[TRANSLATION]

…

THE FACTS

The three applicants are French nationals, born in 1954, 1955 and 1956 respectively. The first applicant is a technical salesman and lives in Paris. The second applicant is an electromechanical engineer. He is the husband of the third applicant, who is a sales representative. They live in Vitry-sur-Seine (Val-de-Marne).

A. The particular circumstances of the case

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

The applicants were hired in 1986, 1978 and 1985 respectively by a company called Mole Richardson France whose object was the manufacture, sale and hire of lighting and cinematographic equipment. The collective agreement applicable to the three applicants was the one for the metalworking industry.

In 1989 Mole Richardson France transferred its manufacturing department and part of its sales department to a company called Raccetec. The employment contracts of the staff employed in connection with the activities which had not been transferred, including the applicants' contracts, were transferred to Mole Richardson International Ltd.

In 1991 Mole Richardson International Ltd transferred its Montrouge branch to a company called Panavision France, which was not subject to any collective agreement. The following year Panavision France closed down its Montrouge establishment.

On 28 December 1992 the second applicant was made redundant. On 7 January 1993 the company obtained administrative authorisation to serve a redundancy notice on the other two applicants, who, in their capacity as staff representatives, were protected employees. On 13 January 1993 the company made them redundant on the ground that the establishment employing them had been closed down.

On 25 June 1993 the applicants lodged an application with the Boulogne-Billancourt Industrial Tribunal for an order requiring their former employer to pay them all the sums due under their contract, pursuant to the provisions of the collective agreement for the metalworking industry.

On 24 November 1993 the Industrial Tribunal dismissed the applicants' claims in their entirety and awarded costs against them. The tribunal found, *inter alia*, that while Panavision France had taken over Mole Richardson's assets and the employment contracts had been transferred to the new

employer, the latter was not subject to the application of any collective agreement, "the transfer of a contract under ... Employment Code [not entailing] the preservation of all previously obtaining advantages".

The applicants appealed to the Versailles Court of Appeal. They submitted in their grounds of appeal that Panavision France was obliged to apply the collective agreement for the metalworking industry because, in accordance with the provisions of an Act of 3 January 1985, that agreement continued to be effective for one year following the transfer. They also submitted that their redundancies had breached the European Directive of 14 February 1977 relating to the information to be given to employees in the event of transfers of undertakings (Directive no. 77/187, Official Journal of 5 March 1977). The applicants complained, in particular, that, in breach of the directive, it was only their salary slips that had officially informed them, at the end of December 1991, of the transfer of Mole Richardson International to Panavision France.

On 26 June 1995 the Court of Appeal upheld the Industrial Tribunal's decision that there had been genuine and substantial grounds for making the applicants redundant. It went on to hold that the applicants could not rely on the application of the collective agreement for the metalworking industry at the time of their redundancy because the transfer to Panavision France of Mole Richardson International's activity and equipment had taken place on 1 July 1991, that is, before they had been made redundant. Accordingly, the Court of Appeal concluded that the applicants could not rely on the collective agreement for the calculation of their redundancy pay because their right to compensation had arisen when the agreement had ceased to be effective. Consequently, it dismissed the applicants' claims and awarded costs against them. The Court of Appeal did not deal with the ground of appeal relating to a breach of the European directive.

The applicants lodged an appeal on points of law with the Court of Cassation. In their grounds of appeal they complained, *inter alia*, that the Court of Appeal's judgment had not dealt with "important points of law based on French obligations with regard to the European Community". They submitted that, accordingly, the Court of Appeal had failed to comply with its obligations under Article 455 of the new Code of Civil Procedure.

In its defence pleadings, Panavision France, replying to the arguments put forward by the applicants – and after noting that "the appellant complains that the decision did not deal with his objection based on a breach of the European Directive of 14 February 1977" – submitted:

> "... apart from the fact that it is not clear in which pleadings this point was raised, it should be reiterated that the judges of fact have a duty to deal only with genuine grounds, defined as the statement of a fact on the basis of which, using legal reasoning, the party intends to demonstrate the merits of a claim or defence. Even supposing that the employee did raise the point, he did not draw any legal inference from the alleged

breach of the directive. It was therefore a mere argument which the judges of fact did not have to deal with".

In a judgment of 10 July 1997 the Court of Cassation dismissed the applicants' appeals. In particular, the ground of appeal based on a breach of the European directive was declared inadmissible on the ground "that it does not appear either from the impugned decision or the pleadings that [the applicants] relied, before the judges of fact, on a breach of the European Directive of 14 February 1977 on the information to be given to employees in the event of transfers of undertakings; it is therefore a new ground of appeal and one of mixed fact and law ...".

B. Relevant domestic law and practice

New Code of Civil Procedure

Article 619

"... new grounds of appeal shall not be admissible before the Court of Cassation. Subject to any contrary provision, the following may, however, be raised for the first time:

1. Points of pure law;
2. Grounds of appeal arising out of the decision being challenged."

That provision enshrines traditional case-law according to which the Court of Cassation was instituted only to assess, from a legal perspective, judgments delivered at last instance. It is thus impossible to raise before the Court of Cassation new grounds which have not been dealt with before the judges of fact. According to the established case-law of the Court of Cassation, a ground which has not been raised before the judges of fact and is of mixed fact and law is a new ground (see, to that effect, Cass. App. 22 November 1942, JPC 43 II 2444; Court of Cassation, 1st Civil Division, 22 May 1979, JPC 79 IV 244; Cass. 2nd Civ., 17 July 1991, GP 93 summ. 2).

Article 954

"... Appeal submissions shall formulate expressly the parties' claims and the grounds on which each of those claims is based."

Article 455

"The judgment shall set out succinctly the respective claims of the parties and the grounds on which they rely; it shall give reasons. The decision shall be set out in the operative provisions of the judgment."

Case-law has interpreted those provisions to mean, *inter alia,* "that the requirements of that Article are satisfied where the judgment has stated and

dealt with the factual circumstances, and the legal inferences drawn from them, on which the decision is based" (see Comm. 5 January 1976, Bull. civ. IV, p. 2, and 2nd Civil Division, 12 May 1980, ibid. II, p. 77).

COMPLAINT

The applicants complained that they had not had a fair trial because the Court of Cassation had declared one of their grounds of appeal inadmissible on the – clearly inaccurate – premise that it was a new ground. The applicants submitted that they had not had an effective hearing before the Court of Cassation and relied on Article 6 § 1 of the Convention.

THE LAW

The applicants complained that, in refusing to deal with their ground of appeal based on a breach of European Directive no. 77/187, holding that it was a new ground, the Court of Cassation had committed a clear error of assessment and thus deprived them of the safeguards of a fair trial. The applicants relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

The Government pointed out that an appeal on points of law to the Court of Cassation was a special procedure: it was an extraordinary legal remedy which was subject to stricter and more formal rules. They noted that it was clear from the case file that the applicants had indeed referred to a breach of the European directive both in their pleadings before the Court of Appeal and in their further pleadings before the Court of Cassation. However, they noted that it was not sufficient merely to raise an argument before a court for that argument to become a formal ground of appeal for the purposes of the Court of Cassation's case-law. The ground had to be specifically put forward in the appellants' pleadings in order to be considered as such.

In that connection, the Government submitted that a clear distinction had to be made between an argument and a formal ground. In the Government's submission, the Court of Cassation had dealt with the case in accordance with that distinction, which was an essential one in French law. In the instant case, the applicants had merely made assertions in their pleadings filed with the Court of Appeal, without expressly formulating the grounds on which they based their claims. They had set out their position, namely, that they had not been aware of a change of employer until receiving their

salary slips. They had then merely mentioned that such an approach was prohibited by the above-mentioned directive, and copied out the provision in question, without drawing any legal inferences from the incompatibility between domestic law and European law. At no time had the applicants referred to the legal implications of the alleged breach of the European directive. The judges of fact were not obliged to deal with every detail of the parties' arguments; their duty was confined to dealing with the formal grounds. In that connection the Government quoted, among other things, the comments of Mr Jules Le Clec'h, former President of the Court of Cassation, according to which "*the ground which absolutely must be dealt with is thus the one presented as the necessary back-up to the claim or defence. Judges of fact are never criticised for failing to deal with every detail of the parties' arguments ... . The Court of Cassation has never considered reproving them for failing to refute all the objections raised by an appellant against a respondent ... . And that is why it is of fundamental importance in law not to confuse formal grounds with mere arguments ... . There is no requirement to reply with particular reasons to a mere argument. The situation is very different with regard to a formal ground"* (Grounds and arguments before the Court of Cassation, JCP 1951 I 939).

The Government also stressed that the main problem raised by the present dispute centred on whether the collective agreement for the metalworking industry had still been applicable to the applicants when they were made redundant. It was clear from their pleadings that the lack of information given to employees on the transfer of the company had had no effect on the applicants' position since no link had been established by them between that lack of information and the applicability of the collective agreement at the time of dismissal. The Government therefore considered that the allusion to the European directive was clearly just an argument, and not a point of law; that is why the Versailles Court of Appeal had considered it irrelevant and had not dealt with it.

The Government considered, lastly, that the instant case should be clearly distinguished from the Fouquet case, in which the Commission had considered that a defendant was not given an effective hearing if an essential ground of his defence was disregarded by the relevant court (see the Fouquet v. France judgment of 31 January 1996, *Reports of Judgments and Decisions* 1996-I, Commission Report of 12 October 1994). Unlike the position in that case, the Government noted, in the instant case, that it was long after having examined the applicants' ground of appeal that the Court of Cassation had dismissed it, holding that it was a new ground.

The applicants disputed the arguments put forward by the Government.

The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or 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, among other authorities, the García Ruiz v. Spain judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 28).

In the instant case the applicants complained that the Court of Cassation had failed to comply with the rules of a fair trial because it had held that the Court of Appeal was not required to examine a non-existent ground of appeal and that the said ground had been relied on for the first time before it, and was thus inadmissible.

The Court wishes to stress that, in order to accomplish their task, the courts must have the co-operation of the parties, who are required, in so far as possible, to set out their claims clearly, unambiguously and in a reasonably structured form.

The Court notes that an analysis of the pleadings filed by the applicants with the Court of Appeal shows that they merely alluded to the European Directive of 14 February 1977. Their pleadings, which ran to several pages, contain only one (five-line) sentence to the effect that failing to inform staff of a change of employer breached a European directive, followed by a reference to an Article of the directive. The Court is satisfied that this was merely an argument. It reiterates in that connection that although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see the García Ruiz judgment, op.cit., § 26).

Besides that, the Court notes that the point of dispute was Panavision France's refusal to continue applying the collective agreement for the metalworking industry. The Court of Appeal acknowledged that the applicants were justified in relying on that collective agreement, by law, for fifteen months, that is, until 1 October 1992. The fact that they were informed of the change of employer at the end of December 1991 by their salary slip (and not, as the European directive seems to require, as early as July 1991, the date of transfer) does not affect the matter in dispute.

Accordingly, the Court considers that, in failing to reply to a mere argument – one, moreover, which had no effect on the matter in dispute – the Court of Appeal did not fail in its duty to give reasons.

Having regard to the foregoing, the Court considers that it was inevitable that the ground of appeal in question would be considered as a new ground by the Court of Cassation. Admittedly, the Court of Cassation could have explained its position better and drawn a distinction between the formal grounds and the arguments submitted by the applicants. In opting for a laconic response, the Court of Cassation's judgment may indeed lead to confusion and has obliged the Court to examine the case on the merits in order to satisfy itself that the rules of a fair trial have not been disregarded.

The Court concludes that, even if a clearer reply from the Court of Cassation with regard to the European directive would have been desirable,

that court did not commit an error of assessment (see, conversely, the Dulaurans v. France judgment of 21 March 2000), and did respect the applicant's right to a fair trial for the purposes of Article 6 § 1 of the Convention.

It follows that the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

L. LOUCAIDES
President