



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

COURT (CHAMBER)

CASE OF KEMMACHE v. FRANCE (Nos. 1 and 2) (ARTICLE 50)

(Application no. 12325/86; 14992/89)

JUDGMENT

STRASBOURG

02 November 1993

In the case of Kemmache 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 R. BERNHARDT,

Mr F. GÖLCÜKLÜ,

Mr L.- E. PETTITI,

Mr C. RUSSO,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

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

Having deliberated in private on 24 September and 27 October 1993,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") in two stages, first on 11 July and then on 12 October 1990, on each occasion 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 two applications (nos. 12325/86 and 14992/89) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Michel Kemmache, on 1 August 1986 and 28 April 1989. The Court ordered the joinder of the two applications on 25 October 1990.

2. By judgment of 27 November 1991 ("the principal judgment"), the Court found a violation of Article 5 para. 3 and Article 6 para. 1 (art. 5-3, art. 6-1) of the Convention on the ground that the length of the applicant's

* The case is numbered 41/1990/232/298 and 53/1990/244/315. 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.

detention on remand and of the criminal proceedings instituted against him had exceeded a "reasonable time" (Series A no. 218, pp. 22-31, paras. 43-71 and point 1 of the operative provisions).

The only outstanding matter in the present case is the question of the application of Article 50 (art. 50). As regards the facts, reference should be made to paragraphs 9 to 36 of the above-mentioned judgment (*ibid.*, pp. 8-20).

3. As the issue of the award of just satisfaction was not ready for decision, the criminal proceedings having not yet reached a conclusion, the Court, in the principal judgment, reserved the whole of this question. It invited the Government and the applicant to submit to it in writing, within three months of the conclusion of the relevant criminal proceedings, their observations and in particular to inform it of any agreement reached between them (p. 31, para. 74 and point 2 of the operative provisions).

4. The domestic proceedings conducted subsequent to the principal judgment included the following decisions:

(a) on 18 December 1991 the judgment of the Alpes-Maritimes Assize Court of 25 April 1991 sentencing Mr Kemmache to eleven years' imprisonment and fining him 2,600,000 French francs was quashed;

(b) on 21 March 1992 the Var Assize Court, to which the case had been remitted, adopted a judgment sentencing the accused to nine years' imprisonment and fining him 2,600,000 francs for aiding and abetting the importation and use on French territory of counterfeit foreign banknotes and the unlawful circulation of such notes within the customs area;

(c) on 3 February 1993 the applicant's appeal on points of law was dismissed by the Court of Cassation.

Mention should also be made of various letters sent by the Registrar to the participants in the proceedings (30 January, 16 March and 24 June 1992), as well as letters received by him from a Government lawyer (23 January, 10 July and 7 August 1992), from the applicant's lawyer (6 January and 5 June 1992, 21 January and 5 March 1993) and from the Secretary to the Commission (15 July 1992).

5. On 30 April 1993 the Registrar reminded the participants in the proceedings of the invitation in point 2 (b) of the operative provisions of the principal judgment (see paragraph 3 above).

The Government's memorial reached him on 7 July 1993, the applicant's memorial on 28 July and the observations of the Delegate of the Commission on 31 August.

6. On 24 September 1993 the Court decided that in the circumstances of the case it was not necessary to hold a hearing.

AS TO THE LAW

7. 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."

By virtue of that provision the applicant sought compensation for damage and the reimbursement of a sum of money lodged as a security and of his costs.

A. Damage

8. According to Mr Kemmache, the violation of Article 5 para. 3 (art. 5-3) had caused him prejudice of a "psychological, non-pecuniary and emotional nature", assessed at 8,456,250 francs, and damage of a "financial, professional, pecuniary and social nature", estimated at 1,000,000 francs. The first sum corresponded in particular to the constraints of being held in detention in a prison at a considerable distance from his family, the difficulties of re-adapting to life outside prison, the ordeal of the divorce proceedings instituted by his wife shortly after his release and the fact that he was prevented from looking after his young child. The second amount essentially represented his loss of income, owing to the collapse of his companies and the impossibility for him of resuming any commercial activity.

The breach of Article 6 para. 1 (art. 6-1) had entailed damage of a "psychological, non-pecuniary and pecuniary nature", assessed at a total amount of 1,000,000 francs and stemming from the impossibility of leading a normal existence and making or putting into effect any plans.

9. The Government maintained that the findings of violations in this case constituted in themselves sufficient just satisfaction.

As regards Article 5 para. 3 (art. 5-3), they pointed out that the Var Assize Court had sentenced Mr Kemmache to nine years' imprisonment, which placed the period of eight months held to be contrary to the Convention in perspective; they also drew attention to the fact that the entire period of detention on remand had been reckoned as part of his sentence.

From the point of view of Article 6 para. 1 (art. 6-1), they urged the Court to disregard the proceedings conducted subsequent to its judgment, which proceedings had given rise to a further application lodged by Mr Kemmache with the Commission. They also asked the Court to take into account the attitude of the applicant, who had tended to provoke delays, in particular by requesting in June 1990 the adjournment of the trial hearing

and then not attending the hearing in December of the same year because he was in hospital.

10. The Delegate of the Commission did not express a view on the claim for pecuniary damage. He considered that the length of the detention on remand and of the criminal proceedings had occasioned non-pecuniary damage, in respect of which he recommended the award of a total of 50,000 francs.

11. The Court notes that, by virtue of Article 24 of the Criminal Code, the entire period which Mr Kemmache spent in detention on remand was reckoned as part of his sentence (see, *mutatis mutandis*, the *Neumeister v. Austria* judgment of 7 May 1974, Series A no. 17, p. 18, para. 40, and the *Letellier v. France* judgment of 26 June 1991, Series A no. 207, p. 23, para. 62). This being so, it does not find sufficient causal connection between the violations found in the principal judgment and the deterioration of the applicant's financial and professional circumstances. It accordingly dismisses the claim for compensation in respect of pecuniary damage.

On the other hand, it takes the view that the applicant must have suffered non-pecuniary damage, for which the above-mentioned findings of violations do not constitute adequate redress, even though the conditions of detention on remand were less severe than those of his subsequent imprisonment (see the *Ringeisen v. Austria* judgment of 22 June 1972, Series A no. 15, p. 10, para. 26). Making an assessment on an equitable basis in accordance with Article 50 (art. 50), the Court awards him 75,000 francs under this head.

B. The security

12. The applicant also sought, in connection with the breach of Article 5 para. 3 (art. 5-3), the reimbursement of the security of 200,000 francs which he had been ordered to lodge on 10 August 1990 (100,000 francs) and 10 September 1990 (100,000 francs), in other words before his liberation and then with effect therefrom.

13. In the Government's contention, there was no causal connection between the lodging of a security and a breach of Article 5 para. 3 (art. 5-3). In this instance half the sum in question had guaranteed that the accused would appear for trial and the other half had secured the payment of the fine imposed by the Assize Court.

14. The Delegate of the Commission did not express a view on this matter.

15. In the principal judgment, the Court held that Mr Kemmache's detention on remand had exceeded a reasonable time in so far as it lasted until 19 December 1986 (Series A no. 218, p. 27, para. 57). The security in question was lodged several years after that date. It cannot therefore be taken into consideration.

C. Costs and expenses

16. Finally, Mr Kemmache claimed the reimbursement of the costs of the proceedings, including lawyers' and bailiffs' fees, incurred first in the French courts and then before the Convention institutions; he estimated these costs at a total of 250,000 francs.

17. The Government maintained that the costs incurred in the French courts had no connection with the violations found by the Court. For those referable to the Strasbourg proceedings, they requested the Court to apply its case-law.

18. The Delegate of the Commission did not put forward an opinion on this question.

19. The Court notes that the applicant did not provide any itemised accounts or supporting documents. It nevertheless considers it reasonable to accept, making an assessment on an equitable basis, the claims for the costs incurred in Strasbourg and part of those referable to the applicant's attempts to secure release from detention on remand. Having regard to the criteria that it applies in this field, the Court awards the applicant a total amount of 150,000 francs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the respondent State is to pay to the applicant, within three months, 75,000 (seventy-five thousand) French francs for non-pecuniary damage and 150,000 (one hundred and fifty thousand) francs for costs and expenses;
2. Dismisses the remainder of the applicant's claims.

Done in English and in French, and notified in writing on 2 November 1993 pursuant to Rule 55 para. 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar