

In the case of *Birou v. France**,

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. Gölcüklü,
Mr L.-E. Pettiti,
Mr A. Spielmann,
Mrs E. Palm,
Mr I. Foighel,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr F. Bigi,

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

Having deliberated in private on 24 February 1992,

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

Notes by the Registrar

* The case is numbered 70/1991/322/394. 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.

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13319/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by Mr Roland Birou, a French national, on 16 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 Article 5 para. 3 (art. 5-3).

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 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 para. 3 (b)). On 29 August 1991 the President drew by lot the names of the other seven members, namely

Mr F. Gölcüklü, Mr A. Spielmann, Mrs E. Palm, Mr I. Foighel, Mr A.N. Loizou, Mr J.M. Morenilla and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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"), counsel for the applicant and the Delegate of the Commission on the organisation of the procedure (Rule 37 para. 1).

5. An attempt to reach a friendly settlement gave rise, between 14 November 1991 and 6 February 1992, to a number of letters and telephone conversations between the Government, the applicant's lawyer and the Registrar.

6. On 6 February 1992 the Government communicated to the Registrar the terms of an agreement which had been reached with the applicant. On 13 February the applicant confirmed his acceptance of the agreement.

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

7. On 24 February 1992 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 Roland Birou, a French national, was suspected of having taken part in two armed robberies. On 23 July 1983 he was charged and remanded in custody by an investigating judge at the Aix-en-Provence tribunal de grande instance.

He submitted a series of unsuccessful applications for release to the indictments division of the Aix-en-Provence Court of Appeal (judgments of 12 December 1984 and 27 August 1985) and the Bouches-du-Rhône Assize Court (judgments of 16 April, 19 June and 28 October 1986, 28 January and 1 October 1987 and 7 January 1988). The applicant's appeal to the Court of Cassation against the above-mentioned judgment of 28 January 1987 on the grounds of formal defects was dismissed on 30 June 1987. On 3 October 1988 the Court of Cassation quashed for want of jurisdiction the indictments division's decision of 23 June 1988 dismissing a further application for release by Mr Birou. The case was remitted to the Assize Court, which granted the application on 19 October 1988. Two days later, the court convicted the applicant and sentenced him to eight years' imprisonment; the period spent in detention on remand fell, by operation of law, to be deducted from the term of imprisonment (Article 24 of the Criminal Code).

PROCEEDINGS BEFORE THE COMMISSION

9. Mr Birou lodged his application with the Commission on 16 September 1987. He alleged that the length of his detention on remand had exceeded the "reasonable time" required under Article 5 para. 3 (art. 5-3) of the Convention.

10. The Commission declared the application (no. 13319/87) admissible on 1 October 1990. In its report of 17 April 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 5 para. 3 (art. 5-3). 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 (volume 232-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. On 6 February 1992 the Court received from the Ministry of Foreign Affairs of the French Republic a document signed by Mr Birou on 25 January 1992, which read as follows:

"I ... declare that I accept the friendly settlement 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 condition:

- payment of compensation of 30,000 FF.

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

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

I note that the French Government will 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 the list.

..."

In a letter of 11 February 1992 to the Registrar, the applicant's lawyer confirmed that his client and the Government had agreed a settlement. 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 Mr Birou. It discerns no reason of ordre public (public policy) why the case should not be struck out of the list (Rule 49 paras. 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 para. 2, second sub-paragraph, of the Rules of Court on 27 February 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar