

APPLICATION N° 39109/97

Pierre DOYEN v/France

DECISION of 9 September 1998 on the admissibility of the application

Article 4, paragraph 2 of the Convention *Work is "forced or compulsory labour" if it is performed against the person's will and this obligation is unjust, oppressive or constitutes an avoidable hardship*

The obligation on an avocat (lawyer) to be on 24 hour call once every 200 days for the purpose of assisting persons held in police custody in the area covered by the Bar of which he is a member cannot be deemed to be forced or compulsory labour (since the complaint in the instant case did not relate to the fact that the lawyer was officially assigned or had to perform this work without pay) This obligation does not increase a lawyer's workload to the point at which it can be considered unjust, oppressive or unreasonably detrimental

THE FACTS

The applicant, born in 1947, is a French citizen and lives in Saint Leu La Forêt (France)

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

On 4 October 1993 the Chairman of the Val d'Oise Bar sent a circular to all his colleagues informing them that in order to ensure that a lawyer was available on demand to assist anyone in police custody anywhere in the *département*, the Val d'Oise Bar Council had decided to require all its members (with the exception of lawyers with

over 30 years' experience and former chairpersons of the Bar) to take it in turns to be on 24-hour call as duty lawyer. The chairman added that this would both spread the burden throughout the Bar and alleviate it since each lawyer would be on call only approximately once every 200 days.

On 2 December 1993 the applicant, who is a lawyer, received a letter informing him that he was the duty lawyer for persons in police custody anywhere in the *département* for a 24-hour period from 24 to 25 January 1994.

In a letter of 18 January 1994 the applicant pointed out to the chairman that there was no provision in the legal rules governing duty lawyers requiring them to be on call for the purpose of assisting persons in police custody. In a letter of 13 April the chairman summoned the applicant before the disciplinary board for breach of integrity, honour or discretion.

On 30 May 1994 the Val d'Oise Bar Council, acting in its disciplinary capacity, after hearing arguments from both sides and having first, at the applicant's request, ordered the proceedings to be held in public, gave the applicant a reprimand for refusing to perform the police-custody duty.

The applicant appealed to Versailles Court of Appeal. After an adversarial hearing, the Court of Appeal dismissed the appeal on 25 January 1995 and upheld the Bar Council's decision. The Court of Appeal emphasised in its judgment that under Article 63-4 of the Code of Criminal Procedure the Bars were to provide a public service and their chairpersons, who were responsible for running the Bar, had not only the power, but also the duty to take the necessary measures - using the legal and human resources available to them - to fulfil the requirements of that provision. The rota organised by the Val d'Oise Bar was such a measure. The court went on to hold that the exemption in respect of former chairpersons of the Bar and lawyers with over 30 years' experience could not be considered to infringe the principle that public service duties should be borne equally by all lawyers since that principle did not prevent different rules being applied to different situations and, on the facts, it had not appeared strictly necessary for the exempted persons to take part in the rota.

The applicant appealed on points of law to the Court of Cassation. On 24 June 1997 the court dismissed the applicant's appeal and ordered him to pay a civil fine of 5,000 French francs for abuse of process. The Court of Cassation held *inter alia*

" the duties required of lawyers following implementation of the Act of 4 January 1993, which reinforces the rights of defendants during police custody, cannot be deemed to be either forced or compulsory labour, within the meaning of Article 4 of the European Convention of Human Rights, or conscription,

accordingly, neither the provisions of Article 63 4 of the Code of Criminal Procedure [nor] prevent the Chairman of the Bar Council from designating lawyers in advance to be on 24 hour call for the purpose of assisting persons in police custody lastly, the principle of equality before the law does not prevent different rules being applied to different situations

COMPLAINTS (Extract)

The applicant complains that the power of the Chairman of the Val d'Oise Bar to confine him to his residence while on 24 hour police custody call amounts to a violation of Article 4 para 2 of the Convention, which provides that no one shall be required to perform forced or compulsory labour

THE LAW (Extract)

1 The applicant complains that the power of the Chairman of the Val d'Oise Bar to confine him to his residence while on 24-hour police custody call amounts to a violation of Article 4 para 2 of the Convention which provides that no one shall be required to perform forced or compulsory labour

Article 4 of the Convention provides, in so far as relevant

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2 No one shall be required to perform forced or compulsory labour

3 For the purpose of this Article the term ‘forced or compulsory labour’ shall not include

d any work or service which forms part of normal civic obligations ”

The Commission recalls that in accordance with its case-law, the constituent elements of the concept of forced or compulsory labour for the purposes of Article 4 para 2 of the Convention are that the labour or service must be imposed on the person concerned against his will and that the obligation to perform it must be either unjust or oppressive or [the work or the service itself must] constitute an avoidable hardship (case of Van Der Musselle v Belgium, Comm Report of 3 March 1982, para 93 and the cases referred to therein)

In the instant case the Commission observes that the applicant does not complain about being officially assigned to a case or about being required to perform this duty without pay. He complains of having to be on call, or - in his words - "confined", for 24 hours once every 200 days in order to assist persons in police custody. The obligation of which he complains cannot therefore be deemed in the present case to be "forced or compulsory labour" for the purpose of paragraph 2 of Article 4. Moreover, the obligation of which the applicant complains cannot be deemed to have increased his workload to the point at which it should be considered unfair, oppressive or unreasonably detrimental. Accordingly, there is no appearance of a violation of Article 4 of the Convention and this complaint must be rejected as being manifestly ill-founded, pursuant to Article 27 para. 2 of the Convention.