



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

COURT (CHAMBER)

CASE OF MORGANTI v. FRANCE

(Application no. 17831/91)

JUDGMENT

STRASBOURG

13 July 1995

In the case of Morganti 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 A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, President,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr J. DE MEYER,

Mrs E. PALM,

Mr F. BIGI,

Mr D. GOTCHEV,

Mr P. JAMBREK,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, Registrar,

Having deliberated in private on 26 June 1995,

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

PROCEDURE

1. The case was referred to the Court by the French Government ("the Government") on 13 April 1995. It originated in an application (no. 17831/91) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) of the Convention on 15 February 1990 by a French national, Mr Michel Morganti.

The Government's application 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 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 Article 5 para. 3 (art. 5-3) of the Convention.

¹ The case is numbered 38/1995/544/630. 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.

2. The applicant did not reply to the Registrar's enquiry whether he wished to take part in the proceedings (Rule 33 para. 3 (d)).

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. 4 (b)). On 5 May 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely, Mr F. Matscher, Mr J. De Meyer, Mrs E. Palm, Mr F. Bigi, Mr D. Gotchev, Mr P. Jambrek and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. Having noted that the application bringing the case before the Court had been filed after the expiry of the time-limit laid down in Article 32 para. 1 (art. 32-1) of the Convention, Mr Ryssdal, as President of the Chamber (Rule 21 para. 6), instructed the Registrar to invite the Government to submit their observations on this point. The Registrar received these observations on 24 May 1995 and asked the Delegate of the Commission and the applicant for their comments on them. The Delegate submitted his comments on 16 June. Mr Morganti did not reply.

5. On 26 June 1995 the Chamber 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

6. Mr Michel Morganti is a prisoner at Melun Prison (Seine-et-Marne).

On 22 November 1985 he was charged with the attempted murder of two Spanish Basque refugees, membership of a criminal organisation, unauthorised possession and transport without a lawful reason of category IV arms and ammunition and handling stolen goods. On the same day he was remanded in custody in Pau Prison (Pyrénées-Atlantiques).

The criminal proceedings lasted from December 1985 to 21 June 1990, when the applicant was sentenced to fifteen years' imprisonment by the Pyrénées-Atlantiques Assize Court. On 16 October 1991 the Court of Cassation dismissed an appeal on points of law by the applicant.

7. Between 10 August 1987 (date of the first application) and 21 June 1990, Mr Morganti submitted fifteen applications for release, which were all dismissed by the Indictment Division of the Pau or the Bordeaux Court of Appeal on the grounds that the length of the proceedings was reasonable in view of the serious charges against the applicant and the gravity and complexity of the facts, that public order had been seriously prejudiced in the region and that there was a risk that he would abscond if released. The applicant lodged twelve appeals on points of law, which were all dismissed.

When one of the applications for release was being heard, on 23 August 1989, the applicant's lawyer requested his immediate release on the ground that the file did not contain any warrant ordering his detention. The Pau Indictment Division adjourned the case to 30 August. On 25 and 28 August the applicant lodged two appeals on points of law against this decision. On 30 August the Indictment Division refused to order his immediate release. It found that the missing warrant was in the file and rejected the argument concerning the identity of the person named in it, holding that the reference to Albert Morganti rather than Michel Morganti in the committal warrant of 22 November 1985 had been due to a clerical error.

The Court of Cassation delivered two judgments on 19 December 1989. In the first, it declared the appeal against the adjournment decision inadmissible; in the second, it declared the submission alleging a defect in the committal warrant inadmissible, but remitted the case to the Bordeaux Indictment Division, finding of its own motion that the impugned decision had not contained a statement of the reasons on which it was based. On 13 February 1990 the Bordeaux Indictment Division dismissed the application, holding that, in view of the circumstances, the length of the proceedings had not been excessive.

The applicant appealed on points of law against the latter decision, alleging, *inter alia*, a violation of Article 5 para. 3 (art. 5-3) of the Convention. In a judgment of 25 April 1990 the Court of Cassation declared the appeal devoid of purpose following the applicant's committal for trial at the Assize Court on 13 October 1989.

PROCEEDINGS BEFORE THE COMMISSION

8. Mr Morganti applied to the Commission on 15 February 1990. He complained of the unlawfulness of his pre-trial detention *ab initio* and its subsequent continuation (Article 5 para. 1 (c) (art. 5-1-c) of the Convention), of the length of his pre-trial detention (Article 5 para. 3) (art. 5-3) and of the fact that the Court of Cassation had not decided the lawfulness of his detention speedily (Article 5 para. 4) (art. 5-4).

9. On 18 May 1994 the Commission (Second Chamber) declared the application (no. 17831/91) admissible as regards the second complaint and inadmissible as to the remainder. In its report of 30 November 1994 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 5 para. 3 (art. 5-3). The full text of the Commission's opinion is reproduced as an annex to this judgment (1)³.

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 320-C of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

COMPLIANCE WITH ARTICLE 32 PARA. 1 (art. 32-1) OF THE CONVENTION

10. Article 32 para. 1 (art. 32-1) of the Convention provides:

"If the question is not referred to the Court in accordance with Article 48 (art. 48) of [the] Convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide ... whether there has been a violation of the Convention."

11. The Court notes that the French Government referred the case to it on 13 April 1995, whereas the Commission's report was sent to the Committee of Ministers on 11 January 1995.

12. The Government maintained that the failure to comply with the time-limit laid down in Article 32 (art. 32) was "due to the combined effect of the following two circumstances. Firstly, on account of the strikes affecting the postal service at that time, the written request of the Ministry of Justice asking for the case to be referred to the Court was not received until 11 April 1995. Secondly, there was a delay in forwarding the application to Strasbourg, as it was sent by fax on 12 April instead of on the 11th".

13. The Delegate of the Commission left the matter to the Court's discretion.

14. The Court notes in the first place that the fax containing the Government's application was received by the Secretariat of the Commission at 7.33 p.m. on 12 April 1995, and was communicated to the registry on the following day. It further notes that the Government did not dispute the fact that they had exceeded the time they were allowed. It considers that the explanations put forward do not disclose any special circumstance of a nature to suspend the running of time or justify its starting to run afresh (see, *mutatis mutandis*, the *Istituto di Vigilanza v. Italy* judgment of 22 September 1993, Series A no. 265-C, p. 35, para. 14; the *Figus Milone v. Italy* judgment of 22 September 1993, Series A no. 265-D, p. 43, para. 14; and the *Goisis v. Italy* judgment of 22 September 1993, Series A no. 265-E, p. 51, para. 19).

It follows that the application bringing the case before the Court is inadmissible as it is out of time.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it cannot deal with the merits of the case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 July 1995.

Rolv RYSSDAL
President

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