

In the Djeroud case*,

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 F. Matscher,
Mr L.-E. Pettiti,
Sir Vincent Evans,
Mr C. Russo,
Mr J. De Meyer,
Mr N. Valticos,
Mr S.K. Martens,
Mr J.M. Morenilla,

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

Having deliberated in private on 22 January 1991,

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

Notes by the Registrar

* The case is numbered 34/1990/225/289. 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 corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11) which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 May 1990, 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. 13446/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by an Algerian national, Mr Mohamed Djeroud, on 25 September 1987.

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 Articles 8 and 3 (art. 8, art. 3).

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 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr C. Russo, Mr J. De Meyer, Mr N. Valticos and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mr S.K. Martens and Mr J.M. Morenilla, substitute judges, replaced Mr Pinheiro Farinha and Mr Pekkanen who were unable to take part in the consideration of the case (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, on 3 July 1990, gave directions as to the written procedure, after having, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant's lawyer.

5. An attempt to reach a friendly settlement gave rise, between 8 November 1990 and 3 January 1991, to a series of letters and telephone conversations between the Government, the applicant's lawyer and the Registrar.

6. On 3 January 1991 the applicant's lawyer communicated to the Registrar the text of a declaration signed by his client accepting an offer made by the Government. On 14 January the Government transmitted a copy of that document to the Court.

The Delegate of the Commission was consulted (Rule 49 § 2) and submitted his observations on 15 January.

7. On 22 January 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 38).

AS TO THE FACTS

8. Mr Mohamed Djeroud, an Algerian national who was born in Algeria in 1958, arrived in France the following year with his family, who set up home in Mulhouse. His mother and his six brothers and sisters, four of whom have French nationality, live in France.

9. He was convicted on several occasions in 1977 and 1978, inter alia, on theft charges; the first two sentences were suspended. In February 1979 the Minister of the Interior ordered his deportation on the ground that he represented a danger to public order (section 23 of the Order of 2 November 1945 on the conditions for the entry and residence of foreign nationals). The applicant went to Algeria of his own accord in 1980, but in 1982 returned to France where he lived until 1985 under a provisional residence permit and where he committed further offences.

He was deported in February 1985 and again in April 1987 in pursuance of the 1979 order, but each time he returned to France. In December 1987 he refused to board an aeroplane for Algeria, as a result of which he served a prison sentence in France.

Since 1988 he has been the subject of a compulsory residence order confining him to the municipality of Villeneuve-Saint-Georges (Val-de-Marne), near Paris, until such time as he complies with the deportation order. Various attempts to secure the revocation of that order failed, as did an application for political asylum lodged in 1987.

PROCEEDINGS BEFORE THE COMMISSION

10. In his application (no. 13446/87) lodged with the Commission on 25 September 1987 Mr Djeroud alleged that his deportation from France violated two provisions of the Convention: Article 8 (art. 8), by infringing the right to respect for his private and family life; and Article 3 (art. 3), on account of inhuman and degrading treatment.

The Commission declared the application admissible on 10 May 1989. In its report of 15 March 1990 (Article 31) (art. 31), it expressed the opinion, by thirteen votes to one, that there had been a violation of Article 8 (art. 8). On the other hand, it considered unanimously that there had been no violation of Article 3 (art. 3). The full text of the Commission's opinion and of the dissenting opinion contained in the report 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 (volume 191-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

11. The Registrar of the Court received copies of a document signed on 21 December 1990 by Mr Djeroud from the applicant's lawyer on 3 January 1991 and from the Ministry of Foreign Affairs of the French Republic on 14 January. The document was worded as follows:

"I ... declare that I accept the friendly settlement which has been proposed to me by the French Government in the proceedings pending against that Government in the European Court of Human Rights, subject to the following conditions:

- revocation of the deportation order made against me,
- issue of a residence permit valid for ten years,
- payment of compensation of 150,000 French francs.

I acknowledge that the payment of the above-mentioned sum shall constitute full and final reparation for all the pecuniary and non-pecuniary damage alleged by me in my application and shall also cover in their entirety the lawyer's fees and other expenses incurred by me in the present case.

I therefore agree to withdraw from these proceedings and undertake not to institute any subsequent proceedings against the French State in this matter in national or international courts.

I note that the French Government are to take the measures necessary to implement the terms of the friendly settlement 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.

12. The Court takes formal note of the friendly settlement reached by the Government and the applicant. It discerns no

reason of ordre public militating against striking the case out of the list (Rule 49 §§ 2 and 4 of the Rules of Court).

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 23 January 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar