

**APPLICATION/REQUÊTE N° 13562/88**

**Gilbert GUENOUN v/FRANCE**

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**DECISION** of 2 July 1990 on the admissibility of the application

**DECISION** du 2 juillet 1990 sur la recevabilité de la requête

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**Article 6, paragraph 1 of the Convention** *The public character of proceedings before the judicial bodies referred to in Article 6 para 1 is an essential element of the fairness of a trial. However this provision allows exceptions to the rule requiring publicity at least in respect of the trial of the action in particular when the protection of the private lives of the parties or the interests of justice require this*

**Article 6, paragraph 1, and Article 25 of the Convention** *In the case of proceedings in camera before the disciplinary organs of the Medical Association of France concerning suspension of the right to practise medicine the person concerned cannot claim to be a victim of a violation of the right to a public hearing if he has not claimed that right*

**Article 6, paragraphe 1, de la Convention** *La publicité de la procédure des organes judiciaires visés à l'article 6 par 1 est un élément essentiel de l'équité du procès. Cette disposition ménage cependant des exceptions à la règle de publicité au moins pour les débats notamment lorsque la protection de la vie privée des parties et les intérêts de la justice l'exigent*

**Article 6, paragraphe 1, et article 25 de la Convention** *S'agissant d'une procédure a huis clos devant les organes disciplinaires de l'Ordre des médecins de France concernant la suspension du droit d'exercer la profession médicale l'intéressé qui n'a pas revendiqué la publicité des débats ne peut se prétendre victime d'une violation du droit en question*

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*(TRANSLATION)*

## **THE FACTS**

The applicant is a French national born in 1950 in Mascara (Algeria) and resident in Paris. He is a doctor. In the proceedings before the Commission he is

represented by Ms. Claire Waquet, a lawyer practising before the Conseil d'Etat and the Court of Cassation.

The facts, as submitted by the parties, may be summarised as follows.

In a decision dated 15 December 1985 the Ile-de-France Regional Council of the Medical Association, dealing with a complaint lodged by one of the applicant's patients, imposed a six-month suspension on the applicant for :

- practising medicine as a commercial activity, on the ground that he had received advance fees, a breach of Article 23 of the Code of Medical Ethics ;
- supplying pharmaceutical products, a breach of Article 28 of the Code ;
- breaching Article 70 of the Code on the level of fees charged.

On appeal by the applicant, the disciplinary panel of the Medical Association's National Council, in a decision dated 11 March 1987, annulled the decision of the Regional Council for a procedural defect, looked into the merits of the charges itself and suspended the applicant for six months for breaches of Articles 28 and 70 of the Code of Medical Ethics and for disregarding the principle that medicine must not be exercised as a commercial activity.

The applicant appealed against the latter decision to the Conseil d'Etat, pleading in particular that the procedure followed failed to satisfy the requirements of Article 6 para. 1 of the Convention, the decision having been given at a session closed to the public.

However, in a judgment dated 25 November 1987, the Judicial Division of the Conseil d'Etat dismissed the applicant's appeal, holding in particular that "disciplinary tribunals do not determine criminal charges or civil rights and obligations; consequently, the above-mentioned provisions of Article 6 para. 1 of the European Convention ... are not applicable thereto".

## COMPLAINTS

The applicant alleges a violation of Article 6 para. 1 of the Convention in that he was not given a fair hearing.

Referring to the case-law of the Convention institutions, particularly the Le Compte, Van Leuven and De Meyere case and the Albert and Le Compte case

(Eur Court H R , judgment of 23 June 1981, Series A no 43 and judgment of 10 February 1983, Series A no 58), he contends that Article 6 para 1 is applicable to disciplinary proceedings and that in this case there was an infringement of the principle of a public hearing, given that the decision adopted by the National Council of the Medical Association on 11 March 1987 irrespective of whether it concerned his civil rights and obligations or a criminal charge against him, was given at a hearing closed to the public

## THE LAW

The applicant claims to be a victim of a violation of Article 6 para 1, which provides as follows

‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ’

The Government contest neither the admissibility of the application under Article 26 of the Convention nor the applicability of Article 6 para 1 to the proceedings at issue

They deny failure to comply with Article 6 para 1 in this case because the applicant did not ask the disciplinary panel to open the hearing to the public, and if he had done so his application would have been refused in order to protect the private life of the patient who had complained. Lastly they point out that the case was heard publicly by the Conseil d’Etat, which exercises extensive supervisory powers in this area

In reply, the applicant maintains that as admission of the public is a fundamental principle of public policy, it does not have to be expressly requested. It was up to the complainant to request exclusion of the public, although the description of her treatment did not involve revelation of any information relating to her private life. Lastly the principle of proportionality required that more weight be given to the applicant’s right to a fair hearing than to the complainant’s right to respect for her private life

It is true that the public character of proceedings is a principle of fundamental importance to the fairness of those proceedings (cf, in particular, Eur Court H R Pretto and others judgment of 8 December 1983, Series A no 71,

p. 11, paras. 21-22, and Axen judgment of 8 December 1983, Series A no. 72, p. 12, paras. 25-26) However, derogations from this principle may be justified, particularly by the need to protect the private lives of the parties or by the interests of justice. These derogations may, as in this case, be regulated by the legislator, who is free to decide that in disciplinary matters, bearing in mind the interests of the parties and the need to preserve confidentiality between doctor and patient, hearings shall normally be conducted in closed session. It is then for the party claiming the right to publicity to ask the disciplinary body to weigh the conflicting interests against each other.

The Commission points out that in this case the applicant did not request a public hearing either before the Regional Council nor on appeal before the National Council, although before the latter body he did raise several criticisms of the procedure followed before the Regional Council, particularly regarding its failure to respect the rights of the defence. He availed himself of his right to call for a public hearing for the first time in the proceedings before the Conseil d'Etat.

The Commission therefore considers that the applicant cannot claim to be the victim of a violation of one of the Convention's provisions, since he did not assert his right to a public hearing before the disciplinary tribunals.

The Commission concludes that the applicant's complaint does not disclose any appearance of a violation of the Convention and that it must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2.

For these reasons, the Commission

**DECLARES THE APPLICATION INADMISSIBLE**