APPLICATION N° 29420/95

Paul TOUVIER v/FRANCE

DECISION of 13 January 1997 on the admissibility of the application

---

Article 6, paragraph 1 of the Convention

a) The right to remain silent and the right not to contribute to incriminating oneself although not expressly referred to in Article 6, are generally recognised international standards which are part of the concept of a fair trial enshrined in this provision

Does the fact that the file concerning an application for a presidential pardon which contained an admission of responsibility by the applicant was attached to the criminal file in criminal proceedings against him infringe his right not to contribute to incriminating himself? (Question unresolved)

The fact that in appeal proceedings against conviction the President did not inform the applicant of his right to remain silent and his right not to contribute to incriminating himself does not infringe those rights as the applicant could not, on the facts claim to have been unaware of their existence and was not compelled to give self-incriminating evidence

b) Independent tribunal Although a reply from a Minister for Foreign Affairs to a request for interpretation of international conventions issued by a domestic court could have influenced the decision whether or not to pursue criminal proceedings in progress in this case the Minister declined to give an interpretation and the domestic court gave its decisions on the basis of domestic legislation which it alone was competent to interpret

Article 6, paragraphs 1 and 3 of the Convention *The concept of "equality of arms" does not exhaust the contents of paragraphs 1 and 3 of Article 6. The Commission's task is to ascertain whether the proceedings considered as a whole were fair*

Article 6, paragraph 2 of the Convention *Allegations of an infringement of the principle of the presumption of innocence on account of statements by certain public figures during criminal proceedings*

Article 6, paragraph 3 (d) of the Convention

a) The purpose of this provision is to place the defendant on an equal footing with the prosecution regarding the hearing of witnesses

b) As a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which an accused seeks to adduce, and in particular whether it is appropriate to call witnesses in the autonomous sense given to that term in the Convention system

c) It is not enough for an accused person to complain that he was unable to question certain witnesses, he must also support his request to question witnesses by specifying the importance thereof and must demonstrate that the hearing of the witnesses is necessary for ascertaining the truth

Article 7, paragraph 2 of the Convention *The purpose of this provision is to specify that this Article does not affect the laws which in the exceptional circumstances at the end of the Second World War were passed in order to punish war crimes and acts of treason and collaboration with the enemy. This reasoning also applies to crimes against humanity*

Conviction for aiding and abetting a crime against humanity. Provision in the Charter of the Nuremberg International Tribunal and a French law referring expressly to that provision that criminal proceedings in relation to this offence cannot be time barred. The applicant was not convicted of an ordinary offence, but of aiding and abetting a crime against humanity. No need to rule on whether the offence with which the applicant was charged could, when it was committed, be classified as a crime against humanity

Article 19 of the Convention

a) As a general rule, the application and interpretation of domestic law is a matter for the domestic courts

b) The Commission is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a violation of the rights and freedoms set forth in the Convention

Article 26 of the Convention *To exhaust domestic remedies the person concerned must have raised in his appeal against his conviction by the Assize Court the complaint he puts before the Commission*

THE FACTS

The applicant, a French national, was born in 1915 and died on 17 July 1996. He had no profession and was imprisoned in the Santé prison. In a letter of 24 July 1996, the applicant's heirs, that is, his wife, born in 1925, and his two children, born in 1948 and 1950, all three of French nationality and resident in Paris, stated their intention to pursue the application. Before the Commission, the applicant and his heirs were represented by Mr Jacques Tremolet de Villers, a lawyer practising in Paris.

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

During the Second World War the applicant was commander of the Second Unit of the French militia in Lyons, first for the *département* and subsequently for the region, from November 1943 to the end of August 1944. He fled at the end of the war.

In a judgment of 10 September 1946, Lyons Court of Justice convicted the applicant, *in absentia*, of treason and sentenced him to the death penalty, confiscation of his property and deprivation of his civic rights.

In a judgment of 4 March 1947, Chambery Court of Justice also sentenced the applicant, *in absentia*, to the death penalty, ordering the confiscation of his property and deprivation of his civic rights for collusion with the enemy.

On 3 July 1947 the applicant was arrested in Paris. He succeeded in escaping on 9 July 1947.

Law no. 64-1326 of 26 December 1964 provided, in a single section, referring, *inter alia*, to the Charter of the Nuremberg International Tribunal annexed to the inter-Allied agreement of 8 August 1945, that the prosecution of crimes against humanity could not be time-barred.

As regards the sentences passed in 1946 and 1947, the death penalty lapsed after twenty years, but the other penalties remained in force, pursuant to the provisions of the Criminal Code.

The applicant filed an application for a presidential pardon in which he allegedly partly admitted his responsibility. A *rapporteur* recommended that his application be dismissed, recalling the applicant's role in the Rillieux massacre in which seven people, six of Jewish origin and one unidentified, were shot on 29 June 1944 by *francs-gardes*,

a unit of the Rhône French militia under the command of the applicant himself acting on the orders of "Commandant Knab, the head of the Gestapo, following the murder of Philippe Henriot, a minister and member of the militia, by agents working for *France Libre*

In a decree of 23 November 1971, the President of the Republic granted the applicant a pardon with respect to the exclusion order and the confiscation of property to which he had been sentenced following his convictions in 1946, 1947 and other subsequent convictions for theft and attempted theft His civic rights were not restored This pardon was strongly criticised by among others, key politicians and members of the legal profession

On 5 June 1972 the weekly magazine *L'Express* published an article entitled 'L'Express has found the Lyons executioner' All the national media followed suit, referring to the applicant as, among other things, 'The Nazi occupiers' assistant-executioner', murderer', 'Gestapo torturer", 'Jew executioner from Lyons", "war criminal whose sadistic crimes and rapacious pillaging were motivated by racism" After receiving death threats, the applicant took refuge in a monastery

On 9 February 1973, the weekly magazine *Tribune Juive* published a photo of the applicant and requested victims of the Lyons militia to come forward

On 9 November 1973 a criminal complaint for crimes against humanity, together with a request for leave to join the proceedings as a civil party seeking damages, was filed with the Lyons investigating judge It was filed by R E , who accused the applicant of having attacked a synagogue in Lyons in 1943, and by G G , the son of one of the Rillieux victims

On 27 March 1974 A M R , J L -A , G C and R N filed criminal complaints for crimes against humanity with a Chambéry investigating judge They also requested leave to join the proceedings as civil parties seeking damages

Both investigating judges gave orders declining jurisdiction, which were upheld by the Indictments Chambers of Lyons and Chambery Courts of Appeal on 30 May and 11 July 1974

In three judgments of 6 February 1975, the Court of Cassation quashed those orders on the grounds that it was the judges' task to assess whether or not the acts complained of constituted crimes against humanity, for which there are no special courts and whose constituent elements are different from war crimes or collusion with the enemy It referred the cases to Paris Court of Appeal

In several judgments of 27 October 1975, Paris Court of Appeal set aside the orders declining jurisdiction, but held that criminal proceedings for the offences complained of were time-barred and that the applications by the parties seeking damages were inadmissible

In a judgment of 30 June 1976, the Court of Cassation quashed those judgments on the grounds, *inter alia*, that it was the Indictments Chamber's task to determine whether, pursuant to the international conventions including Articles 7 and 60 of the European Convention of Human Rights, the presumed perpetrator of a crime against humanity could benefit from the rule that criminal proceedings were time-barred It referred the case back to the Indictments Chamber of Paris Court of Appeal before different judges

In three judgments of 17 December 1976, the Indictments Chamber of Paris Court of Appeal requested an interpretation of the international conventions from the Minister for Foreign Affairs, seeking clarification of the following points

"1 Is it to be inferred from the provisions of the Charter of the International Military Tribunal annexed to the inter-Allied Agreement of 8 August 1945, Article 6 of which defines crimes against humanity without providing for any time-limit on the prosecution and punishment thereof, that the prosecution of crimes against humanity cannot be time barred?

2 Does Article 7 para 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, published in Decree No 74 360 of 3 May 1974, provide both for the past and the future or exclusively for the future?

3 If the answer to question 1 is no, does the perpetrator of the crimes in question, should they be made out, benefit from the prohibition on retroactive application of criminal legislation by virtue of the provisions of Article 7 para 2 of the European Convention of Human Rights and Fundamental Freedoms referred to in question 2?

4 In the event that the provisions of the European Convention of Human Rights and Fundamental Freedoms do provide both for the past and for the future where crimes against humanity are concerned, does the right under French law to have criminal proceedings declared time barred fall, pursuant to the combined provisions of Article 7 para 2 and Article 60 of that Convention, within the category of human rights and fundamental freedoms from which, according to Article 60, none of the provisions of that Convention can derogate?"

The Minister for Foreign Affairs gave his opinion in a report dated 15 June 1979 in which he concluded, *inter alia*, that it could be inferred from the Charter of the Nuremberg International Military Tribunal that the prosecution of crimes against humanity was not subject to limitation, that Article 7 para 2 of the Convention did provide both for the past and the future and that crimes against humanity did not fall within the prohibition on retroactive application of the criminal law, having regard to, *inter alia*, the decision of the European Commission of Human Rights of 26 July 1957 (Yearbook, Vol 1, p 239) As regards the last question, the Minister considered that

this raised the issue whether a right to have the prosecution of crimes against humanity declared time barred (assuming this was allowed by our legislation) would fall into the category of human rights and fundamental freedoms recognised in accordance with our laws, and concerns not an interpretation of international conventions, but our legislation It is therefore outside the power of interpretation of the Minister for Foreign Affairs

In three judgments of 27 July 1979, the Indictments Chamber of Paris Court of Appeal, taking formal note of the replies by the Minister for Foreign Affairs, ruled that the prosecution of the crimes against humanity complained of by the civil parties, assuming they were made out was not time barred It referred the case to an investigating judge attached to Paris *tribunal de grande instance* for the investigation to be pursued

After a new investigating judge had been appointed a witness, L G , who was present at the time the Rillieux victims were singled out gave evidence on 22 October 1981 His testimony gave the prosecution fresh evidence on which to request the investigating judge to extend the investigation and issue a warrant for the applicant's arrest

In a judgment of 17 September 1983, the Court of Cassation ordered a case against the applicant for a crime against humanity, namely the murder of V B and his wife, to be removed from the Lyons investigating judge and to be referred to the Paris investigating judge The investigation continued before the investigating judge attached to Paris *tribunal de grande instance*

On 24 May 1989 the applicant was arrested and charged with murder, several counts of attempted murder and of wrongful arrest and false imprisonment, crimes against humanity and crimes against humanity in the form of arbitrary arrests arbitrary imprisonment, arbitrary arrests and imprisonment, followed by physical torture, premeditated murder and aiding and abetting murder He was also remanded in custody

In a judgment of 19 October 1989 the Indictments Chamber of Paris Court of Appeal dismissed an application for the applicant s release and upheld the lawfulness of the applicant's detention on the ground that he was being prosecuted for a crime which, pursuant to the Law of 26 December 1964 was not subject to limitation On that occasion, the Indictments Chamber gave its own exposition of the scope of the 1964 Law

In a judgment of 25 January 1990 the Court of Cassation dismissed a request for the case to be referred to the Lyons investigating judge in the interests of the sound administration of justice

The applicant's request for release was granted by judgment of 11 July 1991 of the Indictments Chamber of Paris Court of Appeal which released him under judicial supervision subject to a number of conditions including payment of a security

That decision provoked an outcry which was reported in the media. On 6 January 1992 a committee of historians submitted a report, ordered by the Cardinal Archbishop of Lyons, revealing that churchmen had colluded with the applicant.

In a 215-page judgment of 13 April 1992 Paris Indictments Chamber ordered the proceedings to be discontinued for lack of sufficient evidence and, concerning the Rillieux crime, on the ground that the investigation had not, in the light of the circumstances of the case and the case-law of the Court of Cassation, shown it to be a crime against humanity, there could therefore be no prosecution. Judicial supervision was lifted.

A wave of protest followed this judgment, with comments by the President of the Republic and a number of ministers being reported in the press. The Principal State Prosecutor attached to Paris Court of Appeal appealed on points of law.

In a judgment of 27 November 1992, the Court of Cassation quashed the order discontinuing the proceedings, but only the part relating to the Rillieux drama, holding, *inter alia*, that the Court of Appeal could not, without contradicting itself, rule out the classification of crime against humanity on the one hand "while noting, on the other hand, that the acts had been committed on the orders of a 'commandant' of the Gestapo, an organisation which had been declared criminal on the ground that it belonged to a country which had practised a policy of ideological hegemony". The court referred the case to the Indictments Chamber of Versailles Court of Appeal.

In a judgment of 2 June 1993 the Indictments Chamber of Versailles Court of Appeal committed the applicant for trial before the Assize Court for the Yvelines *département*, considering that the investigation had yielded sufficient evidence that the applicant

> 'had in Lyons on 28 and 29 June 1944 knowingly aided and abetted a crime against humanity by, firstly, giving instructions to commit premeditated intentional homicide against the persons of Messrs Glaeser, Krzykowski, Schlusseman, Ben Zimra, Zeizig, Prock and one other unidentified man and, secondly, by aiding or assisting the perpetrators of those intentional homicides in the commission of the relevant acts, which were part of a common plan on behalf of a State practising a policy of ideological hegemony against persons singled out on the basis of their membership of a racial or religious community'.

In a judgment of 7 July 1993 the Indictments Chamber decided to place the applicant under judicial supervision, thereby restricting his movements. The applicant appealed against that decision. His appeal was dismissed by the Court of Cassation on 21 October 1993.

In a judgment of 21 October 1993, the Court of Cassation also dismissed the applicant's appeal against his committal for trial before the Assize Court on the

grounds, first, that the *non bis in idem* rule did not apply to this case notwithstanding the death penalty pronounced in 1946, given that the offence had been reclassified as a crime against humanity and secondly, that the Indictments Chamber had found that the *actus reus* and *mens rea* of a crime against humanity had been made out, which justified committing him for trial before the Assize Court

In a judgment of 3 November 1993 the Court of Cassation refused to refer the case to the Assize Court for the Rhône *departement* On 16 March 1994 it dismissed the applicant's appeal against an order of the President of the Assize Court allowing a video recording to be made of his trial

During the proceedings before the Assize Court, the applicant requested leave to examine Edouard Balladur, the Acting Prime Minister, as a witness in his capacity as former Secretary General of the Presidency of the Republic, in order to have him clarify the conditions in which a pardon had been granted on 23 November 1971 The Assize Court gave an interlocutory judgment dismissing that request, on the grounds that it was not necessary for ascertaining the truth The applicant also requested leave to examine Jean Guitton a member of the *Academie française* at the end of the preparations for the hearing That request was also dismissed The applicant submitted other requests to examine witnesses all of which were dismissed

In a judgment of 20 April 1994, the Assize Court for the Yvelines *departement* sentenced the applicant to life imprisonment for aiding and abetting a crime against humanity

The applicant appealed on points of law filing a supplementary memorial and further pleadings setting out eleven grounds of appeal Regarding his unsuccessful requests to examine witnesses, the applicant submitted grounds of appeal only in respect of the requests concerning Edouard Balladur and Jean Guitton

The Court of Cassation dismissed his appeal in a judgment of 1 June 1995 Regarding the request to examine witnesses the court noted that the applicant's pleadings did not refer to any fact or circumstance specifying the importance of the Prime Minister's evidence and that the evidence of Jean Guitton, who had neither been summoned nor implicated was not considered relevant to the Assize Court's task of ascertaining the truth

COMPLAINTS (Extract)

2 He considers that he was not tried by an independent tribunal within the meaning of Article 6 para 1 of the Convention, as a report interpreting the international conventions had been given by the Minister for Foreign Affairs, at the request of the Indictments Chamber

3 He considers that he was systematically presumed guilty by both the media and key politicians in public office He invokes Article 6 para 2 of the Convention

4 The applicant considers that, even after his conviction, he is still unaware of the nature and cause of the accusation against him He invokes Article 6 para 3 (a) of the Convention

5 He complains that he was unable to examine witnesses who might have testified in his defence He invokes Article 6 para 1 and 3 (d) of the Convention

6 The applicant also invokes an Article 6 para 3 (g) which, he claims, provides that 'anyone accused of a criminal offence has a fully equal right to the following guarantees g) not to be compelled to incriminate himself or to confess himself guilty"

7 The applicant also considers that he was convicted because of the 1964 Law which provided retroactively that the prosecution of crimes against humanity could not be time barred He invokes Article 7 para 1 of the Convention He considers further that the exception to the principle of non-retroactivity, as provided for in Article 7 para 2, cannot apply in this case, as the offence of which he was convicted constitutes an ordinary offence and not a crime against humanity

THE LAW (Extract)

2 The applicant considers that he was not tried by an independent tribunal within the meaning of Article 6 para 1 of the Convention, as a report interpreting the international conventions was submitted by the Minister for Foreign Affairs at the courts' request Article 6 para 1 provides

> "In the determination of any criminal charge against him everyone is entitled to a fair hearing by an independent and impartial tribunal

The Commission notes that during the preliminary investigation, the Indictments Chamber of Paris Court of Appeal delivered three judgments dated 17 December 1976 asking the Minister for Foreign Affairs four questions relating to the interpretation of international conventions The Minister replied in a report of 15 June 1979

The Commission accepts that the Minister's reply could have influenced the decision whether or not to pursue the proceedings regarding the purely procedural question as to whether they were time-barred and, therefore, the possibility of bringing a prosecution However, the Commission notes that the Minister for Foreign Affairs declined to give his view on the question whether "a right to have the prosecution of crimes against humanity declared time-barred (assuming such a right is recognised under domestic law) would fall into the category of human rights and fundamental freedoms' recognised in accordance with domestic law", as that was a matter of interpretation of the legislation The Commission notes also that the Indictments Chamber held, in its judgment of 27 July 1979, that the prosecution of crimes against humanity could not be time barred and based its decision not only on the Minister's interpretation, but also on the 26 December 1964 Law Lastly, it transpires from the judgment of 19 October 1989 that the Indictments Chamber meant to justify the time-bar on its own terms, without referring to the Minister's opinion and mainly basing its decision not on the international conventions, but on the 26 December 1964 Law, which the courts alone have competence to interpret

The Commission therefore considers that the applicant's case was heard by an "independent" tribunal within the meaning of Article 6 para 1 of the Convention (see, *a contrario*, Eur Court HR, Beaumartin v France judgment of 24 November 1994, Series A no 296-B p 63, para 38)

It follows that this complaint must be rejected as manifestly ill founded, pursuant to Article 27 para 2 of the Convention

3 The applicant considers that he was systematically presumed guilty both by the media and by key politicians in public office He invokes Article 6 para 2 of the Convention which provides that

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law

The Commission notes that the statements made by certain public figures during the criminal proceedings can be explained by the controversy which had long been surrounding the applicant's activities during the Second World War These activities were noted in two final judgments sentencing him to death, *in absentia*, on 10 September 1946 and 4 March 1947 In any event, the impugned statements, taken as a whole, could not be interpreted as declaring the applicant guilty of the offence which was in the process of being examined (see, *inter alia*, *mutatis mutandis*, No 10847/84, Dec 7 10 85, D R 44, p 238)

It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 27 para 2 of the Convention

4 The applicant claims that even after his conviction, he was still unaware of the nature and cause of the accusation against him He invokes Article 6 para 3 (a) of the Convention which provides

> 3 Everyone charged with a criminal offence has the following minimum rights
>
> a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him

The Commission notes that from 24 May 1989 the date on which the applicant was arrested and charged, he was informed of the accusations against him, as stated in the criminal complaints filed with an application to join the proceedings as a civil party, and of the legal classification i e among other things, crimes against humanity and crimes against humanity in the form of arbitrary arrests, arbitrary imprisonment, arrests and arbitrary imprisonment followed by physical torture, premeditated murder and aiding and abetting murder , then committed by the Indictments Chamber of Versailles Court of Appeal for trial before the Assize Court on charges of aiding and abetting a crime against humanity The Commission notes lastly that it is clear from the circumstances of the case that during the proceedings, the applicant explained his actions and submitted his grounds of defence regarding the offence and classification thereof

It follows that this complaint must be rejected as manifestly ill founded, pursuant to Article 27 para 2 of the Convention

5 The applicant complains that he was unable to examine witnesses who might have testified on his behalf He invokes Article 6 para 1 and 3 (d) of the Convention

Article 6 para 3 (d) of the Convention provides

> 3 Everyone charged with a criminal offence has the following minimum rights
>
> d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,

The Commission recalls that as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the accused seeks to adduce (see *inter alia*, Eur Court HR Barbera, Messegue and Jabardo v Spain judgment of 6 December 1988 Series A no 146 p 31 para 68)

Article 6 para 3 (d) leaves it to them again as a general rule, to assess whether it is appropriate to call witnesses, in the autonomous sense given to that word in the Convention system (Eur Court HR, Asch v Austria judgment of 26 April 1991, Series A no 203, p 10, para 25), it does not require the attendance and examination of every witness on the accused's behalf, its essential aim is an equality of arms (Eur Court HR, Engel and Others v the Netherlands judgment of 8 June 1976, Series A no 22, pp 38 39, para 91, Bricmont v Belgium judgment of 7 July 1989, Series A no 158, p 31, para 89) However as the concept of 'equality of arms' does not exhaust the content of paragraphs 1 and 3 of Article 6 of the Convention, the Commission has the task of ascertaining whether the proceedings in issue, considered as a whole, were fair as required by paragraph 1 of Article 6 (Eur Court HR, Delta v France judgment of 19 December 1990, Series A no 191, p 15, para 35, Vidal v Belgium judgment of 22 April 1992, Series A no 235-B, pp 32-33, para 33)

The Commission notes, on the facts, that the applicant refers to a number of dismissals of his requests to examine witnesses about which he did not complain in his appeal on points of law against the judgment of the Assize Court of 20 April 1994

It follows that this part of the complaint must be rejected for non-exhaustion of domestic remedies, pursuant to Articles 26 and 27 para 3 of the Convention

The Commission notes further that the applicant complains that he was unable to examine the Prime Minister Edouard Balladur, who was Secretary General of the Presidency of the Republic while President Georges Pompidou was in office, in order to have him clarify the circumstances in which he was granted a presidential pardon on 23 November 1971, neither was he able to examine Jean Guitton, a member of the *Academie française*

The Commission observes at the outset that the matters for which the applicant wished to examine the Prime Minister did not concern the offence with which the applicant was charged and, moreover, that he could, if he wished, have referred to and commented on the pardon during the proceedings The Commission notes, lastly, that the judgment of the Court of Cassation shows that the applicant did not substantiate his request before the Assize Court so as to specify its importance

As regards his other request to examine a witness, the Commission notes that it was not submitted until the end of preparations for the Assize Court hearing The Commission, noting that the Assize Court did not consider it necessary to examine that witness in order to ascertain the truth has not found anything allowing it to establish a violation of the provisions referred to on this point

It follows that this part of the application must be rejected as being manifestly ill founded, pursuant to Article 27 para 2 of the Convention

6 The applicant also invokes an Article 6 para 3 (g) which he claims provides that "anyone charged with a criminal offence has a fully equal right to the following guarantees g) not to be compelled to incriminate himself or to confess himself guilty

The Commission, which recalls that there is no paragraph 3 (g) of Article 6 of the Convention, considers that this complaint should in reality be examined from the standpoint of paragraph 1 of Article 6

The Commission recalls that even if Article 6 makes no express mention thereof, the right to remain silent and not to contribute to incriminating oneself are generally recognised international standards which are at the heart of the concept of a fair trial enshrined in Article 6 (see Eur Court HR, Funke v France judgment of 25 February 1993, Series A no 256 A p 22, para 44, Murray v the United Kingdom judgment of 8 February 1996, Reports 1996, to be published)

The Commission notes in the instant case that the applicant complains that the file concerning his application for a presidential pardon was attached to the criminal case-file by the first investigating judge, on the ground that his application for a pardon contained a certain admission of responsibility

It is not the Commission's task to rule on whether the inclusion of the file on the application for a pardon could have infringed the applicant's right not to contribute to incriminating himself

The Commission notes that this point was not submitted on appeal to the Court of Cassation There is nothing in the evidence submitted to the Commission to indicate that an application was made to withdraw certain evidence from the file in particular from the file concerning the application for a presidential pardon or that recourse was made to remedies available under domestic law on this point in accordance with the provisions of Article 26 of the Convention

It follows that this part of the complaint must be rejected for non exhaustion of domestic remedies pursuant to Articles 26 and 27 para 3 of the Convention

The Commission notes further that the applicant complained on appeal against his conviction of 20 April 1994 that the President had not informed him of his right to remain silent and not to contribute to incriminating himself

The Commission considers, however, in the light of the circumstances of the case, that the applicant cannot claim to have been unaware of his right to remain silent and not to contribute to incriminating himself Neither has it found any appearance of a violation of this principle, as the applicant has never been compelled to give self incriminating evidence

It follows that this part of the complaint must be rejected as manifestly ill founded, pursuant to Article 27 para 2 of the Convention

7 The applicant also considers that he was convicted because of the 1964 Law which provided retroactively that the prosecution of crimes against humanity could not be time-barred He invokes Article 7 para 1 of the Convention He also considers that the exception to the principle of non retroactivity, as provided for in paragraph 2 of Article 7, cannot apply in this case as the offence of which he was convicted was an ordinary offence and not a crime against humanity

Article 7 of the Convention provides

> 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed
>
> 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations "

The Commission notes that the applicant was sentenced to life imprisonment by the Assize Court for the Yvelines *departement* on 20 April 1994 for aiding and abetting a crime against humanity The Commission notes further that the offence of a crime against humanity and the rule that there can be no time bar were laid down by the Charter of the Nuremberg International Tribunal annexed to the inter-Allied Agreement of 8 August 1945 and that a French law of 26 December 1964 referring expressly to that Agreement provides that the prosecution of crimes against humanity cannot be time barred

The Commission considers it unnecessary to rule on whether the offence with which the applicant was charged could, at the time it was committed, be classified as such

The Commission must now examine whether the exception provided for in paragraph 2 of Article 7 is applicable to the circumstances of this case

The Commission recalls that it transpires from the preparatory work to the Convention that the purpose of paragraph 2 of Article 7 is to specify that this Article does not affect laws which, in the wholly exceptional circumstances at the end of the Second World War, were passed in order to punish war crimes, treason and collaboration with the enemy and does not in any way aim to pass legal or moral judgment on those laws (see No 268/57, Dec 20 7 57, Yearbook 1, p 241) It considers that this reasoning is also applicable to crimes against humanity

The Commission recalls, lastly, that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, for example, No 13926/88, Dec 4 10 90, D R 66, p 209, at p 225, No 17722/91, Dec 8 4 91, D R 69, p 345, at p 354) The Commission recalls further that the interpretation and application of national law are as a general rule, matters for the national courts (see, among other authorities, No 10153/82, Dec 13 10 86, D R 49, p 67)

On the facts, the Commission notes that the applicant was not convicted of an ordinary offence, but of aiding and abetting a crime against humanity, as is clear from the proceedings brought against him and the judgment convicting him

It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 27 para 2 of the Convention