

**[TRANSLATION]**

...

## THE FACTS

The applicant is a Moroccan national. He was born in 1954 and lives in Le Puy. He was represented before the Court by Mr Michel Gras, of the Le Puy Bar.

### **A. The circumstances of the case**

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 21 November 1996 the applicant was stopped by police for an identity check and taken to the police station where he claims to have been insulted and assaulted. On being released, he went to hospital where he was kept in after being examined. At about 10.30 p.m. a doctor came into his room saying that he was a forensic medical examiner and had come to examine the applicant at the public prosecutor's request. The applicant refused to submit to the examination and left the hospital to go to a private clinic.

On 28 November 1996 the applicant lodged a criminal complaint with the investigating judge alleging assault in the course of his duties by a person exercising public authority, and trespass by the forensic medical examiner. He sought leave to join the proceedings as a civil party seeking damages. On 5 December 1997 the investigating judge issued an order finding that there was no case to answer. The applicant appealed. The Indictment Division upheld the order in a judgment of 17 March 1998. The applicant appealed on points of law against that judgment. In a judgment of 16 December 1998, the Court of Cassation declared the appeal inadmissible on the ground that the applicant had not made out "any complaint that a civil party may lodge under Article 575 of the Code of Criminal Procedure in support of an appeal against the decision of an Indictment Division in the absence of an appeal by the prosecution".

### **B. Relevant domestic law**

#### Article 575 of the Code of Criminal Procedure

"A civil party shall be barred from lodging an appeal on points of law against judgments of the Indictment Division unless the prosecution lodges an appeal.

However, an appeal on points of law by the civil party above shall be admissible in the following circumstances:

1. where the Indictment Division has stated in the judgment that there are no grounds for an investigation;
2. where the Indictment Division has declared the civil party's action inadmissible;
3. where the Indictment Division has upheld an objection terminating the criminal proceedings;
4. where the Indictment Division has declared, of its own motion, or on an objection by the parties, that it has no jurisdiction;
5. where the Indictment Division has omitted to rule on a charge;
6. where the judgment does not formally satisfy the conditions essential for its legal validity;
7. where a breach of personal rights as defined in Articles 224-1 to 224-5 and 432-4 to 432-6 of the Criminal Code has been alleged."

## COMPLAINTS

1. Relying on Article 3 of the Convention, the applicant complained of inhuman and degrading treatment at the time of his arrest. He also alleged an infringement of his right to respect for his private life and his home within the meaning of Article 8 of the Convention.
2. The applicant complained further of an infringement of his right to an effective remedy guaranteed by Article 13 of the Convention.

## THE LAW

1. The applicant complained that he had suffered inhuman and degrading treatment within the meaning of Article 3 of the Convention and that his right to respect for his home and his private life, as protected by Article 8 of the Convention, had been infringed.

The Court notes at the outset that the applicant lodged an appeal on points of law, in the absence of an appeal by the prosecution, against the judgment of the Indictment Division finding that there was no case to answer.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international, judicial or arbitral organ to use first the remedies provided by the national legal system. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be made subsequently should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see the

Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

The Court notes that Article 575 of the Code of Criminal Procedure lists exhaustively the circumstances in which a civil party can appeal on points of law in the absence of an appeal by the prosecution. It therefore considers that an appeal lodged, as in the instant case, in circumstances other than those listed in Article 575 of the Code of Criminal Procedure was not a remedy which had to be exhausted for the purposes of the Convention (see Soubiran v. France, application no. 22576/93, Commission decision of 26 June 1994; Courret and Lechaton v. France, application no. 23574/94, Commission decision of 17 May 1995; and Jaumin v. France, application no. 26217/95, Commission decision of 17 January 1996).

Accordingly, the final domestic decision to be taken into account for the purposes of calculating the six-month period within the meaning of Article 35 § 1 of the Convention is the Indictment Division's judgment of 17 March 1998, against which the applicant lodged an appeal that the Criminal Division of the Court of Cassation dismissed as inadmissible on the basis of Article 575 of the Code of Criminal Procedure cited above.

It follows that this part of the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicant complained further of an infringement of his right to an effective remedy guaranteed by Article 13 of the Convention.

The Court notes that the applicant has not submitted any argument in support of his complaint.

It follows that the application, in so far as the applicant relies on an infringement of Article 13 of the Convention, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

S. DOLLÉ  
Registrar

L. LOUCAIDES  
President