

APPLICATION N° 28073/95

Mohamed SLIMANE KAID v/France

DECISION of 7 April 1997 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) This provision cannot be invoked by a complainant in criminal proceedings*
- b) The right of access to a court does not include a right to have criminal proceedings instituted against third parties*
- c) Where no claim is made for compensation the reporting of an offence with an application to join the proceedings as a civil party does not fall within the scope of the concept of civil rights and obligations unless the decision complained of has deprived the applicant of the right to sue for compensation*

In the instant case, as the decision given in the criminal proceedings was not binding on the civil courts the applicant retained the right to sue for compensation and the outcome of the criminal proceedings was therefore not decisive for establishing the applicant's right to compensation

THE FACTS

The applicant, a French national, was born in Algeria in 1941 and lives in Elancourt. He has already submitted two applications to the Commission. An Article 31 Report dated 26 November 1996 has been adopted in respect of the first one (No. 23043/93) and the Commission is in the process of examining the second one (No. 27019/95).

The applicant was represented before the Commission by Mr Francis Tissot, a lawyer practising in Paris

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

On 28 April 1989, the applicant filed a criminal complaint, with an application to join the proceedings as a civil party, against M A , the managing director of several companies, for inducing and being an accessory to liquidation He claimed that M A had been diverting assets, particularly customers, from company P, of which the applicant was the chairman and managing director, for the benefit of various other companies

On 27 July 1989 the applicant filed a second criminal complaint, with an application to join the proceedings as a civil party, against Mr M , the court appointed receiver and creditors' representative, for various thefts and concealment of letters to company S of which the applicant was the chairman, managing director and principal shareholder

On 28 November 1989 the investigating judge issued a request for evidence to be taken on commission

In an order of 19 January 1990, the two sets of proceedings were joined The applicant gave evidence on 21 November 1990 On 30 July 1991 the investigating judge sent the case file to the Aix en Provence public prosecutor for his views on whether a prosecution should be brought

On 10 June 1992 the public prosecutor filed his report recommending that the investigating judge discontinue the proceedings He noted that the applicant had failed to provide any physical evidence in support of a criminal bankruptcy charge and indicated that the alleged thefts of letters would be better suited to disciplinary or civil proceedings

On 24 July 1992 the investigating judge made an order discontinuing the proceedings on the ground that the investigation had revealed insufficient evidence to justify charging anyone with the offences in question

In a judgment of 14 October 1993, the Indictments Chamber of Aix-en Provence Court of Appeal declared the applicant's appeal against this order inadmissible, holding as follows

Under section 186 (4) of the Code of Criminal Procedure, civil parties must lodge their notice of appeal within ten days of notification or service of the decision,

where the decision is served by registered letter, the aforementioned time limit runs from the date on which the said letter is sent to the civil party,

in the instant case, the relevant time-limit started running on 25 July 1992, the day after the registered letter informing the civil party of the investigating judge's decision was sent, and expired at midnight on Monday 3 August 1992

thus, the appeal lodged on Tuesday 4 August 1992 must be declared inadmissible as having been lodged out of time

In a judgment of 24 January 1995 the Court of Cassation declared the applicant's appeal inadmissible on the following ground

Whereas the judgment in question and the documents on the file show that Mohamed Slimane was duly notified of the order on 24 July 1992, whereas the time limit for lodging an appeal, which began to run the next day, 25 July, expired at midnight on Monday 3 August whereas the Indictments Chamber acted correctly in declaring inadmissible Mr Slimane's appeal, which was lodged on Tuesday 4 August 1992, whereas the inadmissibility of that appeal accordingly renders his appeal to the Court of Cassation inadmissible

COMPLAINTS (Extract)

1 The applicant submits that he was not given a fair hearing by an independent and impartial tribunal within a reasonable time as provided for in Article 6 para 1 of the Convention He also invokes Article 6 para 3 (b) and (d) of the Convention

THE LAW (Extract)

1 The applicant submits that he was not given a fair hearing by an independent and impartial tribunal within a reasonable time as provided for in Article 6 para 1 of the Convention

Article 6 para 1 of the Convention provides

In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

The Commission notes at the outset that the proceedings of which the applicant complains do not concern a criminal charge against him within the meaning of Article 6 since he was not an accused but a complainant The Commission recalls its established case law on this point, to the effect that the right to a court afforded by Article 6 para 1 of the Convention does not include a right to have criminal proceedings instituted against third persons (No 9777/82 Dec 14 7 83, D R 34 p 165)

As the applicant had applied to join the proceedings as a civil party the issue arises as to whether those proceedings could have given rise to a dispute over his civil rights and obligations within the meaning of Article 6 para 1 of the Convention

The Commission notes that the applicant did not at any stage of the proceedings request, or indicate his intention to request, damages. Neither does he claim to have made any such request. The case is comparable in this regard to the *Acquaviva v. France* case, in which the applicants, who were civil parties in the proceedings, had not filed any claim for compensation.

In that case, the Court stressed that by choosing the avenue of criminal procedure, the applicants had set in motion judicial criminal proceedings with a view to securing a conviction, which was a prior condition for obtaining compensation, and had retained "the right to submit a claim for damages up to and during the trial" The Court then examined whether the outcome of the proceedings was, for the purposes of Article 6 para. 1, decisive for establishing the applicants' right to compensation. It considered that it was and therefore that Article 6 para. 1 was applicable on the ground that the decision in the criminal proceedings - to drop the charges because the defendant has acted in self defence - deprived the applicants of "any right to sue for compensation" (*Eur. Court HR, Acquaviva v France* judgment of 21 November 1995, Series A no 333-A, p 15, para 47)

In the instant case, the Commission also notes that the applicant retained the right to submit a claim for damages up to and during the trial. The issue to be determined is therefore whether, in the specific circumstances of the case, the outcome of the proceedings was, for the purposes of Article 6 para. 1, decisive for establishing his right to compensation.

The Commission notes that the investigating judge made an order discontinuing the proceedings for lack of sufficient evidence to justify charging anyone with the offences in question. Unlike the *Acquaviva* case, that decision left the complainant's civil claims intact, as he could have submitted them to the civil courts, which were not in any way bound by the decision discontinuing the proceedings. In this case, the applicant has indicated that he did not bring his claim before the civil courts either before or after the decision discontinuing the proceedings.

The Commission is therefore forced to conclude that the outcome of the proceedings was not, for the purposes of Article 6 para. 1, decisive for establishing the applicant's right to compensation. There was therefore no "dispute" over a "civil right" within the meaning of that Article (see, *a contrario*, *Acquaviva v France*, *op cit*, para 47)

It follows that Article 6 is inapplicable here. This part of the application must therefore be rejected on the ground that it is incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para. 2.