

The authorities' refusal to grant police assistance to enforce an expulsion order did not breach the right to a court

In today's Chamber judgment in the case of [Sofiran and BDA v. France](#) (application no. 63684/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights

No violation of Article 1 of Protocol No. 1 (protection of property) of the Convention.

The case concerned failure to execute an eviction order issued by a court in favour of the applicant company.

In June 1997, when Renault announced its intention to sell a vehicle marketing firm located in Béziers to the applicant company Sofiran, about half of the firm's employees went on strike and occupied the firm's premises. The occupation lasted almost a year.

The Court held that the State's refusal to grant police assistance to help enforce an eviction order in order to obtain access to the premises did not breach the right to a court.

Principal facts

The applicants are two companies, the simplified joint-stock company Sofiran, and the limited company "Béziers Distribution Automobile" (BDA).

On 13 June 1997 the company Renault announced its intention to sell a vehicle marketing firm located in Béziers to Sofiran, the main shareholder in BDA. At the news of this sale half of the latter firm's staff went on strike and occupied the premises.

On 20 June 1997 the Béziers urgent applications judge, acting on an application by Renault, ordered fourteen employees to allow free access to the site. On 27 June 1997 he issued a second order requiring free access to the site and, should that not be provided, the eviction of any occupiers.

On 30 June 1997 Renault sent a letter to the Béziers sub-prefecture requesting police assistance. On 22 July 1997 the Prefect of Hérault wrote to the chairman of Sofiran, informing him that he was organising a meeting between the trade unions and companies in order to attempt to open negotiations.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

On 1 August 1997 the company BDA acquired the vehicle marketing firm. The deed of sale stipulated that the purchaser was to take responsibility for the eviction of the employees who were occupying the site.

On 29 August 1997 the urgent applications judge issued an order urging the striking employees to allow access to the premises and ordered that, should they fail to do so, they were to be evicted. On the same date, BDA's lawyer sent a letter to the Prefect requesting police assistance.

By an order of 27 January 1998, the urgent applications judge noted that the persons occupying the premises had been dismissed, that they no longer had the status of employees of the company and that they were occupying the premises unlawfully and without title. He ordered the eviction of the forty-six persons who were occupying the site.

On 23 March 1998 BDA requested police assistance from the Béziers sub-prefecture, but no action was taken. On 30 May 1998 the occupation ended at the initiative of the occupiers.

On 24 March 1999 BDA and Sofiran submitted a preliminary claim to the Prefect seeking compensation for the losses sustained. On 11 October 1999 the two applicant companies asked the Montpellier Administrative Court to set aside the implicit decision by which the Prefect had rejected their request for compensation, and to order the State to pay compensation based on its liability for the losses and the refusal to grant police assistance.

In a first judgment of 18 May 2009, the *Conseil d'Etat* held that the continued occupation could not be considered as having resulted from an assembly or gathering and concluded that the State was not therefore obliged to offset the losses that Sofiran could have sustained as a result of the occupation of the premises.

In a second judgment, delivered on the same date, the *Conseil d'Etat* found that BDA could only rely on the order of 27 January 1998, as the preceding decisions had been issued in favour of Renault. Police assistance had only been requested on 23 March 1998, while BDA had been put into compulsory liquidation from 21 November 1997. It concluded that the dismissal of the request could not be considered as the cause of the losses for which the company was seeking compensation and that, accordingly, the State could not be held liable.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant company BDA complained about the non-enforcement by the State of judicial decisions in its favour and that of Renault. It relied on its right to effective judicial protection. It also alleged that the State's failure to act had entailed an unjustified interference with its right to peaceful enjoyment of its possessions.

The application was lodged with the European Court of Human Rights on 17 November 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),

André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court reiterated that the right to execution of a judicial decision, which was one of the aspects of the right to a court, was not absolute and that the contracting States enjoyed a certain margin of appreciation.

The occupation of the premises had lasted from 13 June 1997 to 30 May 1998, or ten months.

The Court noted that the order of 27 January 1998 had not been executed as a result of the administrative authority's implicit refusal to grant police assistance. That refusal had been based on the risk of public disorder. According to the Prefect of the *département*, the conflict had been serious and received considerable media coverage, and there was a risk that it would worsen and spread. Furthermore, the Court noted that the applicant companies had not obtained compensation for the losses caused by the failure to evict the occupiers and that the State's liability had not been established.

The Court noted that the social considerations which prevailed at the beginning of the conflict and particularly at the time of purchase of the company, which required a rapid and effective response by the State, had become less powerful by the time that police assistance was requested. By that point, however, unlawful occupiers, without title, continued to block access to the premises, and the refusal to grant police assistance to enforce the order of 27 January 1998 reflected the need to avoid public disorder.

As to the interests of the applicant company, the Court reiterated that the company had correctly submitted only one request for police assistance – on 23 March 1998 –, after several months of occupation. Furthermore, the applicant company had been put into compulsory liquidation on 21 November 1997, or shortly after the purchase of the site, which indicated that the Prefect's refusal of its request had not been the cause of the losses for which it sought compensation. The domestic courts had stressed that the applicant company acquired the establishment in full knowledge of the situation and that, accordingly, it could not claim to have sustained losses for which compensation could be awarded.

Having regard, among other things, to its duration, the Court considers that the French authorities' refusal to provide assistance in executing the urgent applications judge's order of 27 January 1998 did not impair the right to a court.

There had not been a violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1

The Court dismissed the complaint under Article 1 of Protocol No. 1 for the same reasons as those set out in respect of Article 6 § 1 and concluded that there had been no violation of Article 1 of Protocol No. 1 of the Convention.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.