



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

COURT (CHAMBER)

CASE OF HENTRICH v. FRANCE (ARTICLE 50)

(Application no. 13616/88)

JUDGMENT

STRASBOURG

3 July 1995

In the case of Hentrich v. France¹,

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 Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Mr A.B. BAKA,

Mr L. WILDHABER,

Mr J. MAKARCZYK,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 25 April and 28 June 1995,

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 12 July 1993, 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. 13616/88) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mrs Liliane Hentrich, on 14 December 1987.

2. In a judgment of 22 September 1994 ("the principal judgment", Series A no. 296-A), the Court found that there had been breaches of Article 1 of Protocol No. 1 (P1-1), as the applicant had not been able to mount an effective challenge to the pre-emption of her property by the Revenue, and of Article 6 para. 1 (art. 6-1) of the Convention, for want of a fair hearing and owing to the length of the proceedings (*ibid.*, pp. 18-23, paras. 34-61, and points 2, 3 and 4 of the operative provisions). On the other hand, it held

¹ The case is numbered 23/1993/418/497. 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.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

that there had been no breach of Article 6 para. 2 (art. 6-2) of the Convention and that it was unnecessary to consider separately the complaints based on Articles 13 and 14 (art. 13, art. 14) of the Convention (*ibid.*, pp. 23-24, paras. 62-66, and points 5 and 6 of the operative provisions).

The Court held that its judgment constituted in itself sufficient just satisfaction as to the alleged non-pecuniary damage and that the respondent State was to pay the applicant, within three months, 56,075 French francs (FRF) in respect of costs and expenses (*ibid.*, pp. 24-25, paras. 67-75, and points 7 and 8 of the operative provisions).

3. As the question of the application of Article 50 (art. 50) was not ready for decision in respect of pecuniary damage, the Court reserved it and invited the Government and the applicant to submit in writing, within three months, their observations on the matter and, in particular, to notify the Court of any agreement they might reach (*ibid.*, p. 25, para. 71, and point 9 of the operative provisions).

4. The negotiations for an agreement proved unsuccessful and the Registrar received a memorial on 3 January 1995 in which the Government replied to the claims made by the applicant in the principal proceedings (*ibid.*, p. 24, para. 68). Mrs Hentrich submitted her observations and proposals on 4 January. In an order of 12 January the President requested the parties to make further submissions. Memorials in reply were submitted by the Agent of the Government on 11 February and by the applicant on 13 February.

5. On 9 March 1995 the Secretary to the Commission informed the Registrar that the Delegate had no observations to make.

6. On 6 April 1995 counsel for Mrs Hentrich filed supplementary documents and observations, which were communicated to the Government and the Delegate of the Commission on 18 April.

On 15 June 1995 the Government submitted further observations, which the Registrar sent to the applicant and the Delegate of the Commission on 23 June 1995.

AS TO THE LAW

7. Under Article 50 (art. 50) of the Convention,

"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."

In reliance on this provision the applicant sought compensation for pecuniary damage and reimbursement of costs and expenses.

8. The conditions for applying Article 50 (art. 50) have been satisfied, as the negotiations that followed the principal judgment did not result in reparation for the breach found.

A. Pecuniary damage

9. Both in her memorial of 20 December 1993 and at the hearing, Mrs Hentrich estimated the value of the land in issue at FRF 1,000,000.

In her view, the value could not now be less than FRF 2,875,550, in other words FRF 425 per square metre, the sum she now sought. She also claimed compensation of FRF 200,000 for loss of enjoyment. Lastly, she sought payment of interest at the statutory rate on the two amounts in question from 22 September 1994.

10. The Government noted that in its principal judgment the Court held that, "given the violation found of Article 1 of Protocol No. 1 (P1-1), the best form of redress would in principle be for the State to return the land" (Series A no. 296-A, p. 25, para. 71). They stated, however, that the French State could not, as its national law currently stood, take the measure recommended by the Court. Having become part of the private property of the State, the "pre-empted" land was subject to the provisions of the Code of State Property and it was impracticable to transfer it, let alone without requiring any payment.

The Government offered to pay the applicant compensation of FRF 130,000. They arrived at that figure by taking the current market value of the land as lying between FRF 700,000 and FRF 800,000 and deducting the payments made in 1981, that is to say FRF 205,688.29, and the additional tax, that is to say FRF 29,000. After adjustment and capitalisation of the interest, they assessed the latter two sums at FRF 703,377.77 and FRF 93,000 respectively.

11. In its principal judgment the Court held that, failing return of the land in question, "the calculation of pecuniary damage must be based on the current market value of the land" (*ibid.*).

Making its assessment of the damage flowing from the loss of the property and of the enjoyment of it on an equitable basis, as required by Article 50 (art. 50), the Court adopts a figure of FRF 1,000,000, from which the sums received by Mrs Hentrich in 1981, which she did not challenge, fall to be deducted. The Court accordingly awards her compensation of FRF 800,000 under this head.

B. Costs and expenses

12. Mrs Hentrich also sought reimbursement of the additional costs and fees incurred as a result of the Article 50 (art. 50) proceedings, namely FRF 20,000. She further claimed payment of interest at the French statutory rate from the date of delivery of the principal judgment on the still unpaid sum of FRF 56,075 awarded in that judgment in respect of the costs and expenses relating to the principal proceedings.

13. The Government made no submissions on any of these points.

14. Noting that the applicant's claims have not been disputed, the Court allows them except as regards the fixing of interest, which is payable solely on the sum of FRF 56,075 awarded in the principal judgment and only from 22 December 1994.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that the respondent State is to pay the applicant, within three months, 800,000 (eight hundred thousand) French francs in respect of pecuniary damage;
2. Holds unanimously that the respondent State is to pay the applicant, within three months, 20,000 (twenty thousand) francs in respect of costs and expenses relating to the proceedings under Article 50 (art. 50);
3. Holds unanimously that the respondent State is to pay the applicant, within three months, statutory interest from 22 December 1994 on the sum of 56,075 francs awarded in the principal judgment;
4. Dismisses by eight votes to one the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 3 July 1995 pursuant to Rule 55 para. 2, second sub-paragraph, of Rules of Court A.

Rolv RYSSDAL
President

For the Registrar
Vincent BERGER
Head of Division in the registry of the Court

In addition to a joint declaration by Mr Ryssdal, Mr Pettiti, Mr Valticos and Mr Baka, the dissenting opinion of Mr Martens is annexed to this judgment (Article 51 para. 2 of the Convention and Rule 53 para. 2 of Rules of Court A) (art. 51-2).

R. R.
V. B.

JOINT DECLARATION BY JUDGES RYSSDAL, PETTITI,
VALTICOS AND BAKA

(Translation)

We voted against the finding that there had been a breach of Article 1 of Protocol No. 1 (P1-1). Nevertheless, having regard to the principal judgment, we have voted with the majority on Article 50 (art. 50) of the Convention.

DISSENTING OPINION OF JUDGE MARTENS

To my regret I cannot agree with the majority of my colleagues. In my opinion this is not a case where the decision as to just satisfaction may be taken on the basis of equity alone.

The parties were deeply divided both as to the relevant legal principles and as to the facts. Their estimates of the actual value of the seized land differed widely and were, moreover, essentially unsupported by any documents.

In such circumstances the Court should not shelter behind "equity" but rule on the legal issues and invite experts to provide it with the data which would enable it to assess the value of the land, if need be in equity. Deciding in equity, like any other judicial decision, requires a clear and reliable view of the facts.

Apart from this general consideration, the need for consistency in the case-law should have prompted the Court to follow the course I have just suggested. In its *Papamichalopoulos and Others v. Greece* judgment of 24 June 1993 (Series A no. 260-B) the Court was faced with similar problems of just compensation and had recourse to experts.

It would seem that the majority is of the opinion that the present case may be distinguished from *Papamichalopoulos*. They apparently distinguish it on the basis that the applicant, both in her memorial and at the hearing concerning the merits, estimated the current value of the land in issue at FRF 1,000,000. That estimate was referred to in paragraph 68 of the judgment. But in my view, this mere estimate, which is rather casual and at any rate wholly unsupported, cannot serve as a proper starting-point for an assessment in equity or for distinguishing the present case from that of *Papamichalopoulos*.

Consequently, I have voted against the first and fourth paragraphs of the operative provisions of the judgment. I could not approve of assessing the value of the land at 22 September 1994 at FRF 1,000,000 since in my opinion it is quite conceivable that the real value is either considerably higher or considerably lower. In neither case is the Court's starting-point just. Moreover, I cannot agree with deducting only the nominal amount received by the applicant in 1981. Since the Court has held that she is entitled to the value of the land at 22 September 1994, it seems unjust towards France not to deduct the amount received adjusted at exactly the same date. Finally, unlike the majority, I think that the applicant is entitled to statutory interest on the difference from 22 September 1994.