

In the case of Chichlian and Ekindjian*,

* Note by the Registrar: The case is numbered 9/1989/169/225. The first number is the case's position on the list of the cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of corresponding originating applications to the Commission.

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. Cremona,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr J. De Meyer,
Mr N. Valticos,
Mr S.K. Martens,

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

Having deliberated in private on 24 November 1989,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 April 1989, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10959/84) against the Republic of France lodged with the Commission under Article 25 (art. 25) by two French nationals, Mr Ferdinand Chichlian and Mrs Jeanne Ekindjian, on 25 April 1984.

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 as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 3 (a) and (b) (art. 6-3-a, art. 6-3-b).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (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 § 3 (b)). On 29 April 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mrs D. Bindschedler-Robert, Mr J.A. Carrillo Salcedo, Mr N. Valticos and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr J. De Meyer and Mr F. Matscher, substitute judges, replaced Mr Carrillo Salcedo, who was exempted from sitting by the President on 11 October (Rule 24 § 3), and Mrs Bindschedler-Robert, who was unable to take part in the consideration of the case (Rule 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, after consulting, through the Registrar, the Agent of the French Government ("the Government"), the Delegate of the Commission and the lawyer for the applicants, gave instructions concerning the written procedure on 12 May 1989 and, on 28 June, directed that the oral proceedings should open on 22 January 1990 (Rules 37 § 1 and 38).

5. The attempt to reach a friendly settlement gave rise, between 19 July and 20 November 1989, to a number of letters and telephone conversations between the Government, the applicants' lawyer and the Registrar.

6. On 14 September 1989 the President decided that, in the event of these negotiations' failing, the hearing would be held on 20 November 1989.

7. On 20 November the applicants' lawyer communicated to the Registrar the terms of an agreement concluded between his clients and the Government. The Delegate of the Commission was consulted and raised no objection.

The Government and the applicants' lawyer decided not to submit memorials.

8. On 24 November the Court decided to dispense with a hearing in this case, having established that the conditions for this derogation from its usual procedure were met (Rules 26 and 38).

AS TO THE FACTS

9. Mr Ferdinand Chichlian and Mrs Jeanne Ekindjian, who are both French nationals, reside respectively at Marseille and Azas.

10. On 17 March 1981 the Economic and Financial Division of the Toulouse Criminal Investigation Department discovered a sum of 807,000 pesetas in cash at their shared home.

They were charged, on the basis of several Articles of the Customs Code and section 7 of Decree no. 68-1021 of 24 November 1968 with "infringement of the legislation and the regulations governing financial relations with foreign countries", consisting in "failure to deposit ... foreign currency" with "an approved intermediary". However, the Toulouse tribunal de grande instance acquitted them on 12 July 1982, finding that no offence had been committed; it ordered the return of the sum seized and dismissed the action brought by the customs authorities, which had joined the proceedings as civil party.

11. Those authorities and the public prosecutor appealed. The former alleged in their grounds of appeal that Mr Chichlian had admitted having "committed the offence" punishable under, *inter alia*, section 1 - and no longer section 7 - of the above-mentioned Decree and relating to "financial transactions effected in France between non-residents and residents without the intervention of an approved intermediary". In the view of the customs authorities, "the first-instance court" had not "examined all the constituent elements of the charge".

On 6 January 1983 the Toulouse Court of Appeal found the applicants guilty of this offence. Accordingly, it sentenced them to a suspended term of six months' imprisonment and a fine. In addition, it ordered the confiscation of the sum in question.

12. The applicants appealed on a point of law relying, *inter alia*, on Article 6 (art. 6) of the Convention. Their sole ground of appeal stated that the Toulouse Court of Appeal had used its "power to

reclassify in order to convict them of an offence not covered by the initial charge and in respect of which they [had] not, moreover, been in a position to defend themselves because the customs authorities had, in their grounds of appeal, relied on ... section 1 of Decree no. 68-1021 of 24 November 1968, whereas, at first instance, they had cited ... only section 7 of the decree ...".

On 14 November 1983 the Court of Cassation delivered a judgment dismissing the appeal on the following grounds:

"...

... the Court of Appeal, which ruled on the circumstances of the offence in adversarial proceedings, merely drew the legal conclusions consistent with the facts laid before it and was accordingly able, solely on the basis of the defendant's statements, to reclassify correctly the initial offence of failure to deposit the sum with an approved intermediary, the offence referred to in the indictment;

While a criminal court may not rule on facts other than those submitted to it in the instrument instituting proceedings, it is under a duty to take note of the evidence adduced in adversarial proceedings which, being related to those facts and without adding anything thereto, is such as to enable them to be correctly classified; such is the case in this instance;

..."

PROCEEDINGS BEFORE THE COMMISSION

13. In their application of 25 April 1984 (no. 10959/84) lodged with the Commission, Mr Chichlian and Mrs Ekindjian relied on Article 6 § 3 (a) and (b) (art. 6-3-a, art. 6-3-b) of the Convention. They stated that they had had no knowledge of the grounds for the customs authorities' appeal until the hearing and they complained that they had not been informed promptly of the nature and cause of the accusation against them before the Toulouse Court of Appeal and that they had not had adequate time and facilities for the preparation of their defence.

14. The Commission declared the application admissible on 8 July 1988. In its report of 16 March 1989 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of sub-paragraphs (a) and (b) of Article 6 § 3 (art. 6-3-a, art 6-3-b). The full text of its opinion is annexed to the present judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 162-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

15. On 20 November 1989 the Registrar received from each of the applicants a signed declaration, the text of which the Government had proposed to them on 9 November and which read as follows:

"I ... declare that I accept the sum of 100,000 francs which the French Government have offered to me in the case brought against them before the European Court of Human Rights (...).

I acknowledge that the payment of this sum shall constitute full and final compensation for all the pecuniary and non-pecuniary damage alleged by me in [my] application and shall also cover in their

entirety the lawyers' fees and other expenses incurred by me in this case.

I therefore agree, subject to the payment of this sum, to withdraw from these proceedings and to refrain from taking any further action in this matter against the French State in the national or international courts.

I note that the French Government will pay to me the sum in question as soon as the Court has decided to strike the case out of its list.

..."

The Delegate of the Commission was consulted and raised no objection.

16. The Court takes formal note of the friendly settlement reached by the Government and the applicants. In view of its responsibilities under Article 19 (art. 19) of the Convention it would nevertheless be open to it to disregard this settlement if a reason of public policy appeared to necessitate such a course (Rule 49 § 4).

This is not the case in this instance because the dispute concerns to a large extent questions of a factual nature (see paragraphs 20-24, 39-40, 52 and 66-72 of the Commission's report) and does not raise any important issue as to the interpretation of the Convention.

Accordingly, it is appropriate to strike the case out of the list pursuant to Rule 49 § 2.

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 55 § 2 of the Rules of Court on 29 November 1989.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar