APPLICATION N° 32026/96

Pierre LACOUR v/FRANCE

DECISION of 10 September 1997 on the admissibility of the application

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Article 6, paragraph 1 of the Convention *Reasonable time (criminal)*

Relevant factors complexity of the case conduct of the applicant and of the judicial authorities

Criminal proceedings lasting more than six years and two months reasonable time respected in the instant case, particularly in view of the complexity of the case

Article 26 of the Convention

a) The six month time-limit is an autonomous rule which must be interpreted and applied in a given case in such a manner as to ensure effective exercise of the right of individual petition

b) It is for the State which pleads a failure to comply with the six month time-limit to establish the date on which the applicant learned of the final domestic decision

c) When domestic law requires service of the written text of the final decision on the applicant or his lawyer, the six-month period is calculated from the date of such service irrespective of whether the judgment concerned, or part thereof, was previously delivered orally

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THE FACTS

The applicant, born in 1923, is a French citizen He is a retired veterinary surgeon and a senator and lives in Paris Before the Commission, he was represented by Messrs Olivier Metzner and François Cheron lawyers practising in Paris

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

On 28 September 1988, during a search carried out on the instructions of an investigating judge in Marseilles, the police found a number of documents at the registered office of the public limited company, *Groupe de Recherche et de Construction* ("GRC") Among these documents was a note setting out the procedure to be followed in the event of a police arrest and documents revealing the existence of bogus companies and blank share transfers

On 29 September 1988 an investigation was commenced into charges against persons unknown of forgery, uttering and misuse of company property On the same day, the investigating judge issued a warrant for an investigation into GRC's dealings

Between 14 and 21 October 1988, four people were charged On 20 October 1988 the investigating judge issued a second warrant for an investigation into GRC's affairs On 21 October 1988 an accountant was instructed to analyse movements of funds by GRC and the manner in which paid fees were invoiced The accountant's report and the investigations carried out pursuant to the request for evidence on commission revealed the existence of false invoices allegedly paid by GRC

On 25 September 1989 the applicant was charged with forging business documents, uttering and handling the proceeds therefrom In particular, the applicant was accused of having improvements worth 1,019,079 13 French francs (FRF) made by company R to his country estate, which were allegedly paid for by means of false invoices issued to GRC The applicant subsequently claimed that the invoices in question had a completely different purpose since, given that he was the treasurer for the *département* in which he was elected, he had to raise funds for his political organisation and various election campaigns

In October 1989 five other people were charged. On 22 October 1989, a further accountant's report was ordered, followed by another one on 13 December 1989 In January 1990 the applicant and two of his co defendants were summoned by the investigating judge On 16 February 1990 the Indictments Division of Lyons Court of Appeal upheld a taxation of costs made on 7 December 1989

On 3 July 1990 the accountant filed his report. On 14 January 1991 this report was served on the applicant, who, on 8 March 1991, requested an alternative accountant's report.

On 16, 26 and 27 March 1991, three other people, including a senator, were charged. In April 1991 a number of the defendants were summoned by the investigating judge. Confrontations were held between various defendants.

On 4 June 1991 the public prosecutor opposed the applicant's request for an alternative accountant's report. On 1 October 1991 the applicant filed his observations on the first accountant's report. In an order of 4 November 1991, the investigating judge dismissed the applicant's request for an alternative accountant's report. The applicant appealed on 7 November 1991.

On 21 August 1992 the applicant was committed for trial before Lyons Criminal Court.

On 7 January 1994, the court, after deciding that the applicant should have been charged with aiding and abetting forgery and uttering and of handling the proceeds therefrom, convicted him of those offences. The applicant was sentenced to eighteen months' imprisonment suspended and a fine of one million francs. The court also stripped him of his civil, civic and family rights for a period of five years.

The applicant and the public prosecutor appealed against that judgment on 12 and 21 January 1994 respectively.

In a judgment of 14 December 1994, Lyons Court of Appeal upheld the lower court's judgment, but increased the applicant's prison sentence to three years, suspended.

On 15 December 1994 the applicant appealed to the Court of Cassation on points of law. He filed supplementary pleadings on 18 July 1995.

On 7 December 1995 the Court of Cassation dismissed the applicant's appeal on the ground that it was ill-founded.

The Court of Cassation's judgment was served on the applicant on 27 February 1996. A copy of that judgment had previously been sent to his lawyer on 29 January 1996.

COMPLAINT

The applicant complains about the length of the proceedings and invokes Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 June 1996 and registered on 25 June 1996

On 27 November 1996 the Commission decided to communicate the complaint about the length of the proceedings to the respondent Government, inviting them to submit written observations on its admissibility and merits It declared the remainder of the application inadmissible

The Government submitted their observations on 14 April 1997, after an extension of the time limit fixed for that purpose The applicant replied on 5 June 1997

THE LAW

The applicant complains about the length of the proceedings and invokes Article 6 para 1 of the Convention, the relevant parts of which provide

> "In the determination of any criminal charge against him, everyone is entitled to a hearing within a reasonable time by [a] tribunal "

The respondent Government submit that the application was not introduced within the six-month time limit provided for in Article 26 of the Convention

The Government point out, in particular, that as the applicant was represented by a lawyer of the Court of Cassation and *Conseil d'Etat* Bar, the Court of Cassation sent a copy of the judgment to that lawyer the very day on which it was delivered, that is, 7 December 1995 The Government submit that the date to be taken into account in calculating the six month time-limit provided for in Article 26 of the Convention is therefore 7 December 1995 However, the application was introduced on 20 June 1996, that is, six months and thirteen days later and thus, they allege, outside the time-limit laid down in Article 26 of the Convention

The applicant replies that the date of 7 December 1995 indicated by the Government is not the correct date for the purposes of Article 26 of the Convention He argues that his lawyer was not sent a copy of the judgment until 29 January 1996 and that he himself was not served with it until 27 February 1996

The Commission recalls that, under Article 26 of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken'

The Commission further recalls that the six-month time limit constitutes an autonomous rule which must be interpreted and applied in a given case in such a manner as to ensure effective exercise of the right of individual petition According to its recent case law, when domestic law requires service of the written text of the final

decision on the applicant or his lawyer, the six month period is calculated from the date of such service, irrespective of whether the judgment concerned, or part thereof, was previously delivered orally (No 22714/93, Dec 27 11 95, D R 83, p 17)

In the instant case, the applicant asserts that the Court of Cassation judgment of 7 December 1995 was served on his lawyer and himself on 29 January and 26 February 1996 respectively therefore less than six months before 20 June 1996, the date on which he introduced his application

The Commission recalls that it is for the State which pleads a failure to comply with the six-month rule to establish the date on which the applicant learned of the final domestic decision (see No 12659/87, Dec 5 3 90, D R 65, p 136) The Commission notes that in the instant case, the Government assert merely that the six-month time limit should be calculated from the date on which judgment was delivered, without providing any details to refute the presumption that the applicant and his lawyer learned of the said judgment on 29 January and 26 February 1996 respectively

The Commission therefore considers that the applicant introduced his application within the six month time limit provided for in Article 26 of the Convention The objection raised by the Government cannot therefore be upheld

On the merits, the Government contend that the complaint about the length of the proceedings is unfounded for the following reasons

The Government argue that the case was particularly complex, referring to its economic and financial context

They go on to submit that the applicant is scarcely in a position to complain about the length of the proceedings since he had indulged in delaying tactics in order to minimise the cost of the building works (which, moreover, he never paid) and had maintained in the face of all the evidence, that the money was used for political funding

The Government submit that the authorities conduct is irreproachable, given that they dealt with a sensitive case involving many documents, without any unjustified delays

The applicant contests the Government's arguments

The Commission notes that the proceedings began on 25 September 1989 and ended on 7 December 1995 They therefore lasted six years, two months and twelve days

The Commission recalls that the reasonableness of the length of proceedings is to be determined with reference to the circumstances of the case and in accordance with the following criteria the complexity of the case, the conduct of the parties and of the authorities dealing with the case (see Eur Court HR, Dobbertin v France judgment of 25 February 1993, Series A no 256 D, p 116 para 39)

The Commission notes first that this was a complex case, with economic, political and financial ramifications, in which several people were implicated and which involved, among other things, an analysis of movements of funds by GRC

As regards the applicant's conduct, the Commission considers that this did not unduly delay the examination of the case

The Commission has not found any delay for which the authorities dealing with the case were responsible Admittedly, the investigation into the charges against the applicant lasted two years and eleven months However, the chronology of the proceedings, drawn up by the respondent Government and appended to this decision, shows that there were no dormant periods during the investigation, in which numerous investig itive measures were carried out at a sustained pace The Commission also notes that the three courts which dealt with the case did so expeditiously

The Commission recalls in this respect that Article 6 commands that judicial proceedings be expeditious, but it also lays down the more general principle of the proper administration of justice (Eur Court HR, Boddaert v Belgium judgment of 12 October 1992 Series A no 235 D, p 82, para 39) In the circumstances of the case, the conduct of the authorities was commensurate with the fair balance which has to be struck between the various aspects of this fundamental requirement

The Commission concludes that in the instant case, particularly given its complexity, there has been no breach of the 'reasonable time requirement laid down in Article 6 para 1 of the Convention

It follows that the remainder of the application must be rejected on the ground that it is manifestly ill founded, in accordance with Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously,

DECLARES INADMISSIBLE THE REMAINDER OF THE APPLICATION