



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

COURT (CHAMBER)

CASE OF MIALHE v. FRANCE (ARTICLE 50)

(Application no. 12661/87)

JUDGMENT

STRASBOURG

29 November 1993

In the case of Mialhe 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. BERNHARDT, *President*,

Mr Thór VILHJÁLMSSON,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr N. VALTICOS,

Mrs E. PALM,

Mr J.M. MORENILLA,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

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

Having deliberated in private on 29 October and 25 November 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") 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. 12661/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by three French nationals, Mr William Mialhe, who also has Philippine nationality, his mother Victoria, née Desbarats, and his wife Brigitte, née Damade, on 11 December 1986.

2. In a judgment of 25 February 1993 ("the principal judgment") the Court found that there had been a breach of Article 8 (art. 8) of the Convention, as house searches and seizures by the customs had infringed the applicants' right to respect for their private life and their correspondence

* The case is numbered 86/1991/338/411. 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.

(Series A no. 256-C, pp. 87-91, paras. 28-40 and point 2 of the operative provisions).

Only the question of the application of Article 50 (art. 50) in the case remains to be determined. For the facts of the case, reference should be made to paragraphs 6-15 of the principal judgment (*ibid.*, pp. 78-83).

3. As the question of awarding just satisfaction was not ready for decision, although the criminal proceedings against Mr and Mrs Mialhe had already ended, it was reserved in whole in the principal judgment. The Court invited the Government and the applicants to submit in writing, within three months, their observations on the matter and, in particular, to notify it of any agreement they might reach (*ibid.*, p. 91, para. 44 and point 4 of the operative provisions).

4. The Registrar received the applicants' memorial on 25 May 1993, the Government's memorial on 14 September and the observations of the Delegate of the Commission on 21 October.

5. At the deliberations on 25 November 1993 Mrs E. Palm, substitute judge, replaced Mr L. Wildhaber, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1 of the Rules of Court). The Court decided that in the circumstances of the case it was unnecessary to hold a hearing.

AS TO THE LAW

6. 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

1. *Pecuniary damage*

7. Mr Mialhe sought 300,000 French francs (FRF) in respect of three heads of pecuniary damage: the freezing of his bank accounts and shares in businesses for eight years owing to the registration of asset-freezing orders made by the authorities and the impossibility of taking out mortgage loans needed to finance his wine-growing business; secretarial expenses incurred in restoring order to his offices and to the documents seized by the customs; and travel expenses between Manila and France, in particular in order to

attend interviews to which he had been summoned by the investigating judge.

For their part, Mrs Victoria Mialhe and Mrs Brigitte Mialhe each sought FRF 20,000 in respect of the deprivation of papers needed for day-to-day living, their contribution to the work and cost of reconstituting files, and travel expenses made necessary by the criminal proceedings.

8. In the Government's submission, the breach found in the principal judgment had had no influence on the asset-freezing orders, the journeys or the deprivation of private papers. While certain filing costs might have been necessary, they were entailed by all seizures, irrespective of the procedure used. Furthermore, the applicants had been entitled at any time to seek the return or a photocopy of any of the papers in question.

9. The Delegate of the Commission did not express any view.

10. The Court discerns no causal link between, on the one hand, the lack of judicial authorisation for the house searches and the seizures - a lack it held to be contrary to Article 8 (art. 8) - and, on the other hand, the pecuniary damage alleged by the applicants, and it accordingly disallows this part of their claim.

2. Non-pecuniary damage

11. In respect of non-pecuniary damage, Mr Mialhe sought FRF 300,000 and Mrs Victoria and Mrs Brigitte Mialhe each sought FRF 100,000. Mr Mialhe pleaded the loss of his consular duties, while the two Mrs Mialhe relied on their social position at the material time and the great age of the applicant's mother, whose personal souvenirs had been violated without notice and without any consideration for her.

12. The Government relied on the lack of any causal link between the breach of Article 8 (art. 8) and the alleged damage. As regards Mr Mialhe, they pointed out that the merits and length of the customs proceedings were not in issue before the Convention institutions and that the applicant was honorary consul - and not consul - of the Philippines in Bordeaux. As regards the two Mrs Mialhe, they said that if the house searches had been judicially authorised, this would not have entailed any prior warning or any listing of the documents to be seized.

13. The Delegate of the Commission thought that the finding of a breach constituted sufficient compensation.

14. The Court considers that the applicants must have sustained non-pecuniary damage for which the finding of a breach does not on its own afford sufficient reparation. Making its assessment on an equitable basis as required by Article 50 (art. 50), it awards Mr Mialhe FRF 50,000, Mrs Victoria Mialhe FRF 25,000 and Mrs Brigitte Mialhe FRF 25,000 under this head.

B. Costs and expenses

15. The applicants also each sought reimbursement of one-third of the costs and expenses incurred in the French courts and subsequently before the Convention institutions (lawyers - Mr Goguel: FRF 250,000; Mr Baudin: FRF 90,000; Mr Boerner: FRF 16,000; and Mr Régnier: FRF 9,637).

16. The Government maintained that the costs incurred in the domestic courts were unconnected with the breach found by the Court, and they referred to the Court's case-law as regards those incurred before the Convention institutions.

17. The Delegate of the Commission recommended reasonable compensation.

18. The Court notes that the applicants did not provide any detailed statements of costs or any vouchers. It considers, however, that it should, on an equitable basis, take into account the costs incurred at Strasbourg and part of those that were designed to bring the breach of Article 8 (art. 8) to an end and secure redress for it. Applying its usual criteria in the matter, it awards each of the applicants a lump sum of FRF 60,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the respondent State is to pay, within three months,
 - (a) 50,000 (fifty thousand) French francs to Mr Mialhe, 25,000 (twenty-five thousand) francs to Mrs Victoria Mialhe and 25,000 (twenty-five thousand) francs to Mrs Brigitte Mialhe in respect of non-pecuniary damage; and
 - (b) 60,000 (sixty thousand) francs to each of the applicants in respect of costs and expenses;
2. Dismisses the remainder of the applicants' claim.

Done in English and in French, and notified in writing on 29 November 1993 pursuant to Rule 55 para. 2, second sub-paragraph, of the Rules of Court.

Rudolf BERNHARDT
President

Marc-André EISSEN
Registrar