APPLICATION N° 21775/93

José Joaquim AIRES v/PORTUGAL

DECISION of 25 May 1995 on the admissibility of the application

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Article 6, paragraph 1 of the Convention *Inapplicable to a decision relating only to court costs as a subsidiary matter*

Article 1, paragraph 1 of the First Protocol *Inapplicable, for lack of any interference with the right to peaceful enjoyment of possessions, to a decision on court costs, especially considering the small amount involved and the subsidiary nature of the decision*

Article 1, paragraph 2 of the First Protocol *Court costs are 'contributions' within the meaning of this provision*

THE FACTS

The applicant is a Portuguese citizen He was born in 1950 and lives in Amadora (Portugal) He is a lawyer

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

Particular circumstances of the case

On 15 November 1988 the applicant brought proceedings in Alfândega da Fé Court (tribunal da comarca de Alfândega da Fe) against the district council for the recovery of land

In a judgment given without a hearing (saneador-sentença) on 9 May 1989, the court dismissed the applicant's claims on the ground that his wife was not a co-plaintiff which meant that he lacked *locus standi* The court ordered the applicant to pay the court costs

The proceedings then went to the Constitutional Court

After the case-file was sent back to Alfândega da Fé Court, the registry drew up the statement of court costs The applicant was then requested to pay 5,000 escudos (PTE) (approximately 170 French francs (FRF)) in court costs

On 16 June 1992 the applicant applied to the court for a review of the statement of costs He argued that as the scale of court costs had been increased by a law passed between the date of the costs order and the date on which his statement of costs was drawn up, the costs should have been assessed in accordance with the scale in force on the date of the order and not in accordance with the new scale He assessed this amount at PTE 3,500 and alleged that he had therefore suffered loss in the sum of PTE 1,500 (approximately FRF 50)

On 22 September 1992 the court dismissed his complaint, stressing that legislation amending rules of procedure is immediately enforceable The applicant was also ordered to pay the court costs of the application for review (PTE 5,000)

This decision is not subject to further appeal

Relevant domestic law and practice

Following publication of Legislative Decree No 387-D/87 of 29 December 1987 increasing the scale of court costs and a number of court decisions delivered in *inter partes* proceedings on the application of that Decree to court costs, Legislative Decree No 92/88 was published on 17 March 1988 Article 5 para 2 of that Decree provides that

> " all statements of costs must be drawn up in accordance with the legislation in force on the date of the relevant decision ordering the party to pay the court costs "

According to legal writers and the established case law of the higher courts, that is, the Supreme Court and the Constitutional Court, legislation on the scales, reduction or increase of court costs applies only to obligations to pay court costs arising while this legislation is in force The obligation itself to pay court costs arises when the decision is made containing an order for costs

COMPLAINTS

1 The applicant invokes Article 6 para 1 of the Convention, complaining that he did not have a fair hearing regarding the courts' decisions on the court costs He argues that the judge misdirected himself in law as it is clear from statute, case law and the writings of legal commentators that statements of costs must be drawn up in accordance with the legal provisions in force when the relevant judgment is delivered He argues further that the order to pay the costs of bringing his complaint is punitive and hinders the right of access to a court

2 The applicant also complains that the courts' decisions resulted in a violation of his right to peaceful enjoyment of his possessions and he invokes Article 1 of Protocol No 1 to the Convention

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 February 1993 and registered on 28 April 1993

On 11 May 1994 the Commission (Second Chamber) decided to give notice of the application to the respondent Government and to invite them to submit their written observations on its admissibility and merits

The Government submitted their observations on 20 July 1994 and the applicant replied on 31 August 1994

On 24 May 1995 the Chamber relinquished jurisdiction in this case in favour of the Plenary Commission

THE LAW

1 The applicant complains that he did not have a fair hearing regarding the courts' decisions on the court costs He invokes Article 6 para 1 of the Convention which provides, in so far as relevant

> "In the determination of his civil rights and obligations , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law "

The Commission observes that the applicant's complaint relates only to decisions in relation to court costs Such decisions inherently concern matters which are subsidiary to the main issue in the substantive proceedings The Commission observes that the question of court costs may also arise in proceedings regarding issues which clearly fall outside the scope of Article 6 para 1 of the Convention and that it would therefore be unreasonable to require a special procedure, complying with the

requirements of that provision, for the determination of those costs The Commission stresses, moreover, that the applicant does not claim that the decisions on the court costs affected the fairness of the proceedings as a whole

The Commission concludes that in so far as the impugned decisions concerned only the subsidiary issue of the order for court costs, they did not involve the determination of the applicant's civil rights and obligations (see No 12446/86, Dec 5 5 88, D R 56 p 229 and No 18623/91, Dec 2 12 91, unpublished)

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 27 para 2 of the Convention

2 The applicant complains further that the courts' decisions resulted in a violation of his right to peaceful enjoyment of his possessions contrary to Article 1 of Protocol No 1 which provides that

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties

The Government object from the outset that the case is incompatible *ratione materiae* with the Convention They submit that, as the domestic legislation on court costs does not fall within the scope of Article 1 of Protocol No 1, the Commission does not have jurisdiction to examine this complaint

In the alternative, the Government argue that even supposing that the situation complained of by the applicant can be examined under this provision of the Convention, there is no appearance of a violation as the domestic courts confined their examination to interpreting and applying domestic legislation The fact that the applicant disagrees with the impugned decisions is insufficient to find a violation of the Convention, especially as the Convention institutions are not appellate bodies competent to review domestic courts' decisions

The applicant claims that as the judge misdirected himself in law, he has suffered an unjustified interference with his right to peaceful enjoyment of his possessions

The Commission first examined whether this provision of the Convention is applicable to the situation here It recalls that in its decisions S v FRG (No 7544/76,

Dec 12 7 78, D R 14 p 60) and X and Y v Austria (No 7909/74, Dec 12 10 78, D R 15 p 160) it decided that the costs of court proceedings were "contributions" within the meaning of Article 1 of Protocol No 1 As the second paragraph of that Article provides that member States may enforce such laws as they deem necessary to secure the payment of contributions, it may fall to the Commission, in accordance with its established case-law, to examine whether the interference, if any, with the applicant's right to peaceful enjoyment of his possessions was justified under that provision

The Commission observes nevertheless that in a later case it considered that the decision on the subsidiary matter of court costs does not involve a determination of civil rights and obligations (see the aforementioned Applications Nos 12446/86 and 18623/91)

The Commission considers that this is an important development in its case-law which affects, to an extent, its decision on the issue before it The question arises as to how far, in view of the particular circumstances of the case, the costs order against the applicant can be construed as an interference with his right to peaceful enjoyment of his possessions, given that such a situation does not fall within the scope of Article 6 of the Convention, which, the Commission stresses, does apply to disputes concerning the right to property

As the determination of the court costs is a subsidiary matter in this case which has no link with the main proceedings and as the amount involved is minimal, the Commission considers that the mere decision on the court costs to be ordered against the applicant when his case was dismissed could not in this case amount to a violation of the right protected by Article 1 of Protocol No 1

It follows that the applicant's complaint falls outside the scope of Article 1 of Protocol No 1 This part of the application is therefore incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 27 para 2 thereof

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE