

In the case of Monnet 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 Thór Vilhjálmsson,
Mr L.-E. Pettiti,
Mr R. Macdonald,
Mr A. Spielmann,
Mr J. De Meyer,
Mr S. K. Martens,
Mr A.N. Loizou,
Mr J.M. Morenilla,

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

Having deliberated in private on 23 April and 22 September 1993,

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

Notes by the Registrar

* The case is numbered 35/1992/380/454. 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 Government of the French Republic ("the Government") on 16 October 1992, 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. 13675/88) against France lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by a French national, Mr Claude Monnet, on 26 November 1987. Before the Commission, the applicant had been designated by the initials "C.M.", but he subsequently consented to the disclosure of his identity.

The Government's application referred to Article 48 (art. 48). The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under paragraph 1 of Article 6 (art. 6-1).

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 30 October 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr R. Macdonald, Mr A. Spielmann, Mr J. De Meyer, Mr S.K. Martens, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission 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 memorial on 24 February 1993 and the Government's memorial on 4 March. On 7 April 1993 the Secretary to the Commission informed the Registrar that the Delegate would address the Court at the hearing.

5. On 22 March 1993 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 20 April 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr	B. Gain, Head of the Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs,	Agent,
Miss	M. Picard, magistrat, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs,	
Mr	G. Bitti, Human Rights Office, European and International Affairs Department, Ministry of Justice,	Counsel;

(b) for the Commission

Mr	F. Ermacora,	Delegate;
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(c) for the applicant

Mr	L. Hincker, avocat,	Counsel,
Mr	J. Paillot, avocat,	Adviser.

The Court heard addresses by Mr Gain for the Government, by Mr Ermacora for the Commission and by Mr Hincker and Mr Paillot for the applicant.

AS TO THE FACTS

I. The particular circumstances of the case

7. In March 1969 Mr Claude Monnet, a doctor specialising in radiology, married Miss C. Grosclaude. They had two children; the first was born on 8 January 1971 and the second on 2 August 1973.

A. The first-instance proceedings

1. The applications for judicial separation and divorce

8. On 15 September 1981 the applicant's wife filed an application for judicial separation. By an order pronouncing the failure of the conciliation process dated 24 November 1981, the matrimonial causes judge of the Valence tribunal de grande instance, giving an

interlocutory ruling as the judge responsible for preparing the case, awarded custody of the children to their mother, set the father's contribution to their maintenance at 2,000 francs per month, and in addition ordered Mr Monnet to pay his wife a monthly sum of 1,500 francs.

9. On 30 December 1981 Mrs Grosclaude instituted judicial separation proceedings against her husband. The applicant entered an appearance by appointing a lawyer on 18 February 1982. He was to change lawyers three times in the course of the proceedings. In his first submissions of 24 May 1982 he cross-petitioned for divorce. He made further submissions on 6 January 1984.

10. On 21 September 1984 Mrs Grosclaude filed her submissions, after she had been directed to do so. She communicated her evidence on 21 November. The parties lodged additional submissions on 11 and 12 December. On 17 December the judge responsible for preparing the case made an order closing the preliminary stage (ordonnance de clôture). The hearing took place two days later.

11. On 13 February 1985 the Valence tribunal de grande instance pronounced the couple's divorce, finding that both were at fault; it deferred its decision on the custody of the children and the amount of maintenance pending the filing of a second social inquiry report and a psychological report on the children (see paragraph 12 below). The provisions relating to custody and maintenance decided by the judge responsible for preparing the case remained in force. The court rejected an application for a psychiatric expert opinion filed by the applicant on 26 October 1984.

2. The ancillary measures

12. In the meantime, on 15 June 1982, the matrimonial causes judge had considered it necessary to have recourse to a social inquiry. The educational guidance report was filed on 2 February 1983; the social inquiry report on 10 June 1983. On the basis of submissions made by Mr Monnet on 18 January 1984 and by his wife in June 1984, the same judge ordered, on 14 August, a second social inquiry and a psychological report on the children.

13. On 19 November 1982 Mrs Grosclaude sought an increase in the paternal contribution and maintenance payments. Before ruling, the judge ordered, on 1 February 1983, an accountant's report on the applicant's income, a measure which was made subject to the deposit by the latter, before 1 March, of the sum of 3,000 francs. This amount was not paid until 8 September, following a reminder sent on 7 June. On 15 May 1984, in the light of the expert's report filed on 2 February 1984, the judge fixed the overall monthly payment at 8,000 francs. The applicant challenged this decision unsuccessfully in the Grenoble Court of Appeal, which dismissed his appeal on 26 September 1984. His appeal on points of law was rejected by the Court of Cassation on 28 April 1986.

B. The appeal proceedings

14. In the intervening period, on 18 March 1985, the applicant had appealed from the judgment of 13 February 1985, asking the Grenoble Court of Appeal to pronounce the divorce with fault being attributed exclusively to his wife.

15. By way of interlocutory application, he requested, on 6 December 1985, that his maintenance payments be reduced. On 21 January 1986 the judge responsible for the preparation of the appeal case dismissed this application, which had been contested by Mrs Grosclaude.

By an interlocutory appeal from this order, Mr Monnet sought,

on 16 June 1986, a new financial expert's report. On 18 September the same judge dismissed his application, which had been opposed by his wife in submissions of 11 September.

16. On 5 September 1985 the judge in question scheduled the conclusion of the preliminary stage of the proceedings for 30 September 1986 and the hearing for 25 November.

The order closing the preliminary stage of the appeal proceedings, which was postponed at the applicant's request to 14 November 1986 and then to 22 February 1987, was finally issued on 27 February, after the exchange of several sets of submissions; the applicant had not filed his first appeal submissions on the merits until 12 November 1986, after being directed to do so following an application from his wife. The hearing was held on 2 March 1987.

17. On 16 March 1987 the Court of Appeal, setting aside the contested judgment, dismissed as ill-founded the petitions for judicial separation and divorce. Ruling of its own motion by virtue of Article 258 of the Civil Code, it awarded custody of the children to the mother, authorised her to live apart from her husband and ordered the latter to pay 8,000 francs as his monthly maintenance contribution.

C. The cassation proceedings

18. Mr Monnet appealed on points of law on 4 August 1987. He produced his memorial on 4 January 1988. The judge rapporteur, to whom the file was assigned on 20 April 1988, filed his report on 5 May 1988. The applicant's wife communicated her observations on 17 May 1988.

On 12 October 1988 the Court of Cassation (Second Civil Division) dismissed the appeal.

II. The relevant legislation

A. The Civil Code

19. The following provisions of the Civil Code are relevant in the present case:

Article 248-1

"In the event of divorce on grounds of fault, and at the request of the couple, the court may confine itself to noting in the reasons for its judgment that there are grounds for divorce without having to set out the transgressions and complaints of the parties."

Article 251

"Where divorce is sought because of long-term de facto separation or on grounds of fault, prior to the judicial proceedings an attempt shall obligatorily be made at reconciliation. Further such attempts may be made during the proceedings.

Where divorce is sought on the basis of mutual consent, an attempt at reconciliation may be made in the course of the proceedings in accordance with the specific rules of procedure applicable to this type of divorce."

Article 258

"When the court gives a final decision rejecting the divorce petition, it may rule on the maintenance contributions, the place of residence of the family and the custody of minor children."

Article 259

"The facts relied on as grounds for divorce or as a defence to a divorce petition may be established by any type of evidence, including a confession."

Article 259-3

"Spouses must communicate to each other and to the judge and to the experts appointed by him, all information and documents which are useful in determining the allowances and contributions and for the realisation of the matrimonial assets.

The court may order any useful inquiries in respect of debtors or those who hold assets on behalf of the couple, regardless of whether such information is protected by a duty of confidentiality."

Article 296

"Judicial separation may be pronounced at the request of one of the spouses in the same cases and subject to the same conditions as divorce."

B. The new Code of Civil Procedure

20. The following Articles of the new Code of Civil Procedure may also be cited:

Article 2

"The parties shall conduct the proceedings in accordance with the responsibilities incumbent on them. They shall carry out the steps in the proceedings in the manner and in compliance with the time-limits laid down."

Article 3

"The court shall ensure the proper conduct of the proceedings; it shall be empowered to lay down time-limits and order necessary measures."

Article 265

"The decision ordering an expert opinion shall:

set out the circumstances which render necessary the expert opinion and, if appropriate, the appointment of several experts;

appoint the expert or experts;

set out the terms of reference for the expert;

lay down the time-limit within which the expert shall give his opinion."

Article 765

"The judge responsible for preparing the case may invite the lawyers to reply to any arguments in respect of which they have not made submissions.

He may also invite them to supply any explanations as to the facts and law which may be necessary to resolve the

dispute.

He may order that the originals of documents adduced in court be communicated to him or require the production of copies thereof."

PROCEEDINGS BEFORE THE COMMISSION

21. Mr Monnet lodged his application with the Commission on 26 November 1987. Relying on Article 6 (art. 6) of the Convention he complained of the length of the judicial separation and divorce proceedings and of criminal proceedings brought against him for wilful neglect to maintain his family. He also alleged that his case had not had a fair hearing either at first instance or in the appeal proceedings.

22. On 6 March 1991 the Commission found the complaint concerning the length of the civil proceedings admissible and declared the remainder of the application (no. 13675/88) inadmissible as manifestly unfounded. In its report of 1 July 1992 (made under Article 31) (art. 31), it expressed the opinion, by seven votes to one, 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 273-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS TO THE COURT

23. In their memorial, the Government requested the Court to "dismiss the application lodged by Mr Monnet".

24. The applicant, on the other hand, urged the Court "to find that the French State had breached the Convention on the ground that the French courts had not dealt with the judicial separation application submitted by his wife and his counter-petition for divorce within a reasonable time as required under Article 6 para. 1 (art. 6-1) of the Convention".

AS TO THE LAW

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

25. Mr Monnet complained of the time taken to hear the judicial separation and divorce petitions. He relied on Article 6 para. 1 (art. 6-1) of the Convention, according to which:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government disputed this claim; the Commission accepted it.

A. The period to be taken into consideration

26. The period to be taken into consideration began on 15 September 1981, the date on which the petition for judicial separation was filed. It ended on 12 October 1988, when the Court of Cassation delivered its judgment. It therefore lasted seven years and approximately one month.

B. Reasonableness of the length of the proceedings

27. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, notably the complexity of the case and the conduct of the parties and of the relevant authorities (see, *inter alia*, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

As the Government stressed, Article 2 of the new Code of Civil Procedure leaves it to the parties to take the initiative: it is incumbent on them to "carry out the steps in the proceedings in the manner and in compliance with the time-limits laid down". However, this does not absolve the courts from ensuring that the proceedings are conducted within a reasonable time (see, *inter alia*, the *Martins Moreira v. Portugal* judgment of 26 October 1988, Series A no. 143, p. 17, para. 46). Moreover, as the applicant pointed out, under Article 3 of the Code the court is required to ensure the proper conduct of the proceedings and is empowered "to lay down time-limits and order necessary measures".

1. Complexity of the case

28. In the applicant's submission the case was not a particularly complex one.

The Court, however, shares the Government's view that the large number of interlocutory applications filed by the parties, especially Mr Monnet, made it so. Moreover, the Court of Appeal drew attention in its judgment to this intense activity.

2. Conduct of the parties

29. According to the Government, the French authorities could not take responsibility for the consequences of the choice made by the Monnets, who preferred to put an end to their marriage by a contentious procedure rather than opting for divorce by mutual consent, which was much quicker. In addition the attitude of the applicant, who filed the majority of his many submissions late, changed his lawyer several times and made numerous applications for financial expert reports and for psychological or social inquiry reports, slowed down the progress of the proceedings in a manner which was decisive.

The applicant maintained that he had displayed due diligence. Mrs Grosclaude and he had done no more than have recourse to the different means available to secure the best protection of their interests; the interlocutory applications, which had related to the crucial question of the custody of the children and to the payment of maintenance, had in no way been used as a delaying tactic.

30. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, *inter alia*, the *H. v. France* judgment of 24 October 1989, Series A no. 162, pp. 21-22, para. 55).

In this instance the parties were hardly diligent in filing their submissions.

In the Valence tribunal de grande instance Mr Monnet waited almost five months, from 30 December 1981 until 24 May 1982, before lodging his cross-petition for divorce and more than nineteen months, from 24 May 1982 to 6 January 1984, before submitting grounds in support thereof (see paragraphs 8-9 above). At the same time the court had to resort to directing Mrs Grosclaude to reply (see paragraph 10 above).

In the Grenoble Court of Appeal Mr Monnet, the appellant in

those proceedings, twice requested the deferment of the order concluding the preliminary stage of the proceedings (ordonnance de clôture) and did not file his first submissions on the merits until 12 November 1986, following a direction to this effect and twenty months after he had lodged his appeal (see paragraph 16 above).

31. It therefore appears that the parties, especially the applicant, contributed considerably to prolonging the proceedings.

3. Conduct of the judicial authorities

32. The Commission considered that the failure to comply with the "reasonable time" requirement stemmed essentially from the conduct of the judicial authorities. Thus the accountant had taken a year (1 February 1983 - 2 February 1984) to submit his report and the judge responsible for preparing the case had scheduled the hearing for a date almost one year and eight months after the appeal was filed (18 March 1985 - 25 November 1986); in addition, according to the applicant, the social inquiry had taken nearly a year (15 June 1982 - 10 June 1983) (see paragraphs 12, 13, 14 and 16 above). Yet the courts ought to have shown special diligence as the proceedings concerned civil status (see the *Bock v. Germany* judgment of 29 March 1989, Series A no. 150, p. 23, para. 49).

On that last point, the Government affirmed that in appealing the applicant had been motivated by financial considerations rather than the desire to divorce. In addition, in fault-based divorce proceedings, the judge had a limited role to play: he could not accelerate the dissolution of the marriage and only the parties could adduce evidence to substantiate the grounds for the divorce. There had been no exceptional circumstance calling for special expedition on the part of the tribunal de grande instance and the Court of Appeal.

33. With regard to the financial report, the Court notes that Mr Monnet waited seven months (1 February - 8 September 1983) before depositing the amount fixed by the relevant judge, thus making it impossible to appoint an accountant earlier. Once appointed the accountant carried out the task assigned to him (see paragraph 13 above). The social inquiry showed that the expert had encountered all manner of difficulties in his dealings with the Monnets, who were bitterly divided on the question of the children. The period of one year does not seem unreasonable in view of the consequences that the report might have on the future of those concerned (see paragraph 12 above).

Furthermore, the two years that the appeal proceedings lasted (18 March 1985 - 16 March 1987) do not appear excessive in the light of the conduct of the applicant, who caused the adjournment to 2 March 1987 of the hearing, which had originally been set down for 25 November 1986 (see paragraph 16 above).

The cassation proceedings did not give rise to criticism.

34. Having regard to all the circumstances of the case and in particular to the role of the parties in the conduct of the proceedings, the Court does not consider excessive the total length of those proceedings. It therefore takes the view that the applicant's complaint is unfounded.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 October 1993.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar