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

COURT (CHAMBER)

CASE OF HIRO BALANI v. SPAIN

(Application no. 18064/91)

JUDGMENT

STRASBOURG

09 December 1994

In the case of Hiro Balani v. Spain*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A**, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr F. GÖLCÜKLÜ,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr S.K. MARTENS,
Mr J.M. MORENILLA,
Mr F. BIGI,
Mr M.A. LOPES ROCHA,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 24 June and on 23 November 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 December 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 18064/91) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by Mrs Rita Hiro Balani, who was at the time an Indian national, on 30 January 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

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* The case is numbered 46/1993/441/520. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30). The President of the Court gave the lawyer leave to use the Spanish language (Rule 27 para. 3).

3. On 13 January 1994 the President of the Court decided that in the interests of the proper administration of justice this case should be heard by the Chamber already constituted to hear the case of Ruiz Torija v. Spain (no. 39/1993/434/513 - Rule 21 para. 6). That Chamber included ex officio Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1993, in the presence of the Registrar, the President had drawn by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Gölcüklü, Mr R. Macdonald, Mr C. Russo, Mr S.K. Martens, Mr F. Bigi and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 21 March 1994 and the Government's memorial on 28 March. In a letter received on 12 May the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 27 April 1994 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the decision of the President, who had also given the Agent of the Government leave to use the Spanish language (Rule 27 para. 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 25 May 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government
  Mr J. BORREGO BORREGO, Head of the Legal Department
  for Human Rights, Ministry of Justice, *Agent*;
- for the Commission
  Mr F. MARTÍNEZ, *Delegate*;
- for the applicant
  Mr J.C. LARA GARAY, abogado, *Counsel*.

The Court heard addresses by the above-mentioned representatives.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mrs Rita Hiro Balani was at the material time an Indian national; she subsequently obtained Spanish nationality. She lives in Madrid.

7. In 1985 the Japanese company "Orient Watch Co. Ltd" - which specialised in the manufacture and distribution of clocks - filed an application in the Madrid no. 8 First-Instance Court for the removal of the Spanish trade mark "Orient H.W. Balani Málaga" (no. 544.606) from the industrial property register. The trade mark in question concerned "all types of clocks" and had been registered by the applicant's husband in 1970. It had at a later stage been transferred to her name. The plaintiff company claimed that, by virtue of the Paris Convention (see paragraph 14 below), the registration in Japan in 1951 of its trade name had conferred on it the ownership of that designation in all the countries which were parties to that Convention - including Spain - and therefore protected it from the subsequent lodging of any identical or similar trade mark.

8. Mrs Hiro Balani adduced several submissions to contest the application. They were based on the following considerations:

1. The period of three years within which the cancellation of trade mark no. 544.606 could have been sought had expired and the trade mark was consequently "established".

2. Any action was time-barred.

3. The trade name relied on by the plaintiff company was not a genuine one.

4. A trade mark "Creacions Orient", for imitation articles, that had been registered in 1934 under no. 97.541 and transferred to the applicant's name in 1984, had priority.

9. By a judgment dated 9 May 1988, the Madrid Audiencia Territorial, the court with jurisdiction for this type of dispute (see paragraph 15 below), accepted the contention that Mrs Hiro Balani's mark was "established" and dismissed the plaintiff's application. It did not rule on the merits of the applicant's other submissions.

10. The plaintiff company appealed on points of law. In a judgment of 30 April 1990 the Supreme Court (Tribunal Supremo) held that the contested trade mark was not "established" because its registration was void and quashed the decision of the Audiencia Territorial. Giving a ruling on the merits of the dispute (see paragraph 18 below), the Supreme Court expressly rejected the submissions based on the allegedly non-genuine character of the trading name and the general time bar and allowed the application. However, it made no reference to the applicant's submission that the trade

mark "Creacions Orient", registered in Spain in 1934, should have priority over the trading name "Orient" registered in Japan in 1951.

11. The applicant filed an amparo appeal (see paragraph 19 below) in the Constitutional Court (Tribunal Constitucional). It was declared inadmissible on 29 October 1990 on the ground that the various complaints adduced did not raise constitutional issues. On the matter of the submission relating to the priority of the trade mark "Creacions Orient", the Constitutional Court expressed the following view:

> "... as this issue was not put forward as a ground of appeal, the Chamber [of the Supreme Court] could hardly be expected to address it directly. Moreover, there is extensive case-law from this Court to the effect that the Constitution does not require courts to give a specific reply to all the arguments of the parties but only their claims. In the instant case [the applicant's] submission was rejected when the appeal on points of law filed by the plaintiff against the first-instance judgment was allowed."

As decisions of the Constitutional Court finding an appeal inadmissible may be reconsidered only on an application by State counsel, a further appeal lodged by Mrs Hiro Balani was likewise declared inadmissible on 8 November 1990.

II. RELEVANT DOMESTIC LAW

12. The rules governing trade marks and trade names which were in force at the material time were set out in the Industrial Property Regulation (Estatuto de la Propiedad Industrial, "EPI") of 26 July 1929, approved by the Royal Legislative Decree of 30 April 1930. The enactment in 1988 of a new law on trade marks did not affect the applicability of that regulation to the facts of the present case.

A. Protection of trade marks and trade names

1. Priority of registration

13. The registration in Spain of a trade mark or a trade name confers on its holder standing to bring proceedings in the civil and criminal courts against those who infringe his right (Articles 6 and 7 EPI). The priority of rights deriving from a trade mark or a trade name takes effect from the filing of the application for registration in the industrial property register (Article 12 EPI).

The holder of a registered trade name has the same rights as those conferred on the holder of a trade mark (Article 207 EPI). He may, inter alia, seek the removal from the register of any mark (Article 268 EPI) whose similarity with the trade name might give rise to an error or create confusion in the market (Article 124 para. 1 EPI). In order to make such a finding of incompatibility, the court will examine not only the phonetic or

graphic similarity of the two competing designations; it will also consider whether the protected products belong to the same commercial sector.

2. The Paris Convention

14. The Paris Convention for the protection of industrial property of 20 March 1883, as amended in Stockholm on 14 July 1967 - which version was ratified by Spain on 13 December 1971 -, provides that a trade name registered in one of the countries of the Union is to be protected in all the other countries of the Union without necessity of deposit or registration (Article 8). Since such a trade name is entitled to the same protection as if it had been registered in Spain, its holder may seek the removal from the register of any Spanish mark registered after the trade name in question and incompatible with it.

B. Applications for the removal of trade marks from the register

1. At first instance

15. Article 270 EPI makes provision for a special procedure for applying for the removal of a trade mark from the official register. The first-instance court prepares the file and transmits it to the Audiencia Territorial, which seeks the opinion of the legal department of the industrial property register and holds a hearing.

2. In the Supreme Court

16. Judgments given at first instance by the Audiencia Territorial concerning the removal of trade marks from the register may be challenged only by an appeal on points of law to the Supreme Court (Article 270 para. 12 EPI).

The complaints concerning the impugned judgment must be expressed in the form of grounds for cassation (motivos de casación - Article 1707 of the Code of Civil Procedure), of which there are a limited number, for instance failure to comply with essential procedural requirements and violation of the law (Article 1692, nos. 3 and 4 of the Code of Civil Procedure).

17. Argument is presented on the submissions declared admissible, at a public hearing if all the parties so request or if the court considers it necessary. The respondent may appear and plead for the dismissal of the appeal and the confirmation of the impugned judgment (Articles 1711 in fine and 1713 of the Code of Civil Procedure).

18. Except in respect of purely formal or procedural matters, the Chamber which allows an appeal submission does not merely quash the judgment. It must rule on the merits of the case, taking account of all the

arguments adduced by the parties in the course of the proceedings (Article 1715 para. 1, third paragraph, of the Code of Civil Procedure).

C. The obligation to give reasoned judgments

19. Under Article 120 para. 3 of the Constitution, "judgments shall always contain a statement of the grounds on which they are based and be delivered in public". As an aspect of the effective protection of individuals by the judiciary and the courts, recognised as a fundamental right by Article 24 para. 1 of the Constitution, the obligation to state the reasons for judicial decisions may be the subject of an individual appeal to the Constitutional Court (recurso de amparo).

20. According to Article 359 of the Code of Civil Procedure:

> "Judgments must be clear and precise and must address specifically the applications and other claims made in the course of the proceedings; they must find for or against the defendant and rule on all the disputed points which have been the subject of argument.
>
> Such points must be dealt with separately in the judgment."

When a court gives a decision on the merits it must therefore rule on all the submissions adduced by the parties, otherwise the judgment will be flawed for failure to give an adequate statement of the grounds (incongruencia omisiva). However, according to the case-law, the court is not under a duty to deal expressly in its judgment with each of the submissions made by the parties where its decision to allow one of the claims entails by implication the rejection of the submission in question.

PROCEEDINGS BEFORE THE COMMISSION

21. Mrs Hiro Balani applied to the Commission on 30 January 1991. Relying on Article 6 para. 1 (art. 6-1) of the Convention, she complained that she had not had a fair hearing in so far as the Supreme Court had not addressed in its judgment all the submissions made by her in the first-instance proceedings.

22. The Commission declared the application (no. 18064/91) admissible on 30 March 1993. In its report of 15 October 1993 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 303-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

23. At the hearing the Government requested the Court to hold that "the Kingdom of Spain [had] fulfilled its obligations deriving from the Convention".

The applicant asked the Court to "find that the Spanish State [had] violated paragraph 1 of Article 6 (art. 6-1) of the Convention".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

24. According to the applicant, the total failure of the Supreme Court to address in its judgment the submission based on the priority of her trade name "Creacions Orient" (see paragraph 10 above) breached Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

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

25. The Commission in substance accepted this view. It added that the silence of the Supreme Court in this matter could give rise to doubts as to the scope of the examination conducted by that court.

26. According to the Government, on the other hand, the priority claim was entirely irrelevant. "Creacions Orient" protected imitation articles, whereas the action was directed at securing the removal from the register of a trade mark for watches. This had been the opinion not only of the legal department of the industrial property register in the report that it had submitted in the first-instance court (see paragraph 13 above), but also of the Supreme Court itself. The latter court, on an appeal lodged by the applicant in connection with another action brought by the same company whereby it had sought the removal from the register of the trade mark for watches "Orient", had delivered a judgment on 30 March 1989 in which it rejected briefly but expressly the submission based on the priority of "Creacions Orient". The Supreme Court had based its finding in this respect on the difference between the products for which that mark had been registered and those sold under the trade name of the Japanese company.

Mrs Hiro Balani could therefore have been in no doubt as to the futility of her submission and the consequent inevitability of its dismissal. This was shown by the fact that, simultaneously to the proceedings in issue, the applicant had applied to the industrial property register to have the

protection of the mark "Creacions Orient" extended to cover clocks and watches.

27. The Court reiterates that Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 (art. 6) of the Convention, can only be determined in the light of the circumstances of the case.

28. In the present case Mrs Hiro Balani contested the action for the removal of her trade mark from the register, inter alia, by a submission based on the priority of another mark that she owned. This submission was made in writing before the first-instance court and was formulated in a sufficiently clear and precise manner. An official certificate was submitted with it as evidence. The Supreme Court, which quashed the first-instance decision and gave a new ruling on the merits, was bound, under the applicable procedural law (see paragraph 18 above), to review all the submissions made during the proceedings, at least in so far as they had been "the subject of argument" (see paragraph 20 above), and even if they were not expressly repeated in the appeal on points of law.

The Court notes that it is not its task to examine whether the submission based on the priority ratione temporis of "Creacions Orient" was well-founded; it falls to the national courts to determine questions of that nature. It confines itself to observing that it is not necessary to conduct such an examination in order to conclude that the submission was in any event relevant. If the national court had held the submission to be well-founded, it would of necessity have had to dismiss the plaintiff's action.

It is therefore necessary to establish whether in the present case the silence of the Supreme Court can reasonably be construed as an implied rejection. The question whether the Japanese company could assert its right to its trade name "Orient Watch Co. Ltd" vis-à-vis the holder of a prior right to the mark "Creacions Orient" is, as a matter of law and logic, different from the question whether the later mark "Orient H.W. Balani Málaga" was compatible with that trade name. It therefore required a specific and express reply. In the absence of such a reply, it is impossible to ascertain whether the Supreme Court simply neglected to deal with the submission based on the prior right to the mark "Creacions Orient" or whether it intended to dismiss it and, if that were its intention, what its reasons were for so

deciding. Neither the applicant's request to have the list of articles covered by the entry in the industrial property register extended, nor the fact that the legal department of the industrial property register had stated the view in its report to the first-instance court that the submission should be dismissed, nor yet the fact that, according to the Government, the Supreme Court had already expressed the same opinion in a decision in proceedings involving the same parties in an identical context makes any difference to this finding. There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

29. Under Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

30. Mrs Hiro Balani claimed 750,000 pesetas in compensation for the non-pecuniary damage that she had allegedly sustained.

The Government considered that a finding of a violation of the Convention would constitute sufficient satisfaction.

The Delegate of the Commission left the matter to the discretion of the Court.

31. The Court takes the view that the applicant may have suffered non-pecuniary damage, but that the present judgment affords her sufficient satisfaction in this respect.

B. Costs and expenses

32. Mrs Hiro Balani also sought the reimbursement of 997,050 pesetas in respect of the costs and expenses incurred in the Constitutional Court and before the Convention institutions.

The Government regarded this claim as excessive.

The Delegate of the Commission left this question to be determined by the Court.

33. Having regard to the criteria it applies in this field, the Court awards the amount claimed in its entirety.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;

2. Holds unanimously that the present judgment constitutes in itself sufficient just satisfaction in respect of the alleged non-pecuniary damage;

3. Holds unanimously that the respondent State is to pay the applicant, within three months, 997,050 (nine hundred ninety-seven thousand and fifty) pesetas for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 December 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Bernhardt is annexed to this judgment.

R. R.
H. P.

DISSENTING OPINION OF JUDGE BERNHARDT

I am unable to follow the majority in this case, essentially for the same reasons expressed in my dissenting opinion in the case of Ruiz Torija v. Spain. In the present case, the Spanish Supreme Court was hardly under the obligation to answer expressly a question which it had already answered on another occasion (see paragraphs 10, 11 and 28 of the judgment).