COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF CAÑETE DE GOÑI v. SPAIN

(Application no. 55782/00)

FINAL

15/01/2003

JUDGMENT

STRASBOURG

15 October 2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Cañete de Goñi v. Spain,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 June and 24 September 2002,

Delivers the following judgment which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 55782/00) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mrs María Del Carmen Cañete de Goñi ("the applicant") on 4 February 2000.

2. The applicant alleged that she had been denied a fair trial in administrative proceedings in the Andalusia Higher Court of Justice, as a decision that had undeniably caused her damage – namely the loss of her senior teaching post – had been handed down without her being summoned to give evidence as an interested party. She relied on Article 6 § 1 of the Convention.

3. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

5. By a decision of 15 January 2002, the Chamber declared the application admissible.

6. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 25 June 2002 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mr J. BORREGO BORREGO, Head of the Legal Department
for Human Rights, Ministry of Justice, *Agent*;

(b) *for the applicant*
Mr A. DE LA PLAZA ZENNKI, Lawyer, *Counsel*.

The Court heard addresses by the above-mentioned representatives.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1950 and lives at Jerez de la Frontera (in the province of Cadiz).

She teaches history and geography at secondary-school level. From 1 July 1989 to 30 June 1994 she was the head teacher of a secondary school in Jerez de la Frontera where she taught.

9. The Autonomous Community of Andalusia gave notice through an advertisement in the Official Gazette of 31 December 1991 of an internal competition to fill 2,014 senior teaching posts at secondary-school level. On 16 February 1993 the Department of Education and Science of the Autonomous Community of Andalusia ("the Department") published a provisional list of the candidates whose applications to take part in the competition had been accepted. The final list comprised 4,901 candidates, including the applicant, and was published on 27 March 1993.

10. On 9 December 1993 the Department published the candidates' assessments and the number of marks awarded to each under the chosen selection criteria, in order to allow any complaints to be lodged.

11. By an order of 7 February 1994, it published a final list of the candidates, including the applicant, who had passed the examination.

12. In January 1994 more than 300 candidates issued proceedings in the Administrative Division of the Andalusia Higher Court of Justice complaining about the manner in which the competition had been organised and, in particular, of the use of, and weighting given to, teacher-training diplomas in the assessment process, which they maintained was discriminatory. Notice of each individual application was published in the Official Gazette of the province of Seville. The national and regional press carried reports that a large number of legal actions had been brought

complaining about the organisation and results of the competition and that senior officials in the Andalusian government or members of their families had passed the examination as a result of the significant weighting given to one of the assessment criteria. The dispute was referred to the Ombudsman (*defensor del pueblo*) for Andalusia, who strongly criticised the weighting system and advised the Andalusian government to annul the competition. The teachers unions took a stand on the matter, which was also debated in the Andalusian parliament.

13. By a decision of the Department dated 15 March 1994 the applicant was appointed to the grade of senior history and geography secondary-school teacher.

14. In the judicial review proceedings that had been brought by a large number of candidates, the Andalusia Higher Court of Justice ordered the Department to furnish a list of the candidates in the competition, to produce the administrative file and to serve notice on interested third parties to attend the hearing. The Department lodged written pleadings, but without identifying the interested third parties who ought to be summoned. At the end of the proceedings, in a judgment of 31 March 1995, the Higher Court of Justice annulled the competition for history and geography teachers and directed the examiners to re-mark the examination papers without applying the disputed weighting.

15. In other judicial review proceedings that had been brought in the Andalusia Higher Court of Justice on the same grounds, interested third parties, who had not been personally served with summonses to appear, made an application under Article 24 of the Constitution for leave to intervene after learning about the proceedings from other sources. The Higher Court of Justice agreed to their participation in the proceedings.

16. On the reassessment of the candidates under the procedure laid down by the Higher Court of Justice, the applicant did not attain the requisite level and failed the examination. The Department issued an order on 31 August 1995, which was published on 9 September 1995 in the Official Gazette of the Autonomous Community of Andalusia, annulling her appointment to the senior teaching post.

17. The applicant lodged an *amparo* appeal with the Constitutional Court under Article 24 of the Constitution (right to a fair hearing) against the Higher Court of Justice's judgment of 31 March 1995 and the Department's order of 31 August 1995. She said in her appeal that she had learnt of the notice in the 9 September 1995 issue of the Official Gazette of the Autonomous Community of Andalusia by accident and complained in substance that the process whereby her appointment to the senior teaching post had been annulled was unfair, as she had not been summoned to appear before the Andalusia Higher Court of Justice as an interested party to the dispute. In that connection, she argued, *inter alia*, that the Higher Court of Justice had been under a duty under section 64 of the Administrative Courts

Act to inform her of the court proceedings and to summon her to appear. She also sought a stay of execution of the Andalusia Higher Court of Justice's judgment.

18. In a decision of 5 February 1996 the Constitutional Court declared her *amparo* appeal admissible.

19. On 26 February 1996 the Constitutional Court granted the applicant a stay of execution; it discharged that order on 27 May 1996.

20. State Counsel lodged written pleadings with the Constitutional Court on 30 May 1996 concerning the *amparo* appeal. He argued that the appeal should be allowed in part, as there had been a violation of Article 24 of the Constitution for the following reasons:

> "... In order to examine this appeal, it is necessary to recapitulate the criteria and conditions laid down in the case-law of the Constitutional Court establishing that a failure to serve a summons personally will violate the right to the effective protection of the courts.
>
> In that connection, the notion of 'legitimate interest' has a special meaning for the purposes of Article 24 § 1 (of the Constitution), as it determines who has a legitimate right to take part in court proceedings, that is to say standing as an interested party to bring an appeal.
>
> The Constitutional Court has frequently stated that the notion of 'legitimate interest ... is defined as an advantage or any legal benefit arising out of the remedy sought' (judgment no. 60/1982). In the present case, it will be seen that the appellant had a legitimate interest in the application before the Andalusia Higher Court of Justice, as she was liable to be affected by the judgment, which resulted in a new list of selected candidates being drawn up and, consequently, the loss of her newly obtained status as a senior secondary-school teacher. From that standpoint, therefore, it was vital for the summons to be served on her personally and directly in the proceedings.
>
> 3. Secondly, ... since the appellant was identifiable, it is necessary to determine whether she could have been served personally. In that connection, it will be observed from the pleadings lodged with the Higher Court of Justice in support of the application for judicial review that it was not only the 'scale' that was contested, but also the provisional list of candidates permitted to take part in the competition, which means that the persons concerned were readily identifiable.
>
> 4. Consequently, it was not only necessary, but also feasible, for the appellant to be summoned personally and directly. The last requirement is that the person concerned should have no knowledge of the proceedings. In the present case, there is no evidence to suggest that the appellant knew or could have found out about the proceedings, as the judgment was not even served on her. Accordingly, the rule established in the Constitutional Court's judgment no. 117/1983 should be applied, namely: 'this Court will only dismiss the appeal if there is evidence establishing that the appellant was aware of the proceedings ...'
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> 5. In the light of the foregoing, in the present case, the appellant should have been summoned to appear in the judicial review proceedings in the Andalusia Higher Court of Justice. The fact that she was not so summoned put her in a position that was

prejudicial to her defence rights, in breach of the fundamental right guaranteed by Article 24 § 1 of the Spanish Constitution."

21. In a decision of 8 March 1999, the Constitutional Court ordered the joinder of various *amparo* appeals against the Andalusia Higher Court of Justice's judgment in which the appellants all relied on the same points of law.

22. In a judgment delivered on 14 September 1999 after an adversarial hearing, the Constitutional Court dismissed the *amparo* appeal.

23. With respect to the complaint that the annulment of the applicant's appointment to the senior teaching post was tainted with procedural unfairness, owing to the failure to summon her to appear before the Andalusia Higher Court of Justice as an interested party to the dispute, the Constitutional Court held:

"...

4. ... While it is true that the appellants allege, firstly, a violation of section 64 of the Administrative Courts Act on the ground that the Seville Administrative Proceedings Division effected service by advertisement and not personally, such a violation would only have a legal bearing on a constitutional *amparo* appeal if the breach of the Act also constituted a violation of the fundamental right relied on (see judgments nos. 15/1995 and 197/1997, legal reason no. 4). This Court addressed the issue of failure to summon third parties with an interest in judicial review proceedings in detail in its judgment no. 9/1981. The rules established in that case have been systematically recited, *inter alia*, in decisions delivered during the current decade, in judgments nos. 97/1991 (legal reason no. 2); 78/1993 (legal reason no. 2); 325/1993 (legal reason no. 3); 192/1997 (legal reason no. 2); 229/1997 (legal reason no. 2); 122/1998 (legal reason no. 3); and 26/1999 (legal reason no. 3). As a general rule, the following three conditions must be satisfied for *amparo* relief to be granted:

(a) The appellant must have a personal legitimate right or interest capable of being affected by the judicial review proceedings concerned ...

(b) It must be possible for the court or tribunal concerned to identify the appellant. Whether that requirement is satisfied will depend essentially on the information set out in the notice of application, the administrative file or the grounds of appeal ...

(c) Lastly, the appellant must have been a victim of a material infringement of his or her defence rights [*indefensión material*]. There will be no material infringement of defence rights if the person concerned has constructive notice of the proceedings and has not appeared through want of diligence. A finding that the person concerned had constructive notice of the proceedings must be based on reliable evidence [*fehaciente*] (judgments nos. 117/1983 (legal reason no. 3); 74/1984 (legal reason no. 2); 97/1991 (legal reason no. 4); 264/1994 (legal reason no. 5); and 229/1997 (legal reason no. 3)). That does not prevent proof being established on the basis of presumptions (judgments nos. 151/1988 (legal reason no. 4); 197/1997 (legal reason no. 6); 26/1999 (legal reason no. 5); and 72/1999 (legal reason no. 3). The presumption that the person concerned had notice will be particularly strong in cases concerning civil servants employed by an authority that is a defendant in the proceedings (judgments nos. 45/1985 (legal reason no. 3); and 197/1997 (legal reason no. 6)).

5. The application of the aforementioned constitutional parameters to the present case gives the following results:

(a) Firstly, the appellants indisputably had a legitimate interest ...

(b) Secondly, ... in the present case, the Administrative Division had precise details of the co-defendants or other parties, as the application for judicial review referred to the provisional list of the selected and unselected candidates ... and even the final list of candidates ...

(c) However, thirdly, as to whether there has been a material infringement of the rights of the defence, this Court held in its judgment no. 113/1998 (legal reason no. 4) that it was reasonable to presume that teachers had constructive notice of judicial review proceedings when, as in the present case, they had been appointed to their senior teaching posts following a competition that had been challenged in the administrative courts, had attracted extensive media coverage and had had an important impact in trade-union circles ...

We reach the same conclusion in the present case. A number of articles on the proceedings challenging the scale used in the competition (and the list of candidates selected to take part) have appeared in large circulation newspapers in Andalusia (the case has received extensive coverage in *Diario 16* (Andalusia), *ABC* (Seville edition), *Jaén*, *El País*, *Huelva Información* and *Diario de Córdoba*). The underlying issues were also examined by the Andalusian parliament at a briefing session (held on 24 November 1994). In June 1994 the Department of Education and Science sent a memorandum to the teachers via the 'Sector Education Office' expressly informing them of the proceedings pending in the Andalusia Higher Court of Justice. To these considerations must be added the subjective characteristics common to all the applicants: they are all civil servants employed by the defendant authority; as teachers, they are in a category of the population that has frequent access to the media, particularly the press. Lastly, the number of people affected by the appeals is very high (4,091 teachers entered the competition and 2,014 were selected in a very specific functional environment (teaching)). In the light of the foregoing, we reach the clear conclusion that the appellants had constructive notice of the judicial review proceedings that were heard by the Administrative Division in Seville. Consequently, their failure to take part in those proceedings was not attributable to any lack of diligence by that Division. Accordingly, there has been no violation of the right to the protection of the courts (Article 24 § 1 of the Spanish Constitution)."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

Article 24

"1. Everyone shall have the right to the effective protection of the judges and courts in the exercise of his rights and legitimate interests and shall never be left defenceless.

2. Likewise, everyone shall have the right of access to a judge of ordinary jurisdiction, as predetermined by law, to defend himself and to be assisted by a lawyer, to be informed of the charges against him, to have a public trial without undue delay and attended by all safeguards, to use the evidence relevant to his defence, not to incriminate himself, not to admit guilt and to be presumed innocent.

..."

B. Administrative Courts Act

Section 64(1)

"Everyone appearing to have an interest in the dispute shall be immediately informed of any decision by the authority that issued the relevant instrument or provision to forward the administrative file to the court and summoned within nine days to attend the hearing ..."

C. The case-law of the Constitutional Court

24. In a series of judgments published in the Official Gazette of the State, the Constitutional Court has established the legal principles applicable to cases in which interested third parties have not been personally served with summonses requiring their appearance in judicial review proceedings to which they were not parties (see section 64 of the Administrative Courts Act). A detailed summary of the rules is to be found in the Constitutional Court's judgment of 14 September 1999 in the present case (see paragraph 23 above).

D. The right of interested parties to take part in judicial review proceedings when they have not received a summons

It is the settled case-law of the Constitutional Court that anyone with constructive notice of and a legitimate personal interest in judicial review proceedings who has not been personally served with a summons to take part in those proceedings may apply to the court for leave to do so by virtue of Article 24 § 1 of the Constitution. A number of interested parties were given leave to intervene in some of the applications for judicial review heard by the Andalusia Higher Court of Justice challenging the assessment criteria used by the authority (see paragraph 15 above).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant alleged that she had been denied access to the Andalusia Higher Court of Justice, as it had handed down a decision that had undeniably caused her damage – namely the loss of her senior teaching post – without summoning her to take part in the proceedings in accordance with section 64 of the Administrative Courts Act. She relied on Article 6 § 1 of the Convention.

26. The relevant provisions of Article 6 § 1 provide:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The applicant

27. The applicant said that she had only been informed of the proceedings challenging the manner in which the competition had been organised in 1995 when her appointment was annulled. Similarly, she maintained that she had been unaware of the press reports about the dispute. In any event, by the time she had been informed of the Higher Court of Justice's judgment, she had already been deprived of her senior teaching post, without being given an opportunity to make representations to the court or to defend herself in the proceedings that had led to the annulment of the competition. Knowing neither the appeal number nor the case number,

she had been unable to seek leave to take part in the proceedings. In the applicant's submission, the Constitutional Court's case-law on the protection of the rights of the defence in judicial review proceedings contravened Article 6 § 1 of the Convention, particularly since section 64 of the Administrative Courts Act required all interested parties in the dispute to be informed of the proceedings so that they had an opportunity to appear before the court hearing the application for judicial review. In that regard, she noted that State Counsel had said in his observations on the *amparo* appeal that he considered that there had been a violation of her right of access to a court. She submitted that the stance taken by the Constitutional Court undermined the principle of legal certainty, one of the linchpins of which was compliance with the rules of procedure. She submitted that information circulating in the media could under no circumstances act as a substitute for the procedural guarantees laid down by law.

28. The Andalusia Higher Court of Justice had directed the Department of Education and Science to furnish a list of the candidates who had applied to take part in the competition, to forward the administrative file and to serve notice on interested third parties so that they could take part in the proceedings. However, the Department had neglected to supply the names of the known interested third parties in its written pleadings so that they could be summoned to attend. The applicant submitted that, had the Department provided the information it had been ordered to give by the Andalusia Higher Court of Justice, she would have been in a position to defend herself. The Department would have had no difficulty in complying with that obligation, as it was familiar with all the files and had the addresses of all the people involved in the proceedings. In the final analysis, the Constitutional Court's judgment had infringed Article 6 § 1 of the Convention.

2. The Government

29. The Government observed that the notice advertising the competition for the senior teaching posts, the provisional and final lists of candidates invited to take part in the competition, and the list of successful candidates had been published in the Official Gazette of the Autonomous Community of Andalusia. Thus, notice of all the administrative stages in the competition had been given to those concerned by publication in the Official Gazette of the Community of Andalusia. The Government said that immediately after the publication in December 1993 of each candidate's assessment, more than 300 applications for judicial review had been lodged complaining of the use of the teacher-training diploma as a criterion of assessment and of the weighting given to it. Details of all the applications had appeared in the Official Gazette of the province of Seville. Personally notifying all interested parties would have required several hundred formal notices to be sent out. In addition, there had been a heated debate about the

competition owing to the alleged favourable treatment given to certain members of the political party in power in Andalusia, whose applications would have been unsuccessful had it not been for the use of the teacher-training diploma as a criterion of assessment. The matter had been raised with bodies such as the Ombudsman for Andalusia, the regional parliament and trade unions; the debate had been reported in the media. The Government expressed surprise that the applicant should have affirmed that she had only become aware of the proceedings in issue when the Higher Court of Justice's judgment was executed.

30. The Government pointed out that, under Spanish law, notice of applications for judicial review of an authority's acts or decisions had not only to be published in the Official Gazette, but also given personally to citizens, provided that they possessed a right or legitimate interest in the proceedings concerned, their identity was known to the judicial body and that they were in a position in which they could not defend themselves. As to the latter requirement, the Government explained that a person did not satisfy the condition if he or she had constructive notice of the proceedings and had not taken part through want of diligence. That was the settled case-law of the Spanish courts as expounded, in particular, in numerous judgments of the Constitutional Court. That was what had happened in the instant case. As the Constitutional Court had said in its judgment of 14 September 1999, the facts of the case clearly showed that the applicant had constructive notice of the applications for judicial review that had been lodged with the Andalusia Higher Court of Justice.

31. The Government was perplexed by the assertion of the applicant, a history and geography teacher, that "there were people who did not read the press and were under no obligation to do so". Nor did they wish to speculate on the applicant's reasons for saying that she had had "the good fortune to receive a copy of the Official Gazette of the Autonomous Community of Andalusia" dated exactly the same day her appointment as a senior secondary-school teacher was annulled. The Government were surprised that the applicant had not enjoyed the same "good fortune" when it came to receiving one of the Official Gazettes of the province of Seville in which notice of the numerous applications for judicial review had been published, or alternatively a trade-union bulletin, a newspaper cutting or perhaps information from the school notice board. In that connection, the Government noted that from 1 July 1989 to 30 June 1994 the applicant was the head teacher at the secondary school where she taught and that almost three-quarters of the teachers from the school had taken part in the competition for the senior teaching posts. Furthermore, the applicant's husband was also her lawyer in the proceedings before the Court, so she could not claim to be unfamiliar with the rules governing constructive notice. In conclusion, the Government said that the applicant had been fully aware of the applications to the Andalusia Higher Court of Justice. It had

been her decision not to take part in those proceedings. There had been no violation of Article 6 § 1 of the Convention.

B. The Court's assessment

32. The applicant has submitted that the fact that she was not informed as an interested party of the applications pending in the Andalusia Higher Court of Justice for judicial review of the validity of the competition for the senior teaching posts prevented her from defending her interests and, consequently, infringed her right of access to a court.

33. The Court will examine the complaint from the perspective of the right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

34. The Court notes that, under its case-law, Article 6 § 1 embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (see *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36). That does not apply only to proceedings that have already commenced, as the provision may also "be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1" (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 20, § 44, and *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 36-37, § 80).

35. In the instant case, the Court notes in substance that there is a divergence of opinion between the parties over the construction of section 64 of the Administrative Courts Act, which provides that persons appearing to have an interest in the litigation shall be personally informed if an application for judicial review of an administrative act or decision is made and summoned to take part in the proceedings. The applicant has argued that that provision imposed a mandatory obligation for her to be served with a summons to appear before the Higher Court of Justice. The Government have contended that since the applicant had constructive notice of the litigation, she was required, as the case-law of the Constitutional Court on the subject confirmed, to act diligently and to apply to the Higher Court of Justice for leave to intervene in the proceedings. It is this latter interpretation that was upheld by the Constitutional Court (see paragraph 23 above).

36. In that connection, the Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation

of procedural rules, such as time-limits for filing documents or for lodging appeals (see, *mutatis mutandis*, *Tejedor García v. Spain*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2796, § 31). Furthermore, the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty. Litigants must be entitled to expect those rules to be applied.

37. Consequently, the Court's task is essentially to determine whether, in the present case, the Constitutional Court's interpretation of section 64 of the Administrative Courts Act might undermine the very essence of the applicant's right of access to a court, as guaranteed by Article 6 § 1.

38. The Court notes that, under the settled case-law of the Constitutional Court, three criteria and conditions have to be satisfied in order for a failure to serve a summons in judicial review proceedings to constitute a violation of the right of access to a court and, consequently, for the Constitutional Court to grant constitutional *amparo* relief. Firstly, the appellant must possess a right or legitimate interest in the relevant proceedings; secondly, his or her identity must be known to the judicial body; lastly, the appellant must have been a victim of a material infringement depriving him of his defence rights (*indefensión material*).

39. The Court notes that the applicant indisputably satisfied the first two criteria. As to the third, in dismissing the application for *amparo* relief the Constitutional Court followed its settled case-law in this sphere, holding that in the circumstances of the case – in particular, the media coverage and the fact that internal memoranda had been sent by the authority to teachers unions concerning the applications for judicial review – it was reasonable to presume that the applicant had constructive notice of the case and had been prevented from taking part in the proceedings by her own lack of diligence. The Constitutional Court also pointed to the very large number of people concerned by the applications for judicial review. Consequently, it held that the fact that the applicant had not been served with a summons did not infringe Article 24 of the Constitution (right to a fair hearing).

40. The Court reiterates that "[t]he parties must be able to avail themselves of the right to bring an action or to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests" (see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 37, ECHR 2000-I). In the instant case, the Court observes that, after detailed consideration of the facts of the case, the Spanish Constitutional Court found in a reasoned decision that the applicant had constructive notice of the relevant proceedings, so that her failure to appear before the Higher Court of Justice was attributable to her own lack of

diligence. In other words, the Constitutional Court found that, had the applicant acted diligently, she would have been able to take part in the proceedings. In that connection, the Court observes that other interested third parties who had constructive notice of the applications for judicial review pending in the Higher Court of Justice, but had not been served with a summons personally, had successfully applied to that court for leave to take part in the proceedings (see paragraph 15 above).

41. The Court notes that, in dismissing the applicant's application for *amparo* relief, the Constitutional Court relied on its settled case-law on the conditions that had to be satisfied in order for a failure to issue a summons in judicial review proceedings to constitute a violation of the right of access to a court. The case-law had been published and was accessible, and it supplemented the wording of section 64 of the Administrative Courts Act (see paragraphs 22 and 23 above). It was sufficiently precise to enable the applicant, if necessary with the benefit of skilled advice, to determine what steps she should be taking. In that regard, the Court can understand the Constitutional Court's pragmatic approach to the service of procedural documents when, as in the instant case, a court finds itself confronted with a large number of applications in the same set of proceedings affecting a great many people.

42. Ultimately, the Court considers that such an interpretation of the domestic law does not appear to have been arbitrary or liable to undermine the very essence of the applicant's right of access to a court.

43. Consequently, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

Holds by five votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in French, and notified in writing on 15 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Casadevall joined by Mrs Strážnická is annexed to this judgment.

M.P.
M.O'B.

DISSENTING OPINION OF JUDGE CASADEVALL JOINED BY JUDGE STRÁŽNICKÁ

(Translation)

1. I have not voted with the majority. In my opinion, Article 6 § 1 of the Convention has been infringed in this case.

2. In finding that there has been no violation, the Court followed the Government's argument based on the Constitutional Court's interpretation of section 64 of the Administrative Courts Act. According to the Constitutional Court: "... it was reasonable to presume that the applicant had constructive notice of the case and had been prevented from taking part in the proceedings by her own lack of diligence". It also referred to the vast number of people concerned by the appeals [see paragraphs 39 and 40 of the judgment].

3. I am unable to agree with that assessment. Rules of procedure are *jus cogens*; they are mandatory and litigants must be able to rely on their being complied with and applied. In the present case, section 64 of the Administrative Courts Act is unambiguous, clear and precise and – to my mind – has no need of interpretation: "Everyone appearing to have an interest in the dispute shall be immediately informed of any decision ... and summoned within nine days to attend the hearing ...". In any event, since the issue here concerns the principle of legal certainty, it is not simply a question of ordinary legal interpretation, but of whether the unreasonable construction of a procedural requirement has prevented the applicant from exercising her right of access to a court and defending her legitimate rights [see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 37, ECHR 2000-I].

4. I fail to see how one can accuse the applicant of any negligence (when she was not informed of a decision that directly concerned her interests or summoned to attend the hearing) and at the same time disregard the negligence of the judicial and administrative authorities. In the present case, the Higher Court of Justice of Andalusia directed the Department of Education and Science to furnish a list of the candidates in the competition, to forward the administrative file and to serve notice on interested third parties so that they could take part in the proceedings [see paragraph 14 of the judgment]. When the Department failed to supply the list of interested third parties, the Higher Court of Justice did nothing to rectify that omission and those concerned were not summoned. The Government's argument that personal service on all interested parties would have required several hundred notices to be sent out [see paragraph 29 of the judgment], does not appear to me to be relevant. When it comes to collecting taxes

and fines, the authorities have no difficulty in sending out thousands or even tens of thousands of demands for payment. To assert that information published in the press constitutes constructive notice that can permit a mandatory procedural rule – such as the rule requiring interested parties to be summoned to attend the hearing – to be dispensed with is not, in my view, acceptable.

5. Litigants are expected to know and comply with the rules of procedure and the same applies to the courts. When dealing with time-limits for making applications or appealing, the judicial system applies the rules of procedure set out in the relevant codes strictly. The principle of legal certainty must be strictly imposed on and observed by all concerned with equal rigour [see *Miragall Escolano and Others* (cited above); *Tejedor García v. Spain*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII; *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports* 1997-VIII; and *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, which all concern time-limits for acting or lodging appeals].

6. In the instant case, in his submissions to the Constitutional Court on the *amparo* appeal, State Counsel recommended allowing the applicant's appeal in part, on the ground that there had been a violation of Article 24 of the Constitution. In so doing, he referred to the Constitutional Court's previous case-law, in which it had held: "... evidence *establishing* that the appellant was aware of the proceedings ..." could justify dismissing the application [see paragraphs 20 and 23 of the judgment]. Apart from the information that was allegedly published in the press, there was no evidence to show that the applicant was aware of the proceedings that jeopardised her legitimate interests and which ultimately caused her to lose her post as a senior secondary-school teacher without being given an opportunity to defend her interests.