

(TRANSLATION)

THE FACTS

The facts of the case, as set forth by the parties, may be summarised as follows.

The applicant is a French national, born in 1942. He is a maritime engineer. He was resident in Paris when the events took place and now lives in Cameroon. This application concerns two separate sets of proceedings, which are summarised below.

1. *First set of proceedings*

On 22 May 1981 three police officers checking on prostitutes in the rue de Budapest asked a prostitute to get into their car so that they could check on her situation at the police station. The applicant, who witnessed the scene and had already, in the past, protested about checks of this kind on many occasions, intervened to protest about the actions of the police officers and about the fact that one of the prostitutes was being taken to the police station. He described this as an "infringement of her freedom".

The applicant's protests drew a crowd and the police asked him to get into the car so that they could take him to the police station, where he was held for about four hours.

As the Chief Superintendent considered the applicant's conduct and remarks somewhat unusual, he thought it was worth obtaining information about him from his colleague in the Madeleine district, where the applicant lived. He learned that the applicant was well known for intervening in support of prostitutes in dealings with the authorities. This information confirmed the Chief Superintendent's impression that the applicant might be mentally disturbed, and he felt it was his duty to have him taken to the psychiatric infirmary attached to the police headquarters, where he was admitted immediately and kept under observation for 24 hours.

On 28 May 1981, the applicant lodged a complaint of wrongful imprisonment with the Public Prosecutor who, however, took no action on the complaint.

Because the Public Prosecutor's Department had taken no action, on 3 September 1981 the applicant submitted to the senior investigating judge in Paris a criminal complaint and a claim for damages against X. in respect of an infringement of his personal liberty, wrongful imprisonment and verbal threats ("menaces verbales sous condition").

By an order dated 4 September 1981 the investigating judge set the deposit payable by the applicant at 1,200 F. This sum was to be paid within 20 days, failing which the complaint would be inadmissible.

On 3 November 1981 the investigating judge issued a request for evidence on commission so that he could check on the facts of which the applicant was complaining. The report transmitted to the judge on 8 February 1982 stated that the applicant had got into the police car of his own free will to be taken to the police station. The applicant contests this.

On 23 February 1982 the investigating judge heard the applicant in his capacity as the party claiming damages.

On an appeal from the Attorney General, however, the record of the hearing was declared void by a Court of Cassation judgment dated 16 April 1982 on the ground that the Paris investigating judge had been wrong to interrogate the party claiming damages since, under Article 687 of the Code of Criminal Procedure, in the event of a criminal complaint against a police officer the Court of Cassation must first appoint a judge to carry out an investigation. The Court of Cassation appointed the Paris investigating judge to continue the investigation.

In the meantime, the investigating judge had, by an order of 24 February 1982, appointed two experts to examine the applicant's mental state and establish whether his stay in the psychiatric infirmary from 22 to 23 May 1981 had been warranted.

In their report of 4 May 1982 the experts concluded that the applicant suffered from non-delirious passionate idealism of a paranoiac nature, which caused him to behave in a way that suggested a mental disorder that had warranted his being sent to the psychiatric infirmary attached to the Paris police headquarters and kept under observation from 22 to 23 May 1981.

On 18 February 1983 the investigating judge issued an order terminating the proceedings on the ground that the investigation had not produced sufficient evidence against the person said to have committed the offences complained of by the applicant.

On 18 March 1983 the applicant appealed against this order on the basis, *inter alia*, of Articles 5, 6, 8 and 10 of the Convention.

In a judgment dated 4 July 1983, however, the Indictments Chamber of the Paris Court of Appeal rejected the applicant's appeal on the grounds that he had voluntarily gone to the police station, that his being kept under psychiatric observation for a short period was medically justified and therefore legitimate, and finally, that he had consequently not been unlawfully detained. The Court of Appeal also held that the investigation had not shown that the applicant had been subjected to a specific, punishable threat.

On 15 July 1983 the applicant appealed against this judgment to the Court of Cassation, on the same grounds based on an alleged violation of the Convention as those on which he had appealed to the Indictments Chamber.

By a judgment dated 3 April 1984, of which the applicant was notified on 29 June 1984, the Court of Cassation, *ex proprio motu*, quashed the judgment which the Paris Indictments Chamber had delivered on 4 July 1983, on the grounds that Articles 206 and 687 of the Code of Criminal Procedure had been violated, and referred the case and the parties before the Indictments Chamber of the Versailles Court of Appeal so that a fresh judgment could be delivered in accordance with the law.

Under Article 687 of the Code of Criminal Procedure, when a police officer ("officier de police judiciaire") is liable to be charged with a crime or offence committed in the district for which he is geographically responsible, whether or not in the course of duty, the Public Prosecutor to whom the case has been referred shall immediately apply to the Criminal Chamber of the Court of Cassation, which shall proceed and give judgment as in the case of conflicts of jurisdiction, and shall designate the court responsible for investigating or trying the case.

The Court of Cassation first observed that the investigating judge could not, as from 8 February 1982, the date on which the report on the request for evidence on commission was transmitted, have been unaware of the fact that the complaint lodged by the applicant on 3 September 1981 was likely to implicate a police officer. It noted that, despite this, instead of declaring that he was not competent to deal with the case and transmitting the procedural file to the Public Prosecutor for the purposes provided for in Article 687 of the Code of Criminal Procedure, the investigating judge had issued an order, on 24 February 1982, appointing experts and had not transmitted the process to the Public Prosecutor until 1 March 1983.

The Court of Cassation held that, by failing to point out, if only *ex proprio motu*, that the investigating judge was not competent to order an expert report, the Indictments Chamber had disregarded Articles 206 and 687 of the Code of Criminal Procedure with the result that its judgment should be quashed.

By a judgment of 17 May 1985, the Indictments Chamber of the Versailles Court of Appeal annulled the order of 24 February 1982 ordering an expert report and all the documents following upon it, and transmitted the procedural file to the senior investigating judge of the Versailles Regional Court so that the investigation could continue and the case could be settled.

By a decision of 1 July 1985 the investigating judge ordered a psychiatric examination of the applicant. As the applicant failed to attend, the experts drafted a report to this effect on 18 October 1985 and submitted conclusions after examining the documents in the file. The applicant was apparently notified of these conclusions at his current address by registered letter, with acknowledgement of receipt, on 10 March 1986.

The outcome of these proceedings is not known.

2. *Second set of proceedings*

Having initially lodged a complaint with the Public Prosecutor on which no action was taken, the applicant lodged a criminal complaint on 10 June 1982, claiming damages against X. for his arrest and arbitrary detention on the grounds that, during a police anti-prostitution operation in the rue de Budapest in Paris, he had, on 6 June 1982, been arrested and taken to a police station, along with five prostitutes, and held for questioning for an hour.

By an order of 18 June 1982 the investigating judge attached to the Paris Regional Court set the deposit to be paid by the applicant, on penalty of his complaint being inadmissible, at 6,000 F.

Considering that the investigating judge was bound to acknowledge the lodging of the complaint in view of the capacity of the person against whom it was lodged, a police officer, and considering that the amount requested was excessive in view of the simplicity of the facts complained of, the applicant appealed against this order on the basis, *inter alia*, of Articles 5, 6 and 13 of the Convention.

On 4 November 1982 the Indictments Chamber of the Paris Court of Appeal dismissed the applicant's appeal. It held that the investigating judge was competent to fix the amount of the deposit since he only had the applicant's word that the person of whose conduct he was complaining was a police officer. As for the amount of the deposit, the Indictments Chamber considered that the sum of 6,000 F was not excessive, in view of the information provided by the applicant, for covering the procedural costs and the cost of the investigation of isolated events that had lasted a short time and had taken place over four months previously.

The applicant appealed to the Court of Cassation which, in a judgment of 21 June 1983, upheld the judgment against which he had appealed.

On 1 October 1984 the investigating judge of the Paris Regional Court issued an order terminating the proceedings on the grounds that the investigation had not made it possible to identify the person or persons who had perpetrated the offences of arbitrary arrest and detention.

As the applicant appealed against this order, the Indictments Chamber of the Paris Court of Appeal ordered an additional investigation by a decision of 29 March 1985. In a judgment of 14 February 1986, the Court upheld the order terminating the proceedings.

Given the terms of the power of attorney which the applicant had left with his lawyer before leaving French territory, the latter should have appealed against this judgment to the Court of Cassation. Apparently the applicant, who says he does not know whether the lawyer did so, attempted in vain to do so by letter. The registry of the Paris Court of Appeal informed him on 20 March 1986 that an appeal submitted by post could not be accepted.

COMPLAINTS (Extracts)

As to the facts dealt with in the first set of proceedings :

1. The applicant considers that his arrest on 22 May 1981 and his detention until 7.30 pm on 23 May 1981 did not fulfil any of the conditions laid down in Article 5 para. 1 (c) and (e) of the Convention.

The applicant contends that he was not deprived of his liberty lawfully or detained lawfully within the meaning of Article 5 para. 1 (c).

The applicant further argues that the Superintendent's decision to send him to the psychiatric infirmary was unlawful in view of Article L 344 of the Code of Public Health, according to which there must be an imminent danger, as attested by a doctor's certificate or common knowledge, before the Police Superintendents in Paris (and the mayors in the provinces) can order the provisional confinement of mentally disturbed persons, and the Chief of Police must confirm or cancel the provisional confinement within 24 hours.

2. The applicant further claims a violation of Article 5 para. 2, on the grounds that he was not informed, either at the time of his arrest or when he was heard by the Police Superintendent, of the reasons for his arrest or of any charge against him.

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As to the facts dealt with in the second set of proceedings :

1. The applicant also complains that paragraphs 1 and 2 of Article 5 of the Convention were violated because he was deprived of his freedom for one hour without any explanation and without any record being drawn up.

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THE LAW (Extract)

1. The applicant submits numerous complaints stemming from the fact that he was apprehended by the police on two occasions. On the first occasion, on 22 May 1981, he was kept at the police station for about four hours and then, in view of his behaviour, placed, on the orders of the Police Superintendent, under observation for 24 hours in the infirmary attached to the police headquarters so that he could undergo a psychiatric examination. On the second occasion, on 6 June 1982, he was held by the police for an hour. He considers his "detention" contrary to Article 5 para. 1 (c), of the Convention and is of the opinion that the first detention was also in breach of Article 5 para. 1 (e).

Article 5 para. 1 of the Convention states :

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law :

(...)

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(...)

- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

The respondent Government contend that the applicant has not exhausted domestic remedies, within the meaning of Article 26 of the Convention, since the domestic courts have not yet delivered a final judgment in respect of the complaints lodged by the applicant under Article 5.

In the present case, the Commission observes that the applicant complained to the investigating judge, claiming damages. Two sets of proceedings were instituted, the first on 3 September 1981 and the second on 10 June 1982, and in both cases the applicant claimed, *inter alia*, that Article 5 of the Convention had been violated. The first set of proceedings is apparently still pending before the Versailles investigating judge. As for the second set of proceedings, it is not clear from the file whether an appeal was duly lodged with the Court of Cassation against the judgment of the Paris Indictments Chamber upholding the order to terminate the proceedings.

In the present case, however, the Commission considers it unnecessary to decide whether or not the applicant has complied with the condition laid down in Article 26 of the Convention, since his complaints are inadmissible on another ground.

a. The Commission notes that, according to the Government's statements, which the applicant does not contest, when the applicant was apprehended by the police on 22 May 1981, after he had intervened in protest against the police officers who were checking on prostitutes, he voluntarily got into the police car to be taken to the police station. He was apparently held there for about four hours.

The Commission observes that, on the occasion when he was apprehended by the police on 6 June 1982, the applicant was taken to the police station with five prostitutes, apparently because he had hindered the work of the police during a police operation to combat prostitution. This operation lasted only an hour.

In the present case, the Commission considers it unnecessary to establish whether, on these two occasions, the applicant was "deprived of his liberty" within the meaning of the second sentence of Article 5 para. 1 of the Convention, since even if the answer to this question is in the affirmative, the deprivation of liberty would have been authorised under the Convention, for the reasons set out below.

The Commission recalls that Article 5 para. 1 (b) authorises deprivation of liberty in the following case :

“b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.”

In the present case, the applicant was taken to the police station because he had hindered the work of police officers who were checking on prostitutes. The Commission observes, in this connection, that in accordance with Section 76 of the Act of 2 February 1981, which reinforces security and protects the freedom of individuals, “officers of the criminal police may, for the purposes of judicial investigations or to prevent a breach of public order, request anyone to provide proof of his identity and, if necessary, take him to a police station for this purpose. No one taken to a police station for this purpose may be held for more than six hours”.

The Commission considers that the obligation to prove one's identity in the circumstances provided for in the above-mentioned Act, as indeed the obligation not to hinder the police in their work, is an “obligation prescribed by law”, within the meaning of Article 5 para. 1 (b) of the Convention. The Commission considers that, in the present case, in view of the need to ensure that the lawful obligation incumbent on the applicant was fulfilled immediately and in view of the brevity of the period for which the applicant was held at the police station, it can be concluded that a fair balance was struck between the need to ensure fulfilment of the obligation and the right to liberty.

In this respect, therefore, there is no appearance of a violation of the Convention and this part of the application must be rejected as manifestly ill-founded.

b. The applicant also contends that the fact that he was placed under observation for 24 hours in the infirmary attached to the police headquarters constitutes a violation of Article 5 para. 1 (e) of the Convention. He was taken, on the orders of the Police Superintendent, to the infirmary attached to the police headquarters to undergo a psychiatric examination.

In so far as the Police Superintendent's decision entailed deprivation of liberty, the Commission has to consider whether this measure was lawful.

The Commission would first point out in this connection that Article L. 344 of the Code of Public Health provides that “in the event of imminent danger, as attested by a doctor's certificate or common knowledge, the Police Superintendents in Paris (...) shall order all the provisional measures necessary to deal with mentally disturbed people, on condition that the measures are referred, within 24 hours, to the Chief of Police, who shall take an immediate decision”. The lawfulness of the deprivation of liberty cannot, therefore, be contested.

As to whether the deprivation of liberty was irregular (1), the Commission observes that, in the present case, the Police Superintendent considered that, in view of the applicant's conduct and information about him obtained through the Police Superintendent of the district where the applicant lived, it was his duty to have him taken to the psychiatric infirmary attached to the police headquarters. The Commission also notes that the applicant spent only 24 hours in the infirmary.

There is nothing in the file to suggest that the measure was taken by the Police Superintendent for reasons unconnected with those provided for in Article L.344 of the Code of Public Health.

In the light of all these factors, the Commission considers that the decision to place the applicant under psychiatric observation for 24 hours was not irregular.

It follows that the complaint based on Article 5 para. 1 (e), is manifestly ill-founded and must therefore be rejected under Article 27 para. 2 of the Convention.

2. The applicant also complains that he was not informed of the reasons for his arrest and claims that there was therefore a violation of Article 5 para. 2 of the Convention, which reads as follows:

"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Commission will examine this complaint only in so far as the applicant was actually "arrested" or otherwise "deprived of his liberty".

First, it observes that the applicant was not under "suspicion of having committed an offence" — the situation provided for in Article 5 para. 1 (c) — and that it was not therefore necessary to inform him of any charge against him. In addition, it emerges from the statements of the applicant himself that he was not unaware of the fact that he was being held at the police station so that his identity could be checked and in the infirmary so that he could be placed under psychiatric observation.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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(1) Translator's footnote: the French version of the European Convention on Human Rights draws a distinction between "légal" (lawful) and "régulier" (regular). In the English version both terms have been rendered as "lawful".