



Lack of impartiality of the Court of Audit when determining the balance on an account

In today's Chamber judgment¹ in the case of [Beusoleil v. France](#) (application no. 63979/11) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned a Court of Audit judgment which, according to the applicant, was biased.

The Court found that references in a 1995 public report by the Court of Audit could have given rise to objectively justified fears on the applicant's part as to that court's lack of impartiality when determining the balance on an account.

Principal facts

The applicant, Christian Beusoleil, is a French national who was born in 1952 and lives in Noisy-Le-Grand.

In 1990 Mr Beusoleil, a local councillor in the municipality of Noisy-le-Grand, was appointed treasurer of the municipality's staff social committee, which was chaired by the mayor. During an audit of the municipal accounts for the financial years 1988 to 1993, the Ile-de-France regional audit office observed some irregularities and decided to widen the scope of its audit to include the committee's accounts, as well as initiating a *de facto* management procedure.

On 22 November 1994 the regional audit office gave a provisional judgment finding that the case was one of *de facto* management and declaring the committee, the mayor, Mr Beusoleil and another individual, jointly and severally, *de facto* accountants of the public funds wrongfully removed and handled since 1 January 1988. The Court of Audit referred publicly to the case in its 1995 annual report. On 16 January 1997 the Court of Audit gave a final judgment declaring Mr Beusoleil, the committee and the mayor jointly *de facto* accountants of the public funds that had been wrongfully removed and handled. On 16 December 1999 the regional audit office determined the balance on the account and made a repayment order. Mr Beusoleil appealed. In a judgment of 30 May 2002 the Court of Audit upheld the judgment in part and declared that Mr Beusoleil, jointly and severally with the committee and the mayor, owed the municipality of Noisy-le-Grand the sum of 404,175.42 euros (EUR). Mr Beusoleil appealed on points of law.

In a decision of 30 December 2003 the *Conseil d'État* quashed the judgment of 30 May 2002 on the grounds that the regional audit office that had determined the balance on the account had not been lawfully composed since the rapporteur who had conducted the management audit of the social committee had taken part in the deliberations of the body that had given judgment.

The case was remitted to the Court of Audit. In a judgment of 28 May 2008 the Court of Audit determined the final balance on the *de facto* management account and declared that the committee, the mayor and Mr Beusoleil, jointly and severally, owed the municipality the sum of

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.

EUR 404,175.42, plus statutory interest. Mr Beausoleil lodged an appeal on points of law, which was dismissed by the *Conseil d'État* on 21 March 2011.

Mr Beausoleil then brought proceedings under section 60-IX of the Finance Act 1963, seeking remission of the amounts to be repaid. The proceedings culminated in a judgment of the *Conseil d'État* declining to consider the application.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant alleged that the Court of Audit had not been impartial, on account of the references in a public report prejudging the issue it was called upon to assess when determining the balance on the accounts in question.

The application was lodged with the European Court of Human Rights on 21 September 2011.

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

Angelika **Nußberger** (Germany), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Erik **Møse** (Norway),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1

The Court observed that Mr Beausoleil was not questioning the structural impartiality of the Court of Audit, in particular as regards the coexistence of its judicial and administrative functions. Nor did he contend that the signatories of the public report had been part of the judicial body that had determined the balance on the accounts. Accordingly, the Court examined solely whether the references in the 1995 report had prejudged the determination of the outstanding balance.

The Court observed that in its decision of 30 December 2003 the *Conseil d'Etat*, while acknowledging that Article 6 § 1 was applicable at each stage of the *de facto* management procedure, had held that the stage of determining the outstanding balance could not, in principle, be rendered void by a prejudgment stemming from a prior public report.

While being aware of the specific nature of this procedure, the Court nevertheless considered that the terms used in the public report might have given rise to objectively justified fears on Mr Beausoleil's part as to the Court of Audit's lack of impartiality when determining the balance on the accounts. The Court observed firstly that the 1995 public report had discussed the case as a whole and had not made any distinction between the declaration of *de facto* management and the calculation of the unlawfully disbursed amounts. The committee had been explicitly mentioned in the report, together with a detailed estimate of the sums involved. The expenditure had been identified in precise detail. Although Mr Beausoleil had not been mentioned by name in the report, he had been described as "the biggest recipient ... who signed the cheques of which he was the beneficiary", which made him identifiable by anyone familiar with how the committee functioned and anyone wishing to investigate its operations. Lastly, the report referred to "extremely detrimental consequences", thus making an assessment as to the seriousness of the actions and the scale of the sums involved.

Those factors were sufficient for the Court to consider that at the stage of determining the outstanding balance on the accounts, the Court of Audit had not provided the guarantees of impartiality required by the provisions of Article 6 § 1 of the Convention. It further noted that in decisions subsequent to the judgment of 30 December 2003 the *Conseil d'Etat* had clarified the limits beyond which the public report would be deemed to have adopted a position precluding the Court of Audit from determining the outstanding balance and imposing a fine on the individuals concerned.

In conclusion, there had therefore been a violation of Article 6 § 1.

Just satisfaction (article 41)

The Court held that France was to pay the applicant EUR 2,392 euros 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.