



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

COURT (CHAMBER)

CASE OF DOBBERTIN v. FRANCE

(Application no. 13089/87)

JUDGMENT

STRASBOURG

25 February 1993

In the case of Dobbertin 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 F. GÖLCÜKLÜ, *President*,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr A.B. BAKA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 29 October 1992 and 28 January 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 December 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. 13089/87) against the French Republic lodged with the Commission under Article 25 (art. 25) on 19 June 1987 by Mr Rolf Dobbertin, who at the time was a national of the German Democratic Republic.

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).

* The case is numbered 88/1991/340/413. 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.

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). The German Government, having been informed by the Registrar of their right to intervene in the proceedings (Article 48(b) of the Convention and Rule 33 para. 3(b)) (art. 48-b), did not indicate any intention of doing so.

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 24 January 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr B. Walsh, Mr N. Valticos, Mrs E. Palm, Mr R. Pekkanen, Sir John Freeland and Mr A.B. Baka (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"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 9 July 1992. In a letter received on 14 September, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Also on 14 September the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 October 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr B. GAIN, Head of the Human Rights Section,

Department of Legal Affairs, Ministry of Foreign Affairs, *Agent*,

Mr P. TITIUN, magistrat,

on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,

Mr J. BOULARD, magistrat,

on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice,

Counsel;

- for the Commission

Mr B. MARXER,

Delegate;

- for the applicant

Mr Y. LACHAUD, avocat,

Counsel.

The Court heard addresses and statements by Mr Gain for the Government, Mr Marxer for the Commission and Mr Lachaud for the applicant.

7. As Mr Ryssdal was unable to attend the deliberations on 28 January 1993, his place as President of the Chamber was taken by Mr Gölcüklü (Rule 21 para. 5, second sub-paragraph); Mr A. Spielmann, substitute judge, replaced Mr Ryssdal as a member of the Chamber (Rules 22 para. 1 and 24 para. 1).

AS TO THE FACTS

8. At the time of his arrest Mr Rolf Dobbertin was a national of the German Democratic Republic. He was a plasma physicist and was working in Paris as a research assistant under contract to the French National Scientific Research Centre (CNRS).

9. On 19 January 1979 he was arrested at his home by the police and held in police custody until 25 January 1979, when he appeared before the investigating judge at the National Security Court (Cour de sûreté de l'Etat), who charged him with being in communication with agents of a foreign power, namely the German Democratic Republic, remanded him in custody and issued a letter of request (commission rogatoire).

I. PROCEEDINGS BEFORE THE SPECIAL COURTS

A. The National Security Court

10. Between 25 January 1979 and 20 March 1980 the investigating judge questioned the applicant on nineteen occasions. Between 21 March 1980 and 18 June 1981 he issued several requests for evidence to be taken on commission by the French Intelligence Service (DST) and made orders for on-the-spot judicial inspections. He also further questioned the applicant by way of recapitulation.

On 22 May 1981 he forwarded the file to the principal public prosecutor.

11. On 18 June the Prime Minister issued a decree indicting Mr Dobbertin.

Shortly afterwards, however, the proceedings were transferred to the Paris Court of Appeal pursuant to Law no. 81-737 of 4 August 1981 abolishing the National Security Court, section 6 of which provided:

"...

Cases pending before the National Security Court shall be transferred on the date of commencement of the present Law [15 August 1981] to the appropriate ordinary courts ...

..."

On 28 August 1981 the principal public prosecutor at the Court of Cassation requested that court to commit the applicant for trial by the Paris Military Court. On 19 September 1981 the Criminal Division so decided on the basis of section 1 of the aforementioned Law, which provided:

"...

... where the offences being prosecuted amount to the crime (crime) of treason or espionage or to some other breach of national security and there is a risk of a defence secret being divulged, the Principal Public Prosecutor at the Court of Cassation shall ... ask the Criminal Division to remove the case from the investigating judicial authority or court of trial and transfer it to the military judicial authority of the same kind and level which has territorial jurisdiction and which shall proceed in the manner, and according to the procedure, laid down in the Code of Military Justice ..."

B. The Paris Military Court

12. On 14 January 1982 the accused received a summons to appear on 25 January 1982. The hearing was postponed, however, and in an order of 2 February, made on an application by the Government Commissioner, the President of the Military Court directed that further inquiries into the facts should be made.

The investigating judge in charge of the case issued several letters of request and corresponded with various civil and military authorities in order to determine the importance and scientific value of the documents that Mr Dobbertin had passed on to the East German secret service. The further inquiries into the facts were completed on 25 November 1982.

13. The file, however, was automatically forwarded to the office of the principal public prosecutor at the Paris Court of Appeal, because on 1 January 1983 there came into force Law no. 82-621 of 21 July 1982 on the judicial investigation and trial of military offences and those involving national security; section 1, first sub-paragraph, of that Law abolished the military courts in peacetime and provided that offences coming within their jurisdiction would henceforth be dealt with by the ordinary courts. The object was to enable the Indictment Division of the Paris Court of Appeal, once it had ruled on the lawfulness of the proceedings and determined the legal classification of the offences charged (Article 215 of the Code of Criminal Procedure), to commit the applicant for trial at the Paris special Assize Court, composed of seven judges, one of whom presides (Articles 697 and 698-6).

II. PROCEEDINGS BEFORE THE ORDINARY COURTS

A. The judicial investigation and the indictment

1. The Paris Court of Appeal

14. On 3 March 1983 the Principal Public Prosecutor at the Paris Court of Appeal brought the case before the Indictment Division.

15. In a judgment of 23 March 1983 the Indictment Division ordered the applicant's release under judicial supervision and on bail of 150,000 French francs (FRF). Mr Dobbertyn was unable to pay this until 9 May 1983, when he regained his freedom.

16. On 11 March 1983 his counsel had filed pleadings. They relied on Articles 5 and 6 (art. 5, art. 6) of the Convention and complained in particular of the unlawfulness of:

(a) the proceedings in the National Security Court, because of the length of the police custody and the status of the investigating judge; (b) the proceedings in the Paris Military Court, on account of its lack of independence and impartiality; and (c) the pre-trial detention, in view of its length.

In a second judgment on 23 March 1983 the Indictment Division held that it had no jurisdiction to commit Mr Dobbertyn for trial at the Assize Court as the indictment had been in existence since 18 June 1981, when the Prime Minister had issued a decree concerning the applicant (see paragraph 11 above), and it did not have to be renewed since the legislature had expressly validated process and decisions dating from before the entry into force of the Laws of 4 August 1981 and 21 July 1982. It reached the same conclusion in respect of the pleas of nullity based on the Convention.

17. On 14 June 1983 the Criminal Division of the Court of Cassation, allowing an appeal on points of law by the principal public prosecutor at the Paris Court of Appeal, set aside that judgment for the following reason: "While section 6 of the Law of 4 August 1981 and section 14 of the Law of 21 July 1982 lay down that all process, formalities and decisions dating from before the entry into force of the relevant Law shall remain valid, these transitional provisions in no way alter the rules applicable in the courts to which jurisdiction has been transferred."

On the other hand, it held that the appeal on points of law brought by the applicant was inadmissible. Mr Dobbertyn had filed pleadings reproducing the complaints set out in the Indictment Division but had not lodged them through counsel, and legal representation was compulsory in the Court of Cassation except for applicants convicted under the criminal law.

It remitted the case to a differently constituted bench of the Indictment Division of the Paris Court of Appeal.

18. Mr Dobberty again sought to have the proceedings declared null and void, but without success. In a judgment of 9 December 1983 the Indictment Division committed him for trial at the Paris special Assize Court and rejected the plea based on Article 5 para. 3 (art. 5-3) of the Convention.

19. On 6 March 1984 the Court of Cassation upheld that decision on the point in issue but set it aside for failure to comply with Article 157 of the Code of Criminal Procedure, an essential provision that was mandatory as a matter of public policy; the Indictment Division had omitted to declare null and void an order made by the investigating judge on 20 May 1979 in which he had appointed translators without giving reasons for choosing ones who were not on a list of official experts.

20. The case having been remitted to it, the Indictment Division on 20 July 1984 reached the same decision as it had on 9 December 1983. It held, notwithstanding the prosecution's submissions to the contrary, that translations made by qualified people were not expert opinions, despite the terms used by the investigating judge, and that accordingly the failure to comply with the rules on expert opinions did not give rise to a nullity. It again committed the applicant for trial at the Paris special Assize Court.

21. On a further application by Mr Dobberty, the Court of Cassation, sitting as a full court, gave judgment on 19 October 1984. It set aside the Paris Court of Appeal's judgment and remitted the case to the Versailles Court of Appeal.

2. The Versailles Court of Appeal

22. On 14 May 1985 the Versailles Court of Appeal quashed the order of 20 May 1979 commissioning experts (Article 206 of the Code of Criminal Procedure) and various procedural steps and ordered that a number of documents should be withdrawn from the file. It sent the case to one of the investigating judges at the Versailles tribunal de grande instance with instructions that he should continue the investigation.

23. On a further appeal on points of law by the applicant, the Criminal Division of the Court of Cassation gave judgment on 29 October 1985. It set aside the judgment of the Versailles Court of Appeal and remitted the case to the Indictment Division of the Amiens Court of Appeal, stating that if the latter found there was sufficient evidence against the accused, it should commit him for trial at the Paris special Assize Court.

The judgment was served on Mr Dobberty on 16 December 1985.

3. The Amiens Court of Appeal

24. On 20 January 1986 the principal public prosecutor at the Amiens Court of Appeal asked the Indictment Division to declare null and void certain procedural documents (notably records of the interviews at which

the applicant was questioned, letters of request and the documents relating to their execution, various reports and applications and, more especially, nearly all the translations of the documents in German that were communicated on 3 April 1979 by officers from the Intelligence Service); to order that they should be withdrawn from the file; and to appoint an investigating judge from the judicial district of the Amiens Court of Appeal to continue the investigation.

On 20 February 1986 Mr Dobberty lodged pleadings in which he sought to have the proceedings quashed on the grounds that they had contravened Articles 10, 6 and 5 (art. 10, art. 6, art. 5) of the Convention, and asking for a declaration that the evidence admitted did not correspond to the crime of being in communication with a foreign agent, which was a punishable offence under Article 80 para. 3 of the Criminal Code.

25. In a judgment of 15 April 1986 the Indictment Division quashed most of the proceedings that had taken place after the order of 20 May 1979 commissioning experts and decided to forward the file to the first investigating judge at the Amiens tribunal de grande instance.

It refused the request made in the applicant's pleadings that it should consider the legal classification of the offences and the question of what evidence there was, on the ground that only the judicial investigation could enable an assessment to be made of these.

The complaints based on the Convention were dismissed. The question whether there had been a violation of Article 10 (art. 10) depended on the outcome of the investigation; Article 6 (art. 6) did not apply to proceedings before an indictment division; and the Court of Cassation had already dismissed the complaint under Article 5 para. 3 (art. 5-3), on 6 March 1984.

26. Mr Dobberty appealed on points of law and asked the Court of Cassation to hear the appeal immediately. In an order of 31 July 1986 the President of the Criminal Division refused that request, holding that neither public policy nor the proper administration of justice required the hearing to be expedited; he also considered that there was no ground for allowing the appeal as matters stood.

27. On 22 December 1986 the case file was therefore sent to the first investigating judge at Amiens.

On 13 February, 27 March and 30 November 1987 he gave an expert at the Amiens Court of Appeal a total of 146 documents to translate. On 5 March and 28 August 1987 he gave an expert at the Besançon Court of Appeal 641 other documents to translate, together with a number of handwritten reports. The applicant was questioned by him on 1 February, 22 March and 18 April 1988, and on 11 May the judge issued a letter of request to the Intelligence Service.

28. On 24 April 1988 Mr Dobberty asked the Indictment Division to take certain investigative measures, to limit the scope of the further inquiries

into the facts and to quash a letter of request of 14 April 1982 and the record of the interview for questioning held on 1 February 1988.

On 6 September 1988 the Indictment Division declared the application inadmissible, since it considered that as matters stood it was impossible to reach a judicial decision on any of the requests in it.

29. On 9 May 1989 the Indictment Division recorded that the case file had been lodged with the registry after completion of the further inquiries into the facts, and on 19 September 1989 it committed the applicant for trial at the Paris special Assize Court (see paragraph 23 above).

Mr Dobbertin appealed on points of law against both these judgments, but the Court of Cassation dismissed the appeals on 4 January 1990.

B. The trial proceedings

30. Mr Dobbertin appeared before the Assize Court on 13, 14 and 15 June 1990, and on the last-mentioned date he was convicted and sentenced to twelve years' imprisonment.

31. On 27 December 1990 the Indictment Division of the Paris Court of Appeal decided to release him under judicial supervision.

32. On an application by Mr Dobbertin, the Criminal Division of the Court of Cassation, giving judgment on 6 March 1991, set aside the Assize Court's judgment of 15 June 1990. It remitted the case to a differently constituted bench of the Paris special Assize Court, which on 29 November 1991 acquitted the applicant. The prosecution did not appeal within the five-day period laid down in Article 568 of the Code of Criminal Procedure.

PROCEEDINGS BEFORE THE COMMISSION

33. The applicant applied to the Commission on 19 June 1987. He alleged that the length of the criminal proceedings against him had exceeded a "reasonable time" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention; that he had not had the benefit of the presumption of innocence, enshrined in Article 6 para. 2 (art. 6-2), or of the safeguards of a fair trial provided for in sub-paragraphs (a) and (d) of paragraph 3 of Article 6 (art. 6-3-a, art. 6-3-d); and that his right to freedom of expression, protected by Article 10 (art. 10), had been infringed.

34. On 12 July 1988 the Commission declared the application (no. 13089/87) inadmissible as being manifestly ill-founded (Article 27 para. 2) (art. 27-2), with the exception of the first complaint. On 1 October 1990 it declared this complaint admissible and rejected a fresh one made by Mr Dobbertin under Article 10 (art. 10). In its report of 10 September 1991 (made under Article 31) (art. 31), it expressed the unanimous opinion that

there had been a breach of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

35. The Government asked the Court to dismiss Mr Dobbertin's application.

36. The applicant requested it to hold that there had been a violation by France of Article 6 para. 1 (art. 6-1) of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

37. The applicant submitted that the consideration of his case lasted for longer than the "reasonable time" laid down in Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government rejected this argument, whereas the Commission accepted it.

38. The period to be considered began on 19 January 1979, when Mr Dobbertin was arrested, and ended at the latest on 4 December 1991, when the period during which the prosecution could have appealed on points of law against the Paris Assize Court's acquittal of the applicant expired (see paragraph 32 above). It therefore covers a little over twelve years and ten months.

39. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

40. The Government emphasised the exceptional complexity of the case and the applicant's conduct.

In their submission, the time which elapsed between January 1979 and November 1983 could not be considered excessive if regard was had to the

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 256-D of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

numerous investigative measures taken by the two judges responsible for the investigation at the National Security Court and the Paris Military Court.

Furthermore, the abolition of those two special courts in 1981 and 1982 was an objective fact that could not be held against the French authorities, since it was designed to improve the implementation of the right to a fair trial as secured in Article 6 para. 1 (art. 6-1) of the Convention. The applicant had, moreover, always categorically refused to be tried by the National Security Court and thereafter the Paris Military Court.

From March 1983 to September 1989 the appropriate ordinary courts had tackled two procedural problems without wasting any time: the validity of the indictment decree of 18 June 1981 and the expert status of the interpreters/translators appointed in the order of 20 May 1979 (see paragraphs 16-22 above). Lastly, after quashing the greater part of the proceedings subsequent to that order and after further inquiries into the facts had been made by an investigating judge on its instructions, the Indictment Division of the Amiens Court of Appeal on 19 September 1989 committed Mr Dobberty for trial at the Paris Assize Court (see paragraphs 25 and 29 above).

Although not criticising him for having availed himself of the domestic remedies, the Government pointed out that the applicant brought no fewer than six appeals on points of law and that this had contributed to the slowing down of the proceedings. These subsequently continued at a normal pace until the applicant's acquittal on 29 November 1991.

41. Mr Dobberty contended that the case was scarcely complex and that his conduct had not impeded the proceedings.

42. Like the Commission, the Court notes that while Mr Dobberty's case presented real difficulties arising from the highly sensitive nature of the offences charged, which related to national security, those difficulties cannot on their own justify the total length of the proceedings.

43. As to the applicant's conduct, the Court reiterates that Article 6 (art. 6) does not require a person charged with a criminal offence to co-operate actively with the judicial authorities (see, among other authorities, the *Corigliano v. Italy* judgment of 10 December 1982, Series A no. 57, p. 15, para. 42). Above all, it notes that several of the applicant's appeals achieved their purpose of remedying certain irregularities attributable to the judicial authorities.

44. In addition, paragraph 1 of Article 6 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements (see, as the most recent authority and *mutatis mutandis*, the *Francesco Lombardo v. Italy* judgment of 26 November 1992, Series A no. 249-B, p. 27, para. 23).

It is apparent from the file, however, that for various reasons the course taken by the proceedings left a great deal to be desired.

Although the National Security Court and the Paris Military Court appear to have shown the necessary diligence, the Court notes that once they had been abolished the authorities took no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly.

The ordinary courts were slow to resolve the two issues mentioned by the Government: it took them nine months (3 March - 9 December 1983) to determine the validity of the indictment of 18 June 1981 (see paragraphs 14-18 above), and thereafter more than two years elapsed (6 March 1984 - 15 April 1986) before the order of 20 May 1979 commissioning experts was quashed (see paragraphs 19-25 above). This latter circumstance made it necessary for a fresh investigation to be carried out, with the result that the applicant was not committed for trial until 19 September 1989, more than ten years after his arrest by the police and more than six years after regaining his freedom (see paragraph 15 above).

While the final stages of the proceedings were conducted at an acceptable speed, the total length of the proceedings nevertheless exceeded a "reasonable time".

45. There has therefore been a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

46. Under Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

47. Mr Dobbertin sought 5,000,000 French francs (FRF) in respect of non-pecuniary damage. He referred to the feelings of anguish and helplessness he had experienced during his detention and throughout the trial, and to the loss of opportunities as regards his career.

The Commission recommended that just satisfaction should be awarded. The Government, however, considered the amount sought to be exorbitant and argued that the applicant had not, moreover, adduced any evidence whatever in support of his claims and had resumed his work at the CNRS as soon as he came out of prison, on 9 May 1983.

48. The Court notes that the applicant did not claim to have sustained any pecuniary damage and that the question of his detention pending trial does not fall to be taken into consideration. On the other hand, the abnormal

length of the proceedings caused the applicant some non-pecuniary damage, for which he should be awarded FRF 200,000.

B. Costs and expenses

49. Mr Dobbertin also sought:

(a) FRF 507,014.54 for the fees of the lawyers who had assisted him during the trial; (b) FRF 107,000 representing the cost of three libel actions he had brought; and (c) FRF 92,508 in respect of the costs and expenses incurred in the proceedings before the Convention institutions.

50. The Government denied that there was any causal link between the length of the proceedings and the first two items above.

As regards the third item, they submitted that, at most, a modest sum should be awarded.

51. The Court considers the claim under (c) above to be justified and allows it in its entirety, but it rejects the claim under (b) as being irrelevant. As to item (a), the applicant is not entitled to the reimbursement of all the costs and expenses entailed by his defence in the criminal proceedings as some of them would have been incurred at all events, but is entitled only to the excess attributable to the fact that the proceedings lasted for longer than a "reasonable time"; on the basis of the evidence in its possession and its case-law, the Court assesses that amount at FRF 50,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay Mr Dobbertin, within three months, 200,000 (two hundred thousand) French francs for non-pecuniary damage and 142,508 (one hundred and forty-two thousand five hundred and eight) francs for costs and expenses;
3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 February 1993.

Feyyaz GÖLCÜKLÜ
President

Marc-André EISSEN
Registrar