

In the case of P.L. 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. Bernhardt, President,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr J. De Meyer,
Mr A.N. Loizou,
Sir John Freeland,
Mr D. Gotchev,
Mr B. Repik,

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

Having deliberated in private on 20 March 1997,

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

Notes by the Registrar

1. The case is numbered 76/1996/695/887. 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 28 May 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21503/93) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr P.L., on 20 July 1992. The applicant asked the Court not to reveal his identity.

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 5 para. 1 of the Convention (art. 5-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant, who remained entitled to legal aid for the representation of his case before the Court (Rule 3 para. 1 of the Addendum to Rules of Court A), 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. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 10 June 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr J. De Meyer, Mr A.N. Loizou, Sir John Freeland, Mr D. Gotchev and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, 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 order made in consequence, the Registrar received the Government's memorial on 31 October 1996. On 3 December 1996 the Secretary to the Commission informed the Court that the Delegate did not wish to reply to the Government's memorial in writing. The applicant did not file any observations.

5. On 8 January 1997 the Commission produced various documents requested by the Registrar on the President's instructions.

6. On 3 February 1997 the Agent of the Government informed the Registrar that the applicant had been granted a pardon by the President of the French Republic remitting part of his sentence. In his letter he enclosed a copy of the letter he had sent on the same day to Mr P.L.'s lawyer, in which he wrote:

"I have the honour to inform you that Mr [P.L.] has just been granted a presidential pardon amounting to one year and eighteen days, that is the equivalent of the initial period of your client's detention on remand in connection with the proceedings declared null and void in the judgment of the Indictment Division of the Amiens Court of Appeal of 3 October 1989.

Consequently, in so far as the pardon thus granted to Mr [P.L.] meets the object of his application to the Convention institutions very precisely, a friendly settlement of the case could be reached.

If so, the hearing in respect of the case in which you represent the applicant, at present due to take place before the ... Court ... on 19 March 1997, would be pointless.

If your agreement on a friendly settlement of the case is not forthcoming, the French Government would be minded to request the Court to strike the case out of its list, on the basis of Rule 49 para. 2 of the Rules of Court.

..."

7. On 25 February 1997 the Agent of the Government wrote to the Registrar in the following terms:

"As you know, Mr [P.L.] has just been granted a presidential pardon for the exact equivalent of the initial period of his detention on remand in connection with the proceedings subsequently declared null and void.

That being the case, it seems to me that further consideration of the case is not justified, since the pardon thus granted to Mr [P.L.] meets the object of his application to the Convention institutions.

I therefore have the honour to request the Court to strike the case out of its list, pursuant to Rule 49 para. 2 of the Rules of Court.

I can also confirm that I wrote to Mr [P.L.]'s lawyer on 3 February 1997 with a view to reaching a friendly settlement. To date, I have still not received a reply from him in writing."

8. On 26 February 1997 the Registrar sent copies of these two letters to the applicant's lawyer and the Delegate of the Commission and asked them to send him their views on the information and the application to have the case struck out contained in them.

9. On 3 March 1997 the Secretary to the Commission wrote to the Registrar in the following terms:

"...

... The Delegate of the Commission considers that it is for the applicant to decide whether the presidential pardon which he has been granted constitutes sufficient redress in the present case. If so, having regard to the fact that in the past the granting of a pardon has been the basis for friendly settlements reached before the Commission, where the latter took the view that the settlement thus reached was based on respect for human rights, the Delegate would not oppose the Government's application for the case to be struck out of the list..."

10. On 5 March 1997 the President decided to adjourn sine die the public hearing due to take place on 19 March 1997.

11. On 12 March 1997 the Agent of the Government sent the Registrar a copy of a letter that had been sent by the Minister of Justice to the Minister of Foreign Affairs on 11 March, informing him that the pardon in question had been granted by the President of the Republic in the form of a decree dated 27 January 1997.

12. On 14 March 1997 the Registrar received a letter from the applicant's lawyer informing him that Mr P.L. "[was] not proceeding with his application (se désist[ait] de sa demande)".

13. On 20 March 1997 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

14. On 9 July 1983 Mr P.L. married Mrs R.V., who had three daughters from a previous marriage, Catherine, Cathy and Sophie, born on 5 November 1971, 8 January 1973 and 31 January 1975 respectively.

15. In September 1988 Catherine, who was about twenty weeks' pregnant, told the educational welfare officer attached to her school that her stepfather had been abusing her for several years. This information was passed on to the public prosecutor's office and a preliminary investigation was undertaken by the gendarmerie. Catherine stood by her allegations and Cathy and Sophie stated that the applicant had also imposed sexual relations on them. Mr P.L. admitted the offences involving the two elder children.

A. The judicial investigation

1. The first set of proceedings

16. On 16 September 1988 Mr P.L. was informed that he was under judicial investigation on suspicion of a number of offences of rape of a person under 15 by a person in a position of authority and rape by a person in a position of authority, and remanded in custody.

17. On 18 September 1989 the public prosecutor's office asked the Indictment Division of the Amiens Court of Appeal to declare null and void the order appointing the investigating judge and all subsequent decisions on the ground that the order did not bear the signature in his own hand of the president of the Laon tribunal de grande instance, but a stamp reproducing his signature.

In a judgment of 3 October 1989 the Indictment Division allowed this application on the following grounds:

"...

A stamped signature cannot confer authenticity, which is provided only by the original signature of the document in its author's own hand; ...

It follows that all the decisions of [the investigating judge] were taken by a judge not validly appointed, and are therefore null and void;

..."

Mr P.L. was released on the same day.

2. The second set of proceedings

18. Another investigating judge had been appointed on 22 August 1989. On 5 December 1989 he informed the applicant that he was under investigation on suspicion of a number of offences of rape of a person under 15 by a person in a position of authority and rape by a person in a position of authority, and remanded him in custody.

B. The trial

19. In a judgment of 18 October 1991 the Indictment Division of the Amiens Court of Appeal committed Mr P.L. for trial at the Aisne Assize Court.

On 25 March 1992 the Assize Court accepted that there were mitigating circumstances in Mr P.L.'s favour and sentenced him to seventeen years' imprisonment on a number of counts of aggravated rape.

C. The applications for reduction of sentence

20. Mr P.L. unsuccessfully requested the judge responsible for the execution of sentences to deduct one year and eighteen days, that is the equivalent of the time he had spent in prison during his initial period of detention on remand, from his sentence.

He then wrote to the Laon public prosecutor, who replied on 19 May 1992 in the following terms:

"... I have the honour to repeat the explanations which have already been given to you on many occasions, particularly by the judge responsible for execution of sentences:

As the judicial investigation prior to 3 October 1989 was declared null and void, your detention on remand from 16 September 1988 to 3 October 1989 is in law deemed never to have taken place.

Consequently, that period, of which the Assize Court was aware

when it sentenced you, cannot be deducted from the sentence of seventeen years' imprisonment imposed on you on 25 March 1992.

..."

21. The governor of Laon Prison, where the applicant was held, alerted the management of the Prison Service at the Ministry of Justice to the applicant's situation. The head of the Office for the Individualisation of Prison Sentences replied in a memorandum of 14 November 1992:

"... The period of Mr P.L.'s detention on remand in connection with the first judicial investigation cannot ... be taken into account for the execution of his sentence since it took place during proceedings which have been declared null and void and for that reason are deemed never to have existed.

However, it remains open to Mr P.L. to petition the President of the Republic for a pardon, seeking special remission of part of his sentence, regard being had to his legal position."

22. On 8 April 1994 the applicant petitioned the French President for a pardon, seeking remission of part (one year and eighteen days) of his sentence. This petition was dismissed on 28 February 1995 but reconsidered and granted on 27 January 1997 (see paragraphs 6 and 11 above).

PROCEEDINGS BEFORE THE COMMISSION

23. Mr P.L. applied to the Commission on 20 July 1992. Without relying on any specific provision of the Convention, he complained of the fact that the term of imprisonment to which he had been sentenced had not been reduced by the length of his initial period of detention on remand in connection with a judicial investigation subsequently declared null and void.

24. The Commission considered this complaint under Article 5 para. 1 and Article 14 of the Convention (art. 5-1, art. 14). On 16 October 1995 it declared the application (no. 21503/93) admissible. In its report of 11 April 1996 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 5 para. 1 (art. 5-1) (twenty-five votes to three) and that it was not necessary to consider separately whether there had been a violation of Article 14 taken in conjunction with Article 5 para. 1 (art. 14+5-1) (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report 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 1997-II), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

25. Rule 49 of Rules of Court A provides:

"...

2. When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list.

The same shall apply where the circumstances warrant the conclusion that the applicant does not intend to pursue his complaints or if, for any other reason, further examination of the case is not justified.

...

4. The Chamber may, having regard to the responsibilities of the Court under Article 19 of the Convention (art. 19), decide that, notwithstanding the notice of discontinuance, friendly settlement, arrangement or other fact referred to in paragraphs 1 and 2 of this Rule, it should proceed with the consideration of the case."

26. The Government informed the Court that, in a decree of 27 January 1997, the President of the French Republic had granted the applicant a pardon remitting a portion of his sentence (one year and eighteen days) equivalent to the period of detention on remand in issue (see paragraphs 6, 11 and 22 above). They considered that the pardon "[met] the object of [the] application to the Convention institutions very precisely" and consequently requested that the case be struck out of the Court's list (see paragraphs 6-7 and 11 above).

The Delegate of the Commission was consulted and stated that it was for the applicant to say whether he considered that the presidential pardon which he had been granted constituted sufficient redress, and that if the applicant did so consider, he would not oppose the application for the case to be struck out of the list (see paragraph 9 above).

Subsequently, the applicant's lawyer informed the Registrar that his client "[was] not proceeding with his application (se désist[ait] de sa demande)" (see paragraph 12 above).

27. The Court observes that the Government and the applicant have not reached a "friendly settlement" within the meaning of Rule 49 para. 2, but that the applicant has stated that he "is not proceeding (se désiste)".

It further notes that the pardon granted in the decree of 27 January 1997 gave the applicant what he was seeking from the French authorities. His imprisonment will be one year and eighteen days shorter, just as if his first period of detention on remand had been deducted from his sentence. Moreover, he was granted legal aid before the Commission and the Court and has not made any claim under Article 50 of the Convention (art. 50). That being so, the circumstances described above may be regarded as an "arrangement or other fact of a kind to provide a solution of the matter" within the meaning of Rule 49 para. 2. Moreover, there is no reason of public policy why the case should not be struck out of the list (Rule 49 paras. 2 and 4). The case should therefore be struck out of the list.

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 2 April 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

