



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

CASE OF DOUSTALY v. FRANCE

(19/1997/803/1006)

JUDGMENT

STRASBOURG

23 April 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1998. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
B-1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher
(place de Paris), B.P. 1142, L-1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat
A. Jongbloed & Zoon (Noordeinde 39, NL-2514 GC 's-Gravenhage)

SUMMARY¹

Judgment delivered by a Chamber

France – length of proceedings in the administrative courts

I. ARTICLE 6 § 1 OF THE CONVENTION (“reasonable time”)

A. Period to be taken into consideration

Starting-point: application to the Montpellier Administrative Court.

End: judgment of the Bordeaux Administrative Court of Appeal.

Total: not including time taken for enforcement, nearly nine years.

B. Reasonableness of length of proceedings

Complexity of case: not particularly complex.

Conduct of applicant and national authorities: applicant not responsible for any delay – lengthy periods of inactivity imputable to judicial authorities.

What was at stake in proceedings for applicant: amount claimed of vital importance and connected with applicant’s professional activity – particular expedition required.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Damage

1. *Pecuniary damage:* causal connection between finding of violation of Article 6 § 1 and alleged losses partly established – claims allowed in part.

2. *Non-pecuniary damage:* claim allowed in full.

B. Costs and expenses: reimbursed on equitable basis.

Conclusion: respondent State to pay applicant specified sums (unanimously).

COURT'S CASE-LAW REFERRED TO

27.2.1992, Ruotolo v. Italy; 23.4.1996, Phocas v. France; 17.12.1996, Duclos v. France

1. This summary by the registry does not bind the Court.

In the case of Doustaly v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 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. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mr B. REPIK,

Mr P. JAMBREK,

Mr E. LEVITS,

Mr J. CASADEVALL,

Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 31 January and 26 March 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 23 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 26256/95) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Michel Doustaly, on 29 December 1994.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 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 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 19/1997/803/1006. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 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), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr A. Spielmann, Mr N. Valticos, Mr B. Repik, Mr P. Jambrek, Mr E. Levits, Mr J. Casadevall and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Ryssdal, who was unable to take part in the further consideration of the case, was replaced as President of the Chamber by Mr R. Bernhardt, the Vice-President of the Court.

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had 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 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 12 and 17 September 1997 respectively. The Delegate of the Commission did not reply in writing.

5. On 4 July 1997 the Commission had produced various documents 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 28 January 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr D. DOUVENEAU, Deputy Secretary of Foreign Affairs,
Legal Affairs Department,
Ministry of Foreign Affairs, *Agent;*

(b) *for the Commission*

Mr J.-C. SOYER, *Delegate;*

(c) *for the applicant*

Mr M. PUECHAVY, of the Paris Bar, *Counsel.*

The Court heard addresses by Mr Soyer, Mr Puechavy and Mr Douveneau.

AS TO THE FACTS

A. Background to the case

7. Mr Michel Doustaly, who lives in Nîmes, was formerly in practice as an architect.

8. On 9 January 1984 Nîmes City Council awarded him a contract for work on the design and construction of a general-purpose senior high school to be built as part of the State school system. While the work was in hand he received advances on the agreed fees totalling 1,336,643.53 French francs (FRF) as stipulated in the contract.

9. In a letter of 12 April 1984 the Council asked the applicant to carry out a further study and prepare the plans for a building to be used as boarding accommodation that had not been included in the original invitation to tender.

10. When the work was completed the Council decided to reduce by half the amount of the agreed fees, alleging, among other matters, breaches by the applicant of his contractual obligations. It also refused to pay his fees for drawing up the plans for the boarding unit and, taking into account the official classification and the complexity of the work that had actually been done, asked him to repay FRF 494,370.06 of the interim payments he had received.

B. The proceedings in the Montpellier Administrative Court

11. On 26 July 1985 Mr Doustaly lodged an application with the Montpellier Administrative Court, which registered it on 29 July 1985. He sought an order requiring Nîmes City Council to pay him FRF 669,100.39, and the interest to which he was legally entitled, as final settlement of the fees agreed in the contract.

12. The Council filed its defence on 30 September 1985.

13. On 21 January 1988 the applicant filed an additional pleading. On 24 February and again on 24 March 1988 he sent letters to the President of the Administrative Court requesting that a date be fixed for the hearing. On 29 February 1988 he filed further documents.

14. On 20 October 1988 the applicant again requested the President of the Administrative Court to fix a date for the case to be tried.

15. In an interlocutory decision of 19 December 1988 the Administrative Court ordered an expert opinion to establish whether the work had been correctly carried out by Mr Doustaly and gave the expert appointed four months in which to submit his report.

16. On 31 December 1988 Mr Doustaly permanently gave up his architect's practice on account of financial difficulties.

17. On 21 May 1991 the expert filed his report, in which he assessed the balance of the fees owed at FRF 363,600, plus FRF 160,000 in fees for preparing the plans of the boarding unit.

18. On 4 September 1991 the applicant asked the court to order Nîmes City Council to pay him FRF 363,671.28 under the contract and FRF 160,000 in payment for the plans of the boarding unit, plus default interest on both sums from 5 November 1984. He further claimed FRF 760,000 in damages.

19. On 3 December 1991 the Administrative Court put the Council on notice to produce their pleading.

20. On 16 January 1992 the applicant filed a supplementary pleading in which he repeated his submissions of 4 September 1991 (see paragraph 18 above) and sought an order requiring the Council to pay FRF 867,350 in compensation for the extra costs of drawing up the plans.

21. In a letter of 27 January 1992 he pointed out to the President of the Administrative Court that the time-limit given to the Council on 3 December 1991 for the production of their pleading (see paragraph 19 above) had expired with no reply forthcoming.

22. On 11 February and 5 June 1992 Mr Doustaly filed further observations.

23. In letters of 17 July and 14 December 1992 to the President and the registry of the Administrative Court the applicant again asked for a date to be fixed for the hearing. This was held on 14 January 1993.

24. On 21 January 1993 the Administrative Court ordered Nîmes City Council to pay the applicant the sum of FRF 470,301.28, FRF 310,301.28 of which was to bear default interest as from 27 November 1984 and FRF 160,000 from 20 October 1991. A sum of FRF 53,370, which was to bear default interest as from 27 November 1984, had been deducted from the fees owed to the architect on account of the unsatisfactory quality of the work done by his sub-contractor. With regard to the damage to Mr Doustaly's professional reputation, the judgment stated that he had not proved "that the fall in his practice's turnover was the direct consequence of conduct imputable to Nîmes City Council...".

C. The proceedings in the Bordeaux Administrative Court of Appeal

25. On 17 May 1993 the applicant, considering that the sum awarded was insufficient, appealed to the Bordeaux Administrative Court of Appeal.

26. As the appeal did not have suspensive effect, Mr Doustaly applied on 16 July 1993 to the Report and Research Division of the *Conseil d'Etat*. However, after the Council had made a first payment the case was closed on 11 October 1993 on the ground that execution of the judgment was currently in progress. The Council's two further payments were made in December 1993 and February 1994.

27. Nîmes City Council filed its defence on 28 September 1993.

28. On 4 July 1994 the Administrative Court of Appeal upheld the Administrative Court's judgment regarding the capital sum but ordered the Council to pay interest on the interest awarded at first instance which had accrued since 17 May 1993.

29. In letters of 30 January, 3 May and 10 May 1995 the applicant applied to the prefect of the Gard *département* to secure compliance by the Council with the above judgment. The sum owed to the applicant, FRF 778,127.27, was paid on 18 May 1995.

30. In a judgment delivered by the Nîmes Court of Appeal on 22 May 1997 in connection with the litigation between the applicant and his sub-contractor, Mr Doustaly was awarded the sum of FRF 53,370, together with default interest calculated from 27 November 1984 and payable in the form of compound interest from 20 October 1993, that sum having been deducted from the outstanding fees he was owed by Nîmes City Council on account of the unsatisfactory quality of the work done by his sub-contractor (see paragraph 24 above).

PROCEEDINGS BEFORE THE COMMISSION

31. Mr Doustaly applied to the Commission on 29 December 1994. He complained of the length of the proceedings in the administrative courts and relied on Article 6 § 1 of the Convention.

32. The Commission (Second Chamber) declared the application (no. 26256/95) admissible on 29 February 1996. In its report of 27 November 1996 (Article 31), it expressed the unanimous opinion that there had been a breach of Article 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

33. In his memorial the applicant asked the Court “to hold that the length of the proceedings he had brought had exceeded the reasonable time required by Article 6 § 1 of the Convention” and to award him just satisfaction under Article 50 of the Convention.

34. The Government submitted that there had been no breach of Article 6 § 1 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. Mr Doustaly complained of the length of the proceedings he had brought against Nîmes City Council. He alleged a breach of Article 6 § 1 of the Convention, which provides:

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

36. The applicability of Article 6 § 1 of the Convention was not contested in the present case. It is accordingly sufficient for the Court to note that the proceedings were brought to settle a claim for the payment of fees owed to the applicant under a contract for a design and construction project signed by him and Nîmes City Council on 9 January 1984 (see paragraph 8 above). The object of the proceedings was to determine civil rights and obligations and they accordingly fall within the scope of Article 6 § 1 of the Convention.

A. Period to be taken into consideration

37. The period to be taken into consideration began on 26 July 1985, when the applicant lodged his application with the Montpellier Administrative Court (see paragraph 11 above). It ended on 4 July 1994, with the judgment delivered by the Bordeaux Administrative Court of Appeal upholding the Administrative Court’s judgment. In the Administrative Court of Appeal’s judgment Nîmes City Council were ordered to pay the applicant the sum of FRF 470,301.28, together with default interest, and to pay him interest on the interest awarded at first

instance which had accrued since 17 May 1993 (see paragraph 28 above). That judgment thus brought the domestic proceedings to an end.

38. Not including the time taken for enforcement (see paragraph 29 above), the proceedings in issue therefore lasted almost nine years.

B. Reasonableness of the length of the proceedings

39. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. The importance of what is at stake for the applicant in the litigation has also to be taken into account (see, among other authorities, the *Phocas v. France* judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 546, § 71, and the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, p. 2180, § 55).

1. Complexity of the case

40. The Government submitted that the case was undeniably complex. The Administrative Court had to determine whether Mr Doustaly had complied with the terms of the contract of 9 January 1984 and whether he had carried out the work correctly.

41. The Court considers that by its nature the case was not particularly complex. Like the applicant, it notes that the case concerned determination of the balance of a lump sum payable for a public works contract. No comment or reservation in respect of the work carried out by Mr Doustaly was made by the Council either while the work was in progress or after expiry of the two-month period following the completion of the contract.

2. Conduct of the applicant and the national authorities

42. The Government submitted that the length of the proceedings in issue had been due – if only in part – to the conduct of the applicant, who took two and a half years to produce the additional pleading he had announced the intention of producing in his initial application (see paragraphs 11 and 13 above). They contended that the French authorities had used the legal means available to ensure that the judgment of the Montpellier Administrative Court was executed as speedily as possible and pointed out that on 3 December 1991 that court had put Nîmes City Council on notice to produce its pleading (see paragraph 19 above), thus manifesting its interest in expediting the proceedings.

43. Mr Doustaly alleged that in his initial application he had reserved the right to produce an additional pleading, which he had done on 21 January 1988 (see paragraph 13 above). He asserted that Nîmes City Council had

done as much in its memorial and that the Montpellier Administrative Court had not made any criticism of him or put him on notice to produce pleadings at any time during the proceedings.

Moreover, his attempts to expedite the proceedings through his applications to the President of the Montpellier Administrative Court on 24 February, 24 March and 20 October 1988, and 17 July and 14 December 1992 (see paragraphs 13, 14 and 23 above) had been unsuccessful.

Mr Doustaly further maintained that it was incumbent upon the Administrative Court to enforce compliance with the four-month time-limit laid down in its interlocutory decision of 19 December 1988 (see paragraph 15 above) for production of the expert's report, whose usefulness he contested in any event.

44. Like the Commission, the Court notes that production by the applicant of further observations was merely a possibility open to him, not a step which he was required to take in order to continue the proceedings, and could not have had any bearing on their length. Moreover, Mr Doustaly cannot be held responsible for the conduct of Nîmes City Council.

45. The Court further observes that although the proceedings in the Bordeaux Administrative Court of Appeal only lasted just under one year and two months, the proceedings in the Montpellier Administrative Court were affected by lengthy periods of inactivity imputable to the State.

In that connection, several delays appear abnormally long. Nearly three years and five months elapsed between the application to the Administrative Court on 26 July 1985 and its interlocutory decision ordering an expert opinion on 19 December 1988 (see paragraphs 11 and 15 above). That decision laid down a four-month time-limit for the production of the expert's report, which was filed on 21 May 1991 (see paragraph 17 above), that is more than two years and one month late. A further one year and eight months went by before the Montpellier Administrative Court gave judgment, on 21 January 1993 (see paragraph 24 above).

The Court notes that the Government did not supply any convincing explanation for these delays.

3. What was at stake for the applicant in the litigation

46. The applicant pointed out that the sums he claimed in the proceedings were connected with his professional activity and observed that the portion of his fees owed to him by Nîmes City Council under the contract signed on 9 January 1984 amounted to more than 30% of the turnover of his architect's practice in the relevant year. In addition, the City Council were not only the largest source of orders for building projects in the conurbation but also the authority with sole power to grant planning permission.

47. The Government asserted that the length of the proceedings in issue had not caused the applicant any pecuniary loss and that the Administrative Court and the Administrative Court of Appeal had in any event awarded him compound default interest on the total amount he had won in damages. They submitted that the object of the Administrative Court's judgment had in any case only been to settle a specific legal dispute, not to resolve the problems between Mr Doustaly and Nîmes City Council, that is the need to restore the reputation of his practice and re-establish working relations with the municipality.

48. The Court notes that in the present case the applicant was to a certain extent professionally dependent as an architect on Nîmes City Council. It was therefore necessary to bring to a close as quickly as possible a dispute between him and an authority which could directly influence the way he carried on his profession. Consequently, the Court considers that special diligence was required of the courts dealing with the case, regard being had to the fact that the amount the applicant claimed was of vital significance to him and was connected with his professional activity (see, *mutatis mutandis*, the Ruotolo v. Italy judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

4. Conclusion

49. In the circumstances of the case, the Court cannot consider "reasonable" a period of nearly nine years. There has therefore been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

50. Under Article 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."

A. Damage

1. Pecuniary damage

51. Mr Doustaly submitted that on account of the excessive length of the proceedings he had sustained a considerable loss resulting for the most part from the prolonged failure to determine his rights, which had damaged his reputation, which his competitors could exploit and which had had a

deleterious effect on his ability to carry on his profession, since it had led to the closure of his architect's practice before the Administrative Court had given a decision, his exclusion from all the public, semi-public and quasi-public projects of Nîmes City Council and the loss of his private clientele, since contractors and building project managers had ceased to call upon his professional services.

He asserted that the pecuniary loss sustained, as assessed by an independent auditor, amounted to FRF 8,956,468 on 31 December 1997, to which sum should be added FRF 170,000 corresponding to an additional pecuniary loss due to the fact that the Montpellier Administrative Court and the Nîmes Court of Appeal had fixed different base dates for the calculation of the interest on the debt owed by the sub-contracting company (see paragraphs 24 and 30 above). Mr Doustaly therefore claimed FRF 9,126,468 under this head.

52. The Government submitted that the applicant had not sustained any pecuniary loss since the administrative courts had given judgment in his favour and he had been awarded compound default interest on the damages he had obtained.

53. The Delegate of the Commission argued that Mr Doustaly should be awarded compensation because the abnormal protractedness of the proceedings, which was admittedly what Nîmes City Council wanted but was wholly imputable to the administrative courts alone, had led to the complete and permanent ruin of his architect's practice.

54. The Court considers it necessary to draw a distinction between the various heads of pecuniary damage alleged by the applicant.

As regards the closure of his architect's practice, the Court agrees with the judgment of the Montpellier Administrative Court, which ruled: "[Mr Doustaly] has not proved that the fall in his practice's turnover was the direct result of conduct imputable to Nîmes City Council," all the more so since the portion of his fees owed to the applicant by Nîmes City Council amounted – according to the applicant himself – to only 30% of the turnover of his practice in the year when the contract was signed.

As to the severing of Mr Doustaly's relations with, and his loss of future opportunities to work with, Nîmes City Council, which decided to exclude him from all their projects, the Court considers that the applicant could not be certain, even before the beginning of the dispute and the commencement of his action against the Council, that the latter would continue to award him contracts for the municipality's projects, or that they would not choose another architect to carry out those projects.

The Court considers that a causal connection between the finding of a violation of Article 6 § 1 and these two heads of alleged damage has not been established. It must therefore dismiss the applicant's claims under these heads.

On the question of the loss of Mr Doustaly's private clients on account of the damage to his reputation caused by the suspicion which the continuation of the proceedings gave rise to, the Court considers that in that respect the applicant suffered a considerable loss, caused by the climate of distrust concerning him brought about by the litigation between him and Nîmes City Council. Making an assessment on an equitable basis, it awards the applicant FRF 500,000 under this head.

2. Non-pecuniary damage

55. Mr Doustaly claimed FRF 100,000 for non-pecuniary damage on account of the extreme length of the proceedings, which had harmed his professional reputation and constituted a permanent source of anxiety.

56. The Government submitted that the amount claimed was disproportionate and suggested that, if the Court were to find a violation, it should award the applicant a sum between FRF 20,000 and FRF 30,000.

57. The Court notes that the excessive length of the proceedings damaged Mr Doustaly's reputation. It considers the sum claimed reasonable and decides to award it in full.

B. Costs and expenses

58. The applicant claimed FRF 50,502, including FRF 20,502 for the cost of an expert report assessing his professional loss, the remainder being for his lawyer's fees before the Convention institutions.

59. The Government stated that they were prepared to reimburse these fees if the applicant proved that they had actually been incurred, which he had not done. They submitted, however, that compensation should not be paid for the fees of an independent auditor because there was no causal connection between them and the alleged violation.

60. The Delegate of the Commission did not express an opinion.

61. Making an assessment on an equitable basis, the Court awards the applicant the sum of FRF 40,000.

C. Default interest

62. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a breach of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 500,000 (five hundred thousand) French francs for pecuniary damage, 100,000 (one hundred thousand) French francs for non-pecuniary damage and 40,000 (forty thousand) French francs for costs and expenses;
 - (b) that simple interest at an annual rate of 3.36% shall be payable on these sums from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 April 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar