



Criminal convictions for misappropriating assets from Air Liberté: the courts' use of a report by the parliamentary commission of inquiry did not infringe the rights of the defence

In today's **Chamber judgment**¹ in the case of [Corbet and Others v. France](#) (applications nos. 7494/11, 7493/11 and 7989/11) the European Court of Human Rights held:

by a majority, that **the applicants' complaint under Article 6 §§ 1 and 2 (right to a fair trial / right to be presumed innocent)** of the European Convention on Human Rights was inadmissible;

unanimously, that there had been a **violation of Article 5 § 1 (right to liberty and security)** on account of Mr Corbet's detention on 24 July 2003.

The case concerned the applicants' prosecution and conviction for misappropriating assets from the airline Air Liberté before it was put into compulsory liquidation.

The Court found that it had not been established that the use in criminal proceedings of statements made by the applicants before a parliamentary commission of inquiry had had any impact on their conviction or sentence.

The Court further held that Mr Corbet's detention on 24 July 2003 had had no lawful basis and reiterated that at the time of the events there had been no provisions in French law governing detention from the expiry of a period in police custody until the detainee was brought before an investigating judge.

Principal facts

The applicants, Yves Léonzi, Jean-Charles Corbet and Christian Paris, are three French nationals who were born in 1957, 1952 and 1954 and live in Boulogne-Billancourt, Boursonne and La Varenne Saint-Hilaire respectively.

They were involved in putting together a rescue bid for the airline Air Liberté.

The French airlines AOM and Air Liberté were part of the Swissair group, which was declared insolvent in October 2001 and ceased trading in March 2002.

On 29 May 2001, at the request of Swissair, the companies forming the AOM-Air Liberté group filed for insolvency. In a judgment of 19 June 2001 the Créteil Commercial Court ordered the judicial reorganisation of the companies in the group and drew up an asset disposal plan. Holco, a company established and managed by Mr Corbet with the aim of bidding to take over the assets, instructed Mr Léonzi's law firm to coordinate the work of the various law firms involved in preparing the bid. In a judgment of 27 July 2001 the Créteil Commercial Court accepted the partial takeover bid by Holco. It also approved a transaction between the shareholders of the AOM-Air Liberté group (Swissair and Taitbout Antibes BV), the purchaser and the bodies involved in the insolvency proceedings, whereby Swissair would pay a voluntary financial contribution of 1.32 billion French francs – approximately

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.

248,000,000 euros (EUR) – to finance the group’s restructuring and business operations and the takeover of its workforce. The contribution from Swissair was accordingly apportioned among the six subsidiaries of the Holco holding company.

In order to force Swissair to pay at least part of the sums it owed Holco, Mr Corbet subsequently devised a strategy involving the purchase, through third-party companies set up for that purpose, of shares in a Polish airline (Lot) in which Swissair had a sizeable stake. Mr Paris was the “beneficial owner” of one of these companies, Comansville, registered in the British Virgin Islands, and a sum of EUR 755,000 was paid into that company’s account.

After becoming unable to meet its liabilities, Air Liberté was put into compulsory liquidation on 17 February 2003.

On 26 February 2003 the public prosecutor’s office at the Paris *tribunal de grande instance* opened a preliminary investigation into suspected misappropriation of assets within Air Liberté.

On 18 March 2003 the National Assembly decided to set up a parliamentary commission of inquiry to examine the economic and financial causes of the collapse of Air Liberté and heard evidence under oath from witnesses including Mr Corbet, Mr Léonzi and Mr Paris. The commission’s report of 11 June 2003 stated that Mr Corbet and his team had accumulated substantial wealth “in circumstances that might interest the judicial authorities”. The report mentioned in particular the very small proportion of the Swissair contribution that had actually been paid to Air Liberté (20%) in the process of its distribution among the various subsidiaries of the Holco holding company, at a time when Air Liberté had been in very serious difficulties. Reference was also made to the bonus of EUR 855,000 paid to Mr Corbet on joining the venture. The report was forwarded to the Paris public prosecutor.

Mr Corbet was taken into police custody from 2 p.m. on 22 July 2003 until 2 p.m. on 24 July 2003. He was brought before the investigating judge at 7.43 p.m. on 24 July 2003 and a judicial investigation was opened in respect of him for alleged criminal conversion and misappropriation of corporate assets. Mr Léonzi was placed under formal investigation on 8 September 2003, among other things, for aiding and abetting the aforementioned offences. Mr Paris was placed under formal investigation on 3 December 2003 for handling misappropriated corporate assets.

On 25 September 2007 Mr Corbet was found guilty as charged and sentenced to four years’ imprisonment, suspended for 18 months, fined EUR 300,000, disqualified from holding corporate office for five years and ordered to pay damages. Mr Léonzi was found guilty of aiding and abetting the misappropriation of corporate assets and handling misappropriated corporate assets and was sentenced to three years’ imprisonment, suspended for 18 months, fined EUR 300,000, barred from practising as a lawyer for two years and ordered to pay damages. Mr Paris was found guilty as charged and given a suspended sentence of eight months’ imprisonment.

The Criminal Division of the Paris Court of Appeal upheld that judgment on 27 February 2009. In particular, it rejected the argument put forward by the applicants Mr Corbet and Mr Léonzi that the use in the criminal proceedings of statements they had made under duress to the parliamentary commission of inquiry infringed Article 6 § 1 of the European Convention on Human Rights. It found that, besides the report by the commission of inquiry, the investigation conducted by the fraud squad and information brought to light by the French anti-money-laundering unit (Tracfin) had also formed a basis for the prosecution. It further held that the applicants, who had always denied any involvement in misappropriation, had not called into question the general thrust of their statements at any stage of the proceedings. Lastly, it pointed out that it had discretion to assess the probative value of any statement whatsoever in the light of the circumstances in which it had been made.

An appeal on points of law by the applicants was dismissed by the Court of Cassation on 30 June 2010.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 2 (right to a fair trial / right to be presumed innocent), the applicants alleged a violation of their right to remain silent and not to incriminate themselves, the right to be presumed innocent and the rights of the defence, arguing that the report by the parliamentary commission on the collapse of Air Liberté, which had been forwarded to the public prosecutor's office, had served as the basis for their prosecution. Mr Corbet also complained, under Article 5 § 3 (right to liberty and security), about his detention from 22 to 24 July 2003 from the time at which he was taken into police custody until he was brought before an investigating judge.

The applications were lodged with the European Court of Human Rights on 22 and 28 December 2010.

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

Mark **Villiger** (Liechtenstein), *President*,
 Angelika **Nußberger** (Germany),
 Ganna **Yudkivska** (Ukraine),
 Vincent A. **de Gaetano** (Malta),
 André **Potocki** (France),
 Helena **Jäderblom** (Sweden),
 Aleš **Pejchal** (the Czech Republic),

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

Decision of the Court

Article 6 §§ 1 and 2

The Court noted firstly that refusal to appear before a parliamentary commission of inquiry, to take an oath or to answer questions before it (except on grounds of professional secrecy) was an offence punishable by two years' imprisonment and a fine of EUR 7,500, penalties that amounted to coercion. Accordingly, the use in the criminal proceedings against the applicants of statements made as a result of such coercion raised an issue in terms of their right to remain silent and not to incriminate themselves. More broadly, the Court considered that the fact that individuals called to appear before a parliamentary commission were unable to rely on these rights to avoid answering questions that might cause them to incriminate themselves was in itself problematic from the standpoint of Article 6 § 1 of the Convention. It was not decisive that the evidence given in this context was not self-incriminating; what mattered was the use made during a criminal trial of statements made under duress. If they were used in such a way as to incriminate the persons concerned, this amounted to a breach of Article 6 § 1. The Court reiterated, however, that the use of evidence obtained by means prohibited by Article 3 but falling short of torture affected the fairness of proceedings only if it had had an impact on the conviction or sentence. This applied *a fortiori* where there were other items of conclusive evidence besides a confession obtained by coercive means not amounting to treatment in breach of Article 3.

The Court observed, however, that the public prosecutor had made little reference to the parliamentary inquiry in relation to the various items of evidence gathered by other means. Furthermore, the statements made by the applicants during the parliamentary inquiry had been used only in a subsidiary manner, for the establishment of the factual background to the case. The Criminal Division of the Paris Court of Appeal had also found that the report by the parliamentary commission had not been the "exclusive basis for the prosecution", which had also been initiated as a result of the investigation by the fraud squad and information brought to light by Tracfin. Lastly, it had taken into account the fact that the defendants had always denied any involvement in

misappropriation, and had added that it had discretion to assess the probative value of any statement whatsoever in the light of the circumstances in which it had been made. The applicants had not claimed, moreover, that the trial court had directly based their conviction or sentence on specific statements.

Accordingly, the Court held that the applicants had not established that the use of their statements before the National Assembly commission of inquiry had had an impact on their conviction or sentence, and rejected this part of the application as being manifestly ill-founded.

Article 5

The Court decided to examine from the standpoint of Article 5 § 1 the complaint raised by Mr Corbet under Article 5 § 3.

Mr Corbet's detention from 2 p.m. on 22 July 2003 to 2 p.m. on 24 July 2003 corresponded to his being held in police custody, a measure provided for in particular in the Code of Criminal Procedure.

However, the French Government accepted that Mr Corbet's detention from 2 p.m. on 24 July 2003 until 7.43 p.m. on the same day, at which time he had been brought before the investigating judge, had not had a lawful basis for the purposes of Article 5 § 1 of the Convention. The Court had already found² that at the time of the events there had been no provisions in French law governing detention from the expiry of a period in police custody until the detainee was brought before an investigating judge. It therefore concluded that there had been a violation of Article 5 § 1.

Just satisfaction (Article 41)

The Court held that France was to pay Mr Corbet 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

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.

² [Zervudacki v. France](#), no. 73947/01, § 47, judgment of 27 July 2006 (in French only).