

In the Woukam Moudefo case*,

* Note by the Registry: The case is numbered 12/1987/135/189. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr J. Pinheiro Farinha,
Mr L.-E. Pettiti,
Sir Vincent Evans,
Mr C. Russo,
Mr J.A. Carrillo Salcedo,
Mr N. Valticos,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 27 August and 7 October 1988,

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 16 October 1987, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10868/84) against the Republic of France lodged with the Commission under Article 25 (art. 25) by Mr Gabriel Woukam Moudefo, a Cameroon national, on 8 September 1983.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 paras. 3 and 4 and Article 6 para. 1 (art. 5-3, art. 5-4, art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyers who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 November 1987, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Sir Vincent Evans, Mr C. Russo, Mr R. Bernhardt, Mr J.A. Carrillo Salcedo and Mr N. Valticos (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr J. Pinheiro Farinha, substitute judge, replaced Mr Bernhardt, who was unable to attend (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant's lawyers on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the Government's memorial on 8 April 1988 and the applicant's memorial on 21 April 1988.

In a letter received on 17 May, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 18 May that the oral proceedings should open on 27 September 1988 (Rule 38).

6. On 12 July the applicant's lawyers submitted a declaration by their client stating that he agreed to "withdraw" from the proceedings subject to the payment of compensation under the terms proposed by the respondent State.

For his part, the Agent of the Government wrote to the Registrar on 22 July to ask whether or not the Court could accept this friendly settlement and, accordingly, strike the case out of its list pursuant to Rule 48 para. 2.

The Delegate of the Commission was consulted and stated on 5 August that he did not wish to formulate any observations.

Consequently, on 27 August the Court decided to cancel the hearing which was to have been held on 27 September.

AS TO THE FACTS

7. Mr Woukam Moudefo is a Cameroon national and was born in 1951. He lives at present in Douala.

On 1 October 1980, when residing in France, in the Paris area, he was arrested by the police on suspicion of having taken part in an armed bank robbery at Saint-Brice-sous-Forêt (Val-d'Oise) on 28 March 1980. Two days after his arrest, he appeared in Pontoise before an investigating judge who ordered his detention on remand and charged him with aggravated theft and attempted murder.

8. The applicant submitted a number of applications for release from detention, in at least some of which he relied, inter alia, on the Convention. He submitted seven such applications to the investigating judge, all of which were rejected (19 December 1980, 21 February 1981, 22 May 1981, 23 June 1981, 10 July 1981, 18 December 1981 and 2 April 1982). He appealed unsuccessfully against two of these decisions to the Indictments Chamber (chambre d'accusation) of the Versailles Court of Appeal (judgments of 13 August 1981 and 27 April 1982). In addition he applied directly to this Chamber on four occasions in accordance with either Article 148-4 or Article 196-1 paras. 2 and 3 (the latter repealed by an Act of 10 June 1983) of the Code of Criminal Procedure, but these applications also failed (judgments of 3 July 1981, 24 February 1982, 8 June 1982 and 4 January 1983). Finally, he appealed against two of the Indictments Chamber's judgments, those of 27 April 1982 and 4 January 1983, to the Court of Cassation, which dismissed his appeals on 4 June 1982 and 12 April 1983.

9. Before lodging his second appeal to the Court of Cassation, the applicant had, on 7 January 1983, asked the President of the Conseil d'Etat and the Court of Cassation Bar Association to appoint a lawyer to act for him. On 13 January the President replied to him that in criminal proceedings the services of a lawyer were not obligatory.

He added however that he proposed to request a colleague to examine the case and that he would appoint defence counsel if a genuine ground of appeal were found to exist.

Consequently, Mr Woukam Moudefo lodged the above-mentioned appeal himself on 26 January and his own written pleadings on 3 February. The President of the Bar Association, to whom he had again written on 29 March and 12 May, confirmed to him on 12 April that he had asked a colleague to examine the case and then, on 17 May, that the lawyer concerned had been unable to find a ground which could be usefully relied upon. He stated further that the Criminal Chamber of the Court of Cassation had dismissed the appeal on 12 April (the date of the previous letter).

10. On 26 December 1983, the investigating judge ordered the applicant's discharge on the ground that there was insufficient evidence against him.

The applicant, who was detained in Loos (Nord) in connection with another matter, was released from detention on 18 January 1984. On 20 June 1984 he lodged a claim with the Compensation Board of the Court of Cassation for compensation on the basis of Article 149 of the Code of Criminal Procedure. According to this provision: "... compensation may be granted to a person who has been held in detention on remand during proceedings terminated by a decision discharging him ... which has become final, where such detention has caused him damage of a clearly exceptional and particularly serious nature".

By a decision of 21 February 1986, in which no reasons were stated, the Compensation Board awarded the applicant 30,000 French francs (FF). In his submissions, the procureur général (State Prosecutor) acknowledged that "the length of the detention on remand" in question - approximately three years and three months - appeared "manifestly excessive".

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 8 September 1983 to the Commission (no. 10868/84), Mr Woukam Moudefo complained of the length of both his detention on remand (Article 5 para. 3 of the Convention) (art. 5-3) and the criminal proceedings in question (Article 6 para. 1) (art. 6-1). He further relied on the fact that he had not received the assistance of a lawyer in the Court of Cassation (Article 6 para. 3 (c)) (art. 6-3-c).

12. The Commission declared the application admissible on 21 January 1987. It stated however that, in its view, the complaint under Article 6 para. 3 (c) (art. 6-3-c) should in fact be dealt with under Article 5 para. 4 (art. 5-4).

In its report of 8 July 1987 (Article 31) (art. 31), it found a breach of Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) (by eleven votes, with one abstention) and of Article 5 para. 4 (art. 5-4) (by six votes to five, with one abstention). The full text of the Commission's opinion and of the two separate opinions accompanying it is reproduced as an annex to this judgment.

FINAL SUBMISSIONS TO THE COURT

13. In his memorial Mr Woukam Moudefo asked the Court to find that he had "been the victim of a breach by France of Articles 5 para. 3, 5 para. 4 and 6 para. 1 (art. 5-3, art. 5-4, art. 6-1) of the Convention" and to award him just satisfaction under Article 50 (art. 50). The Government in their memorial requested the Court to "declare the application ... inadmissible" with regard to Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1), on the ground that he was no longer a "victim" or for failure to exhaust domestic remedies, and to find that there had been no breach of Article 5 para. 4 (art. 5-4).

AS TO THE LAW

14. By a declaration communicated to the Registrar on 12 July 1988 (see paragraph 6 above), the applicant stated that he accepted the compensation of 134,000 FF which the French Government were offering him. This sum was to be in addition to the 30,000 FF which had been awarded him in 1986 on the basis of Article 149 of the Code of Criminal Procedure (see paragraph 10 above). He acknowledged that it would "constitute full and final compensation for all of the pecuniary and non-pecuniary damage alleged" by him and would "also cover in their entirety the legal and other costs incurred [by him]". He therefore agreed, "subject to payment" of the above-mentioned sum, to "withdraw" from the proceedings pending before the Court and "not to take any further action against France in this matter in national or international courts". He noted that the payment would take place "as soon as the Court has decided to strike the case out of its list".

For their part, the Government asked the Court whether or not it could accept this solution and apply Rule 48 para. 2, according to which

"When the Chamber is informed of a friendly settlement ..., it may, after consulting, if necessary, ... the Delegates of the Commission ..., strike the case out of the list."

The Delegate of the Commission was consulted and submitted no observations.

15. The Court takes formal note of the friendly settlement reached by the Government and the applicant. In view of its responsibilities under Article 19 (art. 19) of the Convention, it would nevertheless be open to the Court to disregard this settlement if a reason of public policy appeared to necessitate such a course (Rule 48 para. 4).

In this connection, the Court notes in the first place that it has had to review the length of detention on remand or of criminal proceedings as to their "reasonableness" (Articles 5 para. 3 and 6 para. 1 of the Convention) (art. 5-3, art. 6-1) in several previous cases (see the following judgments: Wemhoff, 27 June 1968; Neumeister, 27 June 1968; Stögmüller, 10 November 1969; Matznetter, 10 November 1969; Ringeisen, 16 July 1971; Eckle, 15 July 1982; Foti and Others, 10 December 1982; Corigliano, 10 December 1982; Baggetta, 25 June 1987; and Milasi, 25 June 1987, Series A nos. 7, 8, 9, 10, 13, 51, 56, 57, 118-B and 118-C respectively). In so doing, it clarified the nature and extent of the obligations undertaken in these areas by the Contracting States.

As regards Mr Woukam Moudefo's complaint under Article 6 para. 3 (c) (art. 6-3-c) - considered by the Commission under Article 5 para. 4 (art. 5-4) - relating to the lack of defence counsel in the Court of Cassation (see paragraphs 9, 11 and 12 above), the Court's case-law already provides some guidance for the interpretation of these two provisions.

Accordingly it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 54 para. 2, second sub-paragraph, of the Rules of Court, on 11 October 1988.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar