EGMR 37292/97 vom 28. Juni 2001

Hudoc Ch, 2001-06-28, FR

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FR: CourEDH 37292/97 du 28 juin 2001

IT: CorteEDU 37292/97 del 28 giugno 2001

Regeste

Violation of Art. 6-1;Pecuniary damage - claim dismissed;Non-pecuniary damage - finding of violation sufficient;Costs and expenses partial award; Violation: 6;6-1

Erwägungen

E. 28

The applicant complained of various breaches of his right to a fair hearing, in particular that there had been a breach of the principle of equality of arms. The applicant relied on Article 6 § 1 of the Convention which states, insofar as relevant: "In the determination of his civil rights and obligations ... , everyone is entitled to a fair ... hearing ... by [a] ... tribunal ... ”

E. 29

The Court has first examined the applicant’s complaint of a breach of the equality of arms. He pointed out that in its observations to the Federal Insurance Court, the Administrative Court of the Canton of Schwyz had mentioned various new points. In its judgment of 10 June 1997 the Federal Insurance Court had implicitly relied on these observations, though it had failed to consider his own statement of 15 May 1997 which he had filed with that court.

E. 30

In the applicant’s view, the observations submitted by the Administrative Court demonstrated that that court had based its judgment to a significant degree on points mentioned for the first time in the observations. As a result, the applicant could not reply thereto in the proceedings before the Administrative Court. The Federal Insurance Court breached the principle of the equality of arms in that it did not take account of his submissions of 15 May 1997, whereas it did so of the observations of the Administrative Court. In principle, each party had the right to state its case in a manner which did not place it at a disadvantage compared with the other party.

E. 31

The Government contested a breach of Article 6 § 1 of the Convention, contending that the regulation provided for by the Federal Judiciary Act, in particular regarding the restricted jurisdiction of an appeal court, complied with the requirements of Article 6 § 1 of the Convention. It was submitted that, even if the Federal Insurance Court had not formally considered the applicant’s reply of 15 May 1997, in fact the applicant was able substantially to put forward his point of view. Thus, the applicant had obtained copies of the observations of the Administrative Court, albeit belatedly in view of an administrative inadvertence, and he had had the possibility to reply thereto. In the Government’s opinion, the present case thus differed from the Nideröst-Huber v. Switzerland case (judgment of 18 February 1997, Reports of Judgments and Decisions 1997-I, p. 107 et seq.) where that applicant had not

received the observations at all.

E. 32

The Government further referred to the Court's case-law, according to which the domestic court concerned did not have to examine in detail every point raised by the parties (see the van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, § 61). As a result, the applicant had no absolute right that the Federal Insurance Court explained the reasons why it dismissed the supplementary observations developed in his reply, a fortiori as that court found that the observations of the Administrative Court contained no new elements and were not pertinent for its decision to be given.

E. 33

The Government recalled that the Federal Insurance Court had actually been aware of the applicant's reply of 15 May 1997, and even commented thereupon. It was true that the Federal Insurance Court did not regard it necessary itself to order a second exchange of statements, particularly as such a second exchange had already taken place before the lower court. Nevertheless, the Federal Court gave detailed reasons for its judgment of 10 June 1997. It transpired from the latter that the applicant's observations contained "no new factual or legal points". The court went on to discuss the circumstances mentioned by the applicant, and it explained in conclusion why the elements, which the applicant regarded as new, were not in fact so. Here again, it had to be borne in mind that the Federal Insurance Court's jurisdiction was limited, and that the applicant's possibility to submit new facts was quite limited. In fact, he should have submitted the reasons stated in his reply of 15 May 1997 already before the lower court.

E. 34

According to the Court's case-law, the principle of equality of arms ■ one of the elements of the broader concept of fair trial ■ requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, among other authorities, the Ankerl v. Switzerland judgment of 23 October 1996, Reports of Judgments and Decisions 1996-V, pp. 1567 ■ 68, § 38).

E. 35

Turning to the circumstances of the present case, the Administrative Court of the Canton of Schwyz submitted observations to the Federal Insurance Court, but the applicant was not permitted to reply thereto. However, the Cantonal Court, which is an independent tribunal, could not be regarded as the opponent of the applicant in these proceedings. Accordingly, no infringement of equality of arms has been established.

E. 36

Nevertheless, the concept of fair trial also implies in principle the right for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed (see the Lobo Machado v. Portugal and Vermeulen v. Belgium judgments of 20 February 1996, Reports 1996-I, p. 206, § 31, and p. 234, § 33, respectively).

E. 37

In the present case, the observations submitted by the Administrative Court ran to five pages and expressly called for the applicant's administrative law appeal to be dismissed. In

the Court’s opinion, the effect which the observations actually had on the judgment of the Federal Insurance Court is of little consequence. Thus, the observations came from an independent tribunal which, furthermore, had a thorough knowledge of the file, having previously considered the merits of the case, and it is unlikely that the Federal Court would have paid them no heed. In fact, the Federal Court relied on these observations, inter alia , when rejecting the applicant’s complaint that the witnesses Ch.R. and R.H. had not been heard. It was therefore all the more needful to give the applicant an opportunity to comment on them if he wished to do so (see the Nideröst-Huber v. Switzerland judgment of 18 December 1997, Reports 1997-I, p. 108, § 27).

E. 38

It is true that the applicant did in fact submit a reply to the Federal Insurance Court on 15 May 1997 concerning the observations of the lower court. The respondent Government pointed out that the Federal Insurance Court had in fact been aware of this reply and even commented thereupon in its judgment of 10 June 1997. The Court nevertheless notes that the Federal Insurance Court in its judgment explicitly and unequivocally stated that “the applicant’s observations, submitted without being so requested, (could) not be legally considered”.

E. 39

Indeed, the Federal Insurance Court found it unnecessary to consider the applicant’s reply, inter alia , as the observations submitted by the lower court contained no new factual or legal points. However, the parties to a dispute should in cases such as the instant one, be given the possibility to state their views as to whether this is the case and whether or not a document calls for their comments. What is particularly at stake here is litigants’ confidence in the workings of justice, which is based on, inter alia , the knowledge that they have had the opportunity to express their views on every document in the file (see the Nideröst-Huber judgment cited above, p. 108, § 29).

E. 40

Article 6 § 1 of the Convention is intended above all to secure the interests of the parties and those of the proper administration of justice (see, mutatis mutandis , the Acquaviva v. France judgment of 21 November 1995, Series A no. 333-A, p. 17, § 66). In the present case, respect for the right to a fair trial, guaranteed by Article 6 § 1 of the Convention, required that the applicant be given the opportunity to comment on the observations submitted by the Administrative Court of the Canton of Schwyz. However, the applicant was not afforded this possibility.

E. 41

That finding alone constitutes a breach of Article 6 § 1 of the Convention. The Court consequently finds it unnecessary to examine the applicant’s further complaint under that provision that he did not have a fair hearing in that in the proceedings before the Administrative Court of the Canton of Schwyz certain witnesses were not heard and that he himself had not been properly heard (see, mutatis mutandis , the De Haes and Gijsels v. Belgium jugment of 24 February 1997, Reports 1997-I, p. 239, § 59). II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

E. 42

Article 41 of the Convention provides: “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.” A. Damage

E. 43

In respect of pecuniary damage, the applicant claimed 9,012.15 Swiss francs (CHF) of the compensation of CHF 12,462.15 which he had to pay to the Compensation Office of the Canton of Schwyz. He further claimed CHF 2,000 for non-pecuniary damage.

E. 44

The Government asked the Court to refuse these claims, arguing that there was no causal link between the alleged violation and the damage claimed.

E. 45

In the Court’s opinion, there is no causal connection between the violation complained of and the pecuniary damage alleged. It is in particular not the Court’s task to speculate as to what the outcome of the case would have been if the proceedings had been compatible with the requirements of Article 6 § 1 of the Convention (see the Nideröst-Huber judgment cited above, p. 109, § 37).

E. 46

As regards non-pecuniary damage, the Court considers that it is sufficiently compensated for by the finding of a breach of Article 6 § 1 of the Convention. B. Costs and expenses

E. 47

The applicant also requested a total of CHF 4,303.95 for costs and expenses, namely CHF 1,200 which he had incurred through the proceedings before the Federal Insurance Court and CHF 3,103.95 as costs for his lawyer.

E. 48

The Government agreed to reimburse the sum of CHF 3,103.95, while asking the Court to refuse the remainder of the claim.

E. 49

The Court observes that, according to its case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, the Philis v. Greece (no. 1) judgment of 27 August 1991, Series A no. 209, p. 25, § 74).

E. 50

In the Court’s opinion, the costs relating to the proceedings before the Federal Insurance Court could not have been incurred in order to prevent or rectify a violation affecting the proceedings in that very court. It accordingly accepts the Government’s submission that it should refuse this part of the claim. 51. In respect of the legal costs incurred by the applicant, the Court awards the sum claimed, namely CHF 3,103.95. C. Default interest 52. According to the information available to the Court, the statutory rate of interest applicable in Switzerland at the date of adoption of the present judgment is 5% per annum. FOR

THESE REASONS, THE COURT UNANIMOUSLY 1. Holds that there has been a violation of Article 6 § 1 of the Convention; 2. Holds that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant; 3. Holds (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 3,103 (three thousand one hundred and three) Swiss francs and 95 (ninety-five) centimes for costs and expenses; (b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement; 4. Dismisses the remainder of the applicant's claims for just satisfaction. Done in English, and notified in writing on 28 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Erik Fribergh Christos Rozakis Registrar President In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Bonello is annexed to this judgment. C.L.R. E.F. CONCURRING OPINION OF JUDGE BONELLO So far, after a finding by the Court that a Convention guarantee has been violated, I have consistently voted against the practice of denying the victim of that breach any non-pecuniary compensation by stating that the finding in itself constitutes just satisfaction. This I did for the reasons set down in detail in my partly dissenting opinion in "Aquilina v. Malta" (29 April 1999, 1999-3, p. 247). My consistency aimed at underscoring a longing to place a sanitary corridor between me and what I consider an undesirable practice. Now my point has been made, and in the interests of collegiality, judicial certainty and to avoid, where possible, fragmentation in decision-making, in similar cases in the future I will be joining the majority. Naturally, when, in my view, the circumstances of a specific case introduce some particularly cogent reasons why non-pecuniary compensation ought to be awarded, I will make that opinion manifest.