

In the case of *Fouquet v. France* (1),

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 A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr S.K. Martens,
Mr A.N. Loizou,
Mr F. Bigi,
Mr J. Makarczyk,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 25 January 1996,

Delivers the following judgment, which was adopted on that date:

Notes by the Registrar

1. The case is numbered 53/1994/500/582. 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) (1 October 1994) 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 8 December 1994, 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. 20398/92) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Marc Fouquet, on 15 April 1992.

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) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, 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 27 January 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr S.K. Martens, Mr A.N. Loizou and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr F. Bigi, substitute judge, replaced Mr Matscher, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("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 orders made in consequence, the Registrar received the Government's memorial on 30 June 1995; on 6 July 1995 the applicant's representative indicated that he intended to make before the Court the submissions he had already filed with the Commission. In a letter of 17 July 1995 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 24 March 1995 the Secretary to the Commission had supplied the Registrar with various documents that he had requested on the President's instructions.

5. On 12 September 1995 the Agent of the Government sent the Registrar a copy of a letter that had been written to the applicant with a view to reaching a friendly settlement. On 15 September the Agent confirmed that such a settlement was very likely. In response to a request from the Agent, and after consulting - through the Registrar - the applicant's lawyer and the Delegate of the Commission, the President decided on 19 September 1995 to adjourn the oral proceedings sine die.

On 22 November 1995 the applicant's lawyer communicated to the Registrar the terms of the agreement concluded between his client and the Government. On the following day the Registrar forwarded a copy to the Government.

In a letter of 11 December 1995 the Secretary to the Commission informed the Registrar that the Delegate, who had been duly consulted (Rule 49 para. 2), had no observations to make.

6. On 25 January 1996 the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

7. On 26 March 1985, while he was travelling on a moped, Mr Marc Fouquet, aged 14, was knocked over by a car driven by Mr D. and seriously injured.

A. The proceedings in the *Saintes tribunal de grande instance*

8. The applicant's father, acting on his son's behalf and in his interests, brought an action for damages against Mr D. and his insurer.

9. In its judgment of 26 May 1988 the court held that Mr Marc Fouquet had himself been negligent at the time of the

accident in swerving onto the verge of the road in an attempt to avoid a collision and it consequently reduced the award of damages by fifty per cent.

B. The proceedings in the Poitiers Court of Appeal

10. The applicant and his father appealed against that judgment to the Poitiers Court of Appeal.

In his submissions of 3 February 1989 Mr Marc Fouquet pleaded that he had not been negligent. In particular, he argued as follows:

"Marc Fouquet's man+uvre was perfectly justified in the circumstances.

...

Consequently, the Court will find that Marc Fouquet's man+uvre did not amount to negligence but was a natural reaction in the given situation and will hold Mr D. wholly liable.

In the unlikely event of the Court's holding that the man+uvre was negligent, it would be bound to acknowledge that Marc Fouquet's negligence was slight in comparison with Mr D.'s and consequently reapportion liability.

..."

In his supplementary submissions of 20 April 1989 the applicant alleged, inter alia:

"...

... it was clearly Mr D.'s conduct which caused the accident with Marc Fouquet.

...

... The Court will find that the accident was caused solely by the negligent conduct of Mr D., who will have to compensate Marc Fouquet for all the damage sustained.

..."

11. In a judgment of 13 September 1989 the Poitiers Court of Appeal upheld the judgment of the court below.

C. The proceedings in the Court of Cassation

12. The applicant and his father appealed on points of law. In their first ground of appeal they maintained that the Court of Appeal had been wrong to hold that Mr Marc Fouquet had been guilty of negligence warranting a reduction of his damages.

13. On 4 March 1992 the Court of Cassation (Second Civil Division) dismissed the appeal on the following ground:

"It appears from the documents produced in evidence that in [their] submissions to the Court of Appeal the Fouquets recognised that the victim had been negligent.

The ground, which contradicts the arguments maintained in the courts below, is inadmissible."

PROCEEDINGS BEFORE THE COMMISSION

14. Mr Fouquet applied to the Commission on 15 April 1992. He maintained that the Court of Cassation had made a mistake of fact when considering the first ground of appeal submitted to it and that this had given rise to a breach of his right to a fair hearing as secured in Article 6 para. 1 (art. 6-1) of the Convention.

15. The Commission (Second Chamber) declared the application (no. 20398/92) admissible on 2 March 1994. In its report of 12 October 1994 (Article 31) (art. 31), it expressed the unanimous opinion 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 (1).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions - 1996), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

16. On 22 November 1995 the Court received from the applicant's lawyer a document signed by Mr Fouquet on 15 November 1995, which read as follows:

"I, the undersigned Mr Marc Fouquet, ... hereby declare that I accept the compensation of FRF 150,000 offered to me by the French Government in the case pending before the European Court of Human Rights between me and that Government (my application, no. 53/1994/500/582).

I acknowledge that the payment of this sum will constitute full and final reparation for all the pecuniary and non-pecuniary damage alleged by me in my application and will also cover in their entirety the lawyers' fees and other costs incurred by me in this case.

I therefore agree, in consideration of the payment of this sum, to withdraw from these proceedings and not to institute any further proceedings in this matter against the French State in the national or international courts.

I note that the French Government will pay me this compensation as soon as the Court has decided to strike the case out of its list.

Done at Epargnes on 15 November 1995

[applicant's manuscript addition:] Approved for settlement in the amount of one hundred and fifty thousand francs (FRF 150,000)."

The Delegate of the Commission was consulted and raised no objection.

17. The Court takes formal note of the friendly settlement reached by the Government and Mr Fouquet. It discerns no reason of public policy why the case should not be struck out of the list (Rule 49 paras. 2 and 4 of Rules of Court A).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing
under Rule 55 para. 2, second sub-paragraph, of Rules of Court A
on 31 January 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar