



## Decisions on requests for adjournment of a hearing will depend on the specific features of the proceedings in question

In today's Chamber judgments in the cases of [Sfez v. France](#) (application no. 53737/09) and [Rivière v. France](#) (no. 46460/10), which are not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 3 (c) (right to be assisted by a lawyer)** of the European Convention on Human Rights in the Sfez case; and  
**a violation of Article 6 §§ 1 and 3 (c)** of the Convention in the Rivière case.

Both cases concerned a refusal by the judicial authorities to grant a request for the adjournment of a hearing.

In Mr Sfez's case the Court found that the applicant, despite already being aware of his first lawyer's shortcomings, did not take advantage of a ten-day period between the lawyer's actual withdrawal from the case and the date of the hearing in order to find new counsel, who could have applied for adjournment. The Court thus concluded that there had been no violation of the Convention.

In the case of Mr and Mrs Rivière, having observed that the Court of Appeal had not given reasons for refusing to grant their request for adjournment, the Court found that it was not therefore able to exercise its supervision of compliance with the Convention. It held therefore that there had been a violation of the Convention in that case.

### Principal facts

In the first case, the applicant Gérard Sfez is a French national who was born in 1943 and lives in Paris.

Mr Sfez appeared in 2007 before the Paris Criminal Court, assisted by a court-appointed lawyer. He was sentenced to two years' imprisonment, including a suspended period of 14 months, with two years' probation and an obligation to receive treatment. He appealed and appointed a new lawyer, Mr V. Shortly before the hearing, Mr V. explained in a letter to the Paris Court of Appeal that he no longer wished to represent Mr Sfez. On the same day, Mr Sfez sought the adjournment of the hearing so that he could appoint a new lawyer.

The hearing took place on 10 April 2008 with Mr Sfez appearing alone. He asked for the case to be adjourned so that he could be assisted by counsel.

On 22 May 2008 the Paris Court of Appeal dismissed Mr Sfez's request for adjournment, regarding it as a delaying tactic. It found that Mr V. had asked to consult the file only once, without taking any further action, and that Mr Sfez had not bothered to contact

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

another lawyer who could have applied for adjournment. The Court of Cassation dismissed his appeal on points of law.

In the second case, the applicants Mr and Mrs Rivière, together with their son, leased a plot of land in January 1996 at Andouillé. Between 2005 and 2006 various unauthorised constructions were recorded, together with the installation of a wind turbine, a lake and a wire fence. The Laval Criminal Court, whilst dismissing some of the charges, fined them 1,500 euros (EUR), awarded EUR 1,000 in damages and ordered them to return the site to its original state. The applicants appealed. In the summons served on them it was indicated that if they were unable to attend the hearing they had to send a letter to the President of the Criminal Appeals Division explaining the reasons for their absence and attaching supporting documents. In a letter of 26 November 2008 to the President of the Court of Appeal the applicants requested that the hearing be postponed owing to their inability to attend, attaching supporting documents for each of them.

On 4 December 2008 the hearing went ahead in their absence and the Court of Appeal upheld the judgment, having decided that the case could be heard in spite of their request for adjournment. The Court of Cassation dismissed their appeal on points of law, finding that the Court of Appeal had, in its discretion, assessed the value of the arguments before it.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 3 (c) (right to be assisted by a lawyer), Mr Sfez complained about a breach of his defence rights, as he had not been assisted by a lawyer during the Court of Appeal hearing.

Relying on Article 6 § 1 (right to a fair hearing) and Article 6 § 3 (c) (right to be assisted by a lawyer), Mr and Mrs Rivière and their son complained that the Court of Appeal had disregarded their right to appear in person and to defend themselves, without giving any reasoning.

Mr Sfez's application was lodged with the European Court of Human Rights on 17 September 2009 and that of the Rivières on 2 August 2010.

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 and 3 (c)

The Court began by observing that in appeal and cassation proceedings, the manner in which paragraphs 1 and 3 (c) of Article 6 were applied depended upon the specific features of the proceedings in question.

**The Sfez case**

The Court noted that Mr Sfez had been assisted by a court-appointed lawyer when he stood trial at first instance, and that it was at the appeal stage that his request for adjournment had been rejected. The Court of Appeal had pointed out the inaction on the part of Me V. and the Court observed that the State could not be held responsible for the shortcomings of a lawyer, whether court-appointed or chosen by the defendant. The conduct of the defence was essentially a matter for the defendant and counsel, whether appointed under a legal-aid scheme or privately financed. Article 6 § 3 (c) only obliged the authorities to intervene if a failure by legal-aid counsel to provide effective representation was manifest or was brought to their attention with sufficient notice.

The Court observed that the Court of Appeal had reproached Mr Sfez for not having, within the period of ten days between Mr V.'s withdrawal and date of the hearing, contacted another lawyer who could have applied for an adjournment. The courts, in weighing up the various interests at stake, had also taken into account the fact that the civil party, to whom compensation had been awarded, opposed any adjournment of the case. The Court lastly observed that Mr Sfez, in spite of the rejection of his request for adjournment, had been able to defend himself: he had been heard, had been able to develop the reasons and set out the grounds for his adjournment request, and had been given the opportunity to express his objections and criticisms.

The Court thus found that the authorities had not breached the applicant's right to the assistance of a lawyer as secured by Article 6 § 3 (c).

**The Rivière case**

The appeal hearing in this case had involved a fresh examination of the evidence and of the guilt or innocence of the defendants. The fairness of the proceedings entailed a right for the applicants, who were not represented by counsel, to attend hearings so that their interests could be set out and protected before the appellate court, which had to examine the case on both the facts and the law. The applicants had applied for the adjournment of the appeal hearing on account of reasons for absence that were explained in their request and justified by supporting documents.

The Court of Appeal's judges had not given reasons for their refusal to adjourn the hearing. The court had merely indicated that it would hear the case, having deliberated on the request for adjournment. As to the Court of Cassation, it rejected the applicants' argument on the ground that the Court of Appeal had, in its discretion, assessed the value of the arguments presented. The Court was not therefore able to verify that the Court of Appeal had effectively examined whether the excuses given by the applicants were valid. Accordingly, it was not in a position to exercise its supervision of compliance with the Convention and found that there had been a violation of Article 6 §§ 1 and 3 (c).

**Just satisfaction (Article 41)**

The court held that France was to pay Mr and Mrs Rivière and their son 300 euros (EUR) each in respect of non-pecuniary damage, and EUR 4,784 jointly in respect of costs and expenses.

*The judgment is available only in French.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.