 of the Federal Law on the Federal Supreme Court(Bundesgesetz über das Bundesgericht), in so far as relevant, reads as follows: "(1) Legal petitions have to be submitted in one of the official languages and have to contain the request for relief, the reasons therefore, together with a list of evidence and the signature. (2) The reasons have to contain succinct submissions as to why the impugned act is against the law... ... (5) In case of lack of the party's or its representative's signature, of the power of attorney or of the required enclosures or in case representation is not permitted, [the Supreme Court] sets an appropriate time-limit for amendment together with the warning that the petition will otherwise not be taken into account. (6) Illegible, inappropriate, incomprehensible [and] excessively extensive petitions and [petitions] which are not submitted in an official language may be rejected for amendment in the same way. ..." COMPLAINT

E. 10

The applicant complained under Article 6 § 1 of the Convention that the Federal Supreme Court had applied excessive formalism when refusing to accept her complaint for adjudication. Erwägungen THE LAW

E. 11

The applicant complained about the Federal Supreme Court's refusal to examine the merits of her complaint. She relied on Article 6 of the Convention, the relevant part of which provides: "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

E. 12

The applicant submitted that the Federal Supreme Court had examined the admissibility of her complaint with excessive formalism. It had, in particular, failed to take into account that the petition had been submitted by a lay person. Under these circumstances, the Federal Supreme Court should have granted her a time-limit to amend her petition. It was practically impossible for a lay person to lodge a petition without being represented by counsel. This amounted to a denial of justice.

E. 13

The applicant further considered that the reasoning she submitted, and, in particular, the reference to retroactive social benefits, made sufficiently clear that she pursued her original request to be granted a disability pension.

E. 14

In the case of Andreyev v. Estonia (no. 48132/07, § 66-68, 22 November 2011), the Court has summarised its case-law on the right of access to a court of appeal or of cassation as follows: "66. The Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see Sabeh El Leil v. France [GC], no. 34869/05 , § 50, 29 June 2011; Andrejeva v. Latvia [GC], no. 55707/00, § 98, 18 February 2009; Kulikowski , cited above, § 58; Sialkowska , cited above, § 101; and Airey v. Ireland , 9 October 1979, § 24, Series A no. 32). 67. Furthermore, the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent as to impair the very essence of the right. Furthermore, such limitations will only be compatible with Article 6 § 1 if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued (see Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98 , § 44, ECHR 2001-VIII; RTBF v. Belgium , no. 50084/06 , § 69, 29 March 2011; Kemp and Others v. Luxembourg , no. 17140/05, § 47, 24 April 2008; Beles and Others v. the Czech Republic , no. 47273/99, § 61, ECHR 2002-IX; and Edificaciones March Gallego S.A. v. Spain , 19 February 1998, § 34, Reports 1998-I). 68. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with (see Delcourt v. Belgium , 17 January 1970, § 25, Series A no. 11). The manner in which this provision applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and

account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them. Given the special nature of the court of cassation's role, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in such courts may be more formal (see Meftah and Others v. France [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII; Khalfaoui v. France , no. 34791/97 , § 37, ECHR 1999-IX; Kulikowski , cited above, § 59; and Sialkowska , cited above, §§ 103-104). Nevertheless, the Court has in several cases found that a particularly strict construction of procedural rules by the supreme or constitutional courts deprived applicants of their right of access to a court (see, among others, Beles and Others , cited above, § 69; Zvolský and Zvolská v. the Czech Republic , no. 46129/99 , § 55, ECHR 2002-IX; Efstathiou and Others v. Greece , no. 36998/02, § 33, 27 July 2006; Kemp and Others , cited above, § 59, 24 April 2008; Reklos and Davourlis v. Greece , no. 1234/05 , § 28, 15 January 2009; Dattel v. Luxembourg (no. 2), no. 18522/06, § 44, 30 July 2009; and RTBF , cited above, § 74)."

E. 15

In the instant case, the Court's task consists in examining whether the reasons given by the Federal Supreme Court for refusing the applicant's complaint deprived the applicant of her right of access to a court. The Court will thus examine whether the limitations imposed on the right of appeal pursued a legitimate aim and were proportionate (compare Kemp , cited above, § 51).

E. 16

The Court notes, at the outset, that the Federal Supreme Court relied on Article 42 § 1 of the Federal Law on the Federal Supreme Court, prescribing that legal petitions had to contain the request for relief. Under the case-law referred to by the Federal Supreme Court, this meant that it was, as a rule, not sufficient to request that the impugned decision be quashed, but that the petition had to contain a request on the merits. The Court considers that the procedural rule relied upon by the Federal Supreme Court pursued a legitimate aim. In fact, the prerequisites contained in Article 42 § 1 had the clear aim of allowing the Federal Supreme Court to conduct a first examination of the complaint without prior consultation of the case-file (compare, mutatis mutandis , Kemp , cited above, § 53).

E. 17

It remains to be determined whether the Federal Supreme Court applied this provision in a proportionate way. The Court will thus proceed by examining the way in which the applicant presented her complaint to the Federal Supreme Court and on which grounds it was rejected.

E. 18

As to the content of the applicant's petition, the Court observes that the applicant requested the Federal Supreme Court to quash the judgment of the Administrative Court. She further mentioned that the case concerned social benefits and submitted that the Administrative Court had failed correctly to assess the evidence. The Federal Supreme Court observed that the applicant's petition did not contain a statement as to how the court should decide on the merits. Neither was this information contained in the reasoning submitted by the applicant. The applicant had, in particular, failed to submit which sort of benefits she claimed.

E. 19

The Court observes that the applicant did not mention in her submissions to the Federal Supreme Court that she requested to be granted a disability pension, but merely referred in a general way to social benefits, without, however, further specifying which sort of benefits she claimed. The Court accepts the domestic court's assessment that this information was relevant for the examination of her complaint. It can thus not be said that the rejection of the applicant's complaint was based on purely formalistic grounds.

E. 20

The Court takes note of the applicant's submissions that her counsel had informed her merely three days before the expiry of the relevant time-limit that she would not lodge a complaint on her behalf. The Court appreciates that it must have been difficult for the applicant to draft her complaint on her own within such a short period of time. The Court observes, however, that the applicant managed to draft a complaint and that she did not submit any specific reasons which could have prevented her from specifying her request on the merits. Furthermore, it does not appear from the applicant's submissions that she informed the Federal Supreme Court about these difficulties. Under these circumstances, the Court does not consider that the Federal Supreme Court was under an obligation under Article 6 of the Convention to allow the applicant to amend her submissions.

E. 21

In the light of the above considerations, the Court considers that the Federal Supreme Court's decision not to accept the applicant's complaint was not disproportionate in the instant case. Accordingly, there is no appearance of a violation of the applicant's right of access to court. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention. Entscheid For these reasons, the Court by a majority Declares the application inadmissible. Stanley Naismith Registrar Guido Raimondi President