



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

**CASE OF SOCIETE STENUIT v. FRANCE**

*(Application no. 11598/85)*

JUDGMENT

STRASBOURG

27 February 1992

**In the case of Société Stenuit 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 F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr S.K. MARTENS,

Mr J.M. MORENILLA,

Mr A.B. BAKA,

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:

**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. 11598/85) against the French Republic lodged with the Commission under Article 25 (art. 25) by Stenuit, a company incorporated under French law, on 20 December 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 para. 1 (art. 6-1).

2. 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

---

\* The case is numbered 67/1991/319/391. 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.

August 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr C. Russo, Mr A. Spielmann, Mr S.K. Martens, Mr J.M. Morenilla and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

3. In response to the enquiry made in accordance with Rule 33 para. 3(d), the applicant company informed the Registrar on 23 December 1991 of its decision to "withdraw".

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") and the Delegate of the Commission on the possibility of the case being struck out of the list (Rule 49 para. 2). The Registrar received the Delegate's observations on 23 January and the Agent's on 31 January 1992.

## AS TO THE FACTS

5. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention were as follows (paragraphs 18-27 of its report - see paragraph 7 below):

"18. In 1977 and 1978 the applicant company submitted tenders for two landscape gardening contracts put out to tender by the Ministry of Defence.

19. It was accused by the Minister responsible for Economic and Financial Affairs of having acted in concert with competitors with a view to sharing out various public contracts and of having, in the two instances mentioned above, agreed to submit higher tenders than its competitors on the understanding that agreements would be concluded on future occasions to ensure that it was awarded other contracts.

20. In accordance with the procedure laid down by the Order of 30 June 1945, as amended by the Law of 19 July 1977, on prices and the punishment of infringements (infractions) of economic legislation, the Minister responsible for Economic and Financial Affairs consulted the Competition Commission (Commission de la concurrence), which expressed the opinion that the applicant company's participation had been proved and proposed that it be fined 100,000 FF.

21. The Minister of Economic and Financial Affairs subsequently imposed a fine of 50,000 FF on the applicant company in a decision dated 16 October 1981.

22. The applicant company appealed to the Minister to reconsider his decision, requesting application in its favour of the amnesty law of 4 August 1981.

23. The Minister dismissed this appeal in a decision dated 1 February 1982, *inter alia* on the ground that the infractions committed by the applicant company had given rise to administrative fines rather than any criminal penalty, whereas only infractions

which had led to a criminal penalty were covered by the amnesty provided for in the above-mentioned law.

24. On 2 April 1982 the applicant company appealed against this decision to the Conseil d'État. On 2 August 1982 it filed a supplementary memorial.

25. On 23 March 1983 the Minister of Economic and Financial Affairs filed a defence memorial with the Conseil d'État. The applicant company filed a memorial in reply on 8 June 1983.

26. On 6 June 1984 the Conseil d'État held a hearing at which it heard a statement by the reporting judge, a short statement by the applicant's lawyer, who referred to his written submissions, and a statement by the Government Commissioner (commissaire du gouvernement), a judge from the Judicial Division of the Conseil d'État seconded to that function, in which he acts as a totally independent adviser.

27. The Conseil d'État dismissed the appeal in a judgment dated 22 June 1984. In the first place, it took the view that fines imposed on firms or corporate bodies by the Minister responsible for Economic and Financial Affairs, in accordance with the Order of 30 June 1945, as amended by the Law of 19 July 1977, were not criminal penalties.

In the second place, it pointed out that the applicant company could not validly maintain that these administrative penalties were contrary to the European Convention on Human Rights, not having been imposed by a court, since provision was made for such penalties in the above-mentioned Law of 19 July 1977. Consequently, the Conseil d'État ruled that the applicant company had no grounds to request annulment of the decision in which the Minister of Economic and Financial Affairs had refused to apply the amnesty law in its favour."

## PROCEEDINGS BEFORE THE COMMISSION

6. In its application of 20 December 1984 to the Commission (no. 11598/85), Stenuit complained of the proceedings brought against it by the Minister of Economic and Financial Affairs. It relied on Article 6 para. 1 (art. 6-1) of the Convention.

7. The Commission declared the application admissible on 11 July 1989. In its report of 30 May 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 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 (volume 232-A 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

8. In a letter of 12 December 1991 the applicant company informed the Court of its wish to "withdraw".

The Government were consulted and expressed the view that the case should be struck out of the list. They stated that they were "all the more inclined to join in [with the wish expressed by Société Stenuit] as French regulations [had] evolved since [the] application [had been] made in 1984 in respect of facts which themselves dated back to 1981. The President of the Republic's Order no. 86-1243 of 1 December 1986 on free prices and competition, which provided in particular for the creation of a Competition Council (Conseil de la concurrence), [had] to a large extent remedied the problems of principle raised by the Commission in its report."

The Delegate of the Commission indicated that he had no objection to the application of Rule 49 para. 2 of the Rules of Court, which is worded as follows:

"When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

9. Although the applicant's decision does not strictly speaking constitute a withdrawal, since it was not taken by a party to the case in view of the fact that Protocol No. 9 (P9) has not yet come into force (Rule 1(h) and (k) and see the Owners' Services Ltd v. Italy judgment of 28 June 1991, Series A no. 208-A, p. 8, para. 10), it is in any event a "fact of a kind to provide a solution of the matter". In addition, the Court discerns no reason of ordre public (public policy) for continuing the proceedings (Rule 49 para. 4).

The case should accordingly be struck 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 para. 2, second sub-paragraph, of the Rules of Court on 27 February 1992.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar