

APPLICATION/REQUÊTE N° 12723/87

D. v/BELGIUM

D. c/BELGIQUE

DECISION of 14 July 1988 on the admissibility of the application

DÉCISION du 14 juillet 1988 sur la recevabilité de la requête

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**Article 6, paragraph 1 of the Convention:** *In the case of criminal proceedings instituted by a private individual, there is no infringement of the right to a fair hearing when the defendant is able to present his case under conditions which do not place him at a substantial disadvantage vis-à-vis the prosecuting party.*

**Article 6, paragraphe 1, de la Convention:** *Dans le cas de poursuites pénales mises en mouvement par un particulier, il n'y a pas atteinte au droit à un procès équitable lorsque le défendeur peut faire valoir ses arguments dans des conditions qui ne le désavantagent pas d'une manière appréciable par rapport à la partie poursuivante.*

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*(TRANSLATION)*

### **THE FACTS**

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

The applicant, a Belgian national, is a building contractor living in H. (Belgium).

In 1981, as manager of private limited company C. D., he placed advertisements in various regional newspapers offering unbuilt houses for sale.

Under Article 64, paragraph 2, of the Code of Criminal Investigation, which allows the victim of a criminal offence to bring the matter before the Criminal Court by direct summons, three couples, who had signed agreements with C. D. on the basis of the advertisements, brought proceedings against the company and the applicant in the Mons Criminal Court. They claimed that the applicant was guilty of misleading advertising, embezzlement, fraud and breach of the Act of 9 July 1971 on the sale of unbuilt houses. They claimed damages amounting to 200,000 Belgian francs, 350,000 Belgian francs and 400,000 Belgian francs respectively.

The Court gave three decisions on the matter on 12 June 1985. In all three, it acquitted the applicant of the charges of misleading advertising, embezzlement and fraud. In two of the decisions, it fined the applicant 200 Belgian francs for seeking and obtaining a payment prohibited by Article 10 of the Act of 9 July 1971, and ordered him to pay damages of 100,000 Belgian francs and 101,000 Belgian francs, the latter sum jointly with the company C. D.

On appeal by the public prosecutor and one of the couples, the Court of Appeal joined the three cases and set the judgment complained of aside on 8 January 1986. In the criminal proceedings, it unanimously declared that all the charges against the applicant had been proved, imposed on him a single sentence of eight months' imprisonment suspended for five years, and fined him 200 Belgian francs. In the civil proceedings, the applicant was ordered to pay one of the couples 75,000 Belgian francs, and the company and the applicant were ordered jointly to pay the other two couples damages of 112,500 Belgian francs and 90,000 Belgian francs respectively.

The applicant appealed to the Court of Cassation, claiming that the Court of Appeal, in order to justify his criminal conviction in legal terms, should have found that the essential features of the offences with which he had been charged were present, and that the decision of 8 January 1986 omitted several essential features of each offence. On 11 June 1986, the Court of Cassation dismissed the appeal.

## **COMPLAINTS** (Extract)

1. The applicant complains that by authorising direct summons Belgian law made it possible to "implicate" him, "without opening a criminal file on the case, giving him the means to defend himself and bringing him before an Indictments Chamber". He considers this a violation of Article 6 of the Convention.

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## **THE LAW** (Extract)

1. The applicant complains that by authorising direct summons Belgian law made it possible to "implicate" him, "without opening a criminal file on the case, giving him the means to defend himself and bringing him before an Indictments Chamber". He alleges a violation of Article 6 of the Convention.

Belgian law allows the victim of a criminal offence to bring court proceedings by direct summons. This direct summons must state the facts complained of, and on which the Court is required to take a decision. Its jurisdiction is confined to the facts set out in the summons.

The Commission recalls its case-law according to which the right to a fair hearing, in both civil and criminal proceedings, implies that each party must be able to put forward its arguments in conditions which do not place him at a substantial disadvantage vis-à-vis the opposing party (No. 2004/66, 16.7.68, Yearbook 11 pp. 400-401; see also Eur. Court H.R., Delcourt judgment of 17 January 1970, Series A no. 11).

The Commission notes that the applicant was invited to appear before the Criminal Court by three direct summonses in which the civil parties accused him of misleading advertising, embezzlement, fraud and breach of the Act of 9 July 1971 on the sale of unbuilt houses, and that the Appeal Court on 8 January 1986 declared that all the charges brought against him in the direct summonses had been proved. He was therefore notified of the facts complained of, and was able to prepare his defence on the basis of this document, which limited the jurisdiction of the court to which the matter had been referred. Moreover it does not appear that he was hindered in presenting his defence. The procedure followed did not therefore place him in a disadvantageous situation that could constitute a violation of the principle of a fair hearing.

It follows that the complaint is manifestly ill-founded and that this part of the application must be dismissed in accordance with Article 27 para. 2 of the Convention.

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