

In the Clerc case*,

* Note by the Registrar: The case is numbered 24/1989/184/244. The first number is the case's position on the list of 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 the 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:

* Note by the Registrar: The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to this case.

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Sir Vincent Evans,
Mr R. Macdonald,
Mr S. K. Martens,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold,
Deputy Registrar,

Having deliberated in private on 24 April 1990,

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 October 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. 12393/86) against the French Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Louis Clerc, on 28 August 1986.

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 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer 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 § 3 (b)). On 25 November 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans and Mr N. Valticos

(Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mr Macdonald and Mr Martens, substitute judges, replaced Mr Pinheiro Farinha and Mr Valticos, who were unable to take part in the consideration of the case.

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5). Having consulted - through the Registrar - the Agent of the French Government ("the Government") and the lawyer for the applicant, he decided that there was no need for memorials to be filed (Rule 37 § 1). On 20 December 1989 he provisionally directed that the oral proceedings should open on 25 April 1990.

5. Between 1 December 1989 and 20 April 1990 the Government, the applicant's lawyer and the Registrar communicated with each other in writing or by telephone on a number of occasions in pursuit of a friendly settlement.

6. On 20 April 1990 the Government and the applicant's lawyer informed the Registrar of the terms of an agreement concluded between them. The Delegate of the Commission was consulted and raised no objection.

7. On 24 April 1990 the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 28).

AS TO THE FACTS

8. Mr Louis Clerc, a French national, is currently living in retirement in Perpignan (Pyrénées-Orientales).

9. Following an administrative inquiry which lasted from 28 June 1971 to November 1973, an investigating judge of the Toulouse tribunal de grande instance began an investigation on 4 April 1974 into the persons criminally liable, by reason of their positions, for the acts of nine civil-engineering firms suspected of having, in relation to a call for tenders, infringed Ordinance no. 45-1483 of 30 June 1945 by taking concerted action inimical to free competition. These persons included the applicant, who at the relevant time was the manager of one of the companies involved.

The defendants were eventually acquitted by the Montpellier Criminal Court, on 27 April 1987, and no appeal was lodged. Before then the proceedings had taken a number of different turns. On 16 December 1976 a judgment of the Indictment Division (chambre d'accusation) of the Toulouse Court of Appeal upholding a discharge order issued by the investigating judge on 3 June 1975 had been quashed; on 10 November 1977 the applicant's appeal on points of law against a judgment delivered on 17 June 1977 by the Indictment Division of the Montpellier Court of Appeal following committal proceedings had been dismissed; on 30 July 1980 an expert's report, ordered by the aforementioned Indictment Division, had been filed; and on 26 May 1986 Mr Clerc's appeal on points of law against the Indictment Division's decision on 12 March 1985 to commit him for trial at the Criminal Court had been dismissed.

PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 28 August 1986 to the Commission (no. 12393/86), Mr Clerc alleged that the time taken by the proceedings against him had not been reasonable as required by Article 6 § 1 (art. 6-1) of the Convention.

11. The Commission declared the application admissible on 8 September 1988. In its report of 12 July 1989 (made under Article 31) (art. 31) the Commission expressed the unanimous opinion that there had been a breach of Article 6 § 1 (art. 6-1). The full

text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (vol. 176-C 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

12. On 20 April 1990 the Registrar received faxes from the French Ministry of Foreign Affairs and from the lawyer for the applicant which reported that a friendly settlement had been reached between them entailing payment of the sum of 100,000 French francs in respect of all heads of damage combined; they requested the Court to strike the case out of the list under Rule 49 § 2 of the Rules of Court.

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

13. 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 nonetheless be open to the Court to disregard this settlement if a reason of public policy appeared to necessitate such a course (Rule 49 § 4), but the Court can discern no such reason.

In this connection it would point out that in several previous cases it has had to review the reasonableness of the length of criminal proceedings (see the following judgments: Wemhoff, 27 June 1968; Neumeister, 27 June 1968; Ringeisen, 16 July 1971; Eckle, 15 July 1982; Foti and Others, 10 December 1982; Corigliano, 10 December 1982; Baggetta, 25 June 1987; Milasi, 25 June 1987; and B. v. Austria, 28 March 1990 - Series A nos. 7, 8, 13, 51, 56, 57, 119 and 175). In so doing, it has specified the nature and scope of the obligations undertaken in the matter by the Contracting States.

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 55 § 2, second sub-paragraph, of the Rules of Court on 26 April 1990.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar