APPLICATION N° 32175/96

S C.I. LE LIVRON v/FRANCE

DECISION of 14 January 1998 on the admissibility of the application

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Article 6, paragraph 1 of the Convention :

a) This provision does not require States to set up courts of appeal or cassation. If, however, such courts are instituted, the requirements of Article 6 must be respected

b) The right of access to a court secured by this provision may be subject to limitations in the form of regulation by the State, however, such limitations must not restrict or reduce access in such a way that the very essence of the right is impaired

c) The rule of French law according to which, in civil proceedings, an appeal on a point of law will not, in principle, be listed for hearing by the Court of Cassation until the appellant has executed the judgment of the court below, is aimed at securing the proper administration of justice

No appearance, in the instant case, that this precondition was disproportionate to the aim pursued, so as to unreasonably hinder access to the Court of Cassation, since the applicant company failed to argue that the amounts claimed from it were disproportionate or to show that paying those amounts, in compliance with the judgment of the court below, would have led to manifestly extreme consequences for it

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THE FACTS

The applicant is the Le Livron non-commercial construction company (*société civile immobilière* Le Livron, hereinafter "S C I Le Livron"), whose registered office is in Pau. In the present proceedings, it is acting through its receivers, Mr Roger Leclerc and Mr Pierre Courrèges, both of Pau.

The applicant company is represented in the proceedings before the Commission by Mr Jean-Alain Blanc, a lawyer practising in the *Conseil d'Etat* and Court of Cassation in Paris.

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

A. *Particular circumstances of the case*

The applicant company was using three contractors - companies C., G., and D. - on a property it was building. It was dissatisfied with their work and sued them.

In a judgment of 15 January 1991, Pau *tribunal de grande instance* found against the applicant company and ordered it to pay the following sums: 12,175 French francs (FRF) to company G. and FRF 125,713 to company D.

On 26 March 1992 Pau Court of Appeal overturned this judgment and ordered the applicant to pay the following sums instead: to company G., FRF 23,774 plus interest from 28 May 1990, together with FRF 3,000 by way of compensation for normally-irrecoverable costs; to company C., FRF 3,000 and to company D., FRF 110,247 plus interest from 23 April 1990, together with FRF 3,000 by way of compensation for normally-irrecoverable costs.

On 27 May 1992 the applicant appealed to the Court of Cassation on points of law against the judgment as it applied to all three of its opponents.

On 13 October 1992, the senior president of the Court of Cassation issued an order to the effect that the applicant's appeal should be struck out of the list, pursuant to an application by company D. Citing section 1009-1 of the New Code of Civil Procedure, he held that the applicant company had not shown that it had "taken any steps such as would convince [him] of its willingness to comply with the Court of Appeal's decision" and had not raised "any factual circumstances such as to lead [him] to fear or presume that such compliance would result in manifestly extreme consequences for it".

On 16 October 1992, the applicant withdrew its appeal in respect of company D. It filed grounds of appeal relating exclusively to companies G. and C.

In a judgment of 6 April 1993, Pau Commercial Court placed the applicant company in administration (*redressement judiciaire*), appointing two lawyers, Mr Roger Leclerc and Mr Pierre Courreges, to represent the creditors

On 9 February 1995, Mr Leclerc and Mr Courreges applied for the appeal to be re-listed on two grounds firstly that company D was no longer a respondent to the appeal (which capacity had enabled it to make its successful application to have the appeal struck out), as the applicant had withdrawn the appeal in so far as it was concerned, and secondly, that the court order placing the applicant company in administration automatically entailed a prohibition on it settling any prior debt, so that it was legally prevented from complying with the Court of Appeal judgment

Company C, on the other hand, applied for the appeal proceedings to be declared to have lapsed for want of prosecution

On 6 July 1995, the senior president of the Court of Cassation made an order rejecting the application to have the appeal re-listed Referring to section 1009-1 of the New Code of Civil Procedure, he held that, since the applicant "ha[d] not proved that the judgment under appeal ha[d] been executed the application for re-listing must be rejected"

With regard to the application to have the appeal proceedings declared to have lapsed, he held that the consequence "of sections 369 and 392 of the New Code of Civil Procedure, read together, is that the running of the period at the end of which proceedings will lapse if they have not been pursued in the meantime was suspended on 6 April 1993", the date on which the applicant company was placed in administration

On 23 November 1993, Pau Commercial Court placed the applicant company in liquidation

On 5 October 1995, one of the receivers applied for the appeal to be re-listed on two grounds that company D, which had proved in the liquidation proceedings, could not be paid because of the liquidation, and that the two other opposing parties, companies C and G, could not be paid either because they had not proved

On 13 February 1996 the senior president of the Court of Cassation rejected the application to have the appeal re listed, holding "that under section 1009-1 of the New Code of Civil Procedure, an appeal can be re-listed only where the judgment under appeal has been fully complied with [and] since no proof of this has been adduced, the application of Mr Roger Leclerc, one of the receivers of *S C I* Le Livron, must be rejected"

On 18 December 1996, the senior president of the Court of Cassation issued an order dismissing the application by company C to have the proceedings declared to have lapsed for want of prosecution He held that "the running of the period at the end

of which proceedings lapse if they have not been pursued in the meantime was suspended in this case by the orders placing *S C I* Le Livron in administration on 6 April 1993 and then in liquidation on 23 November 1993 The application filed on 5 October 1995 by Mr Leclerc, one of *S C I* Le Livron's receivers, brought this period of suspension to an end and started a new statutory period running, which has not yet expired, so that the application cannot be allowed"

According to the applicant, the appeal proceedings lapsed on 5 October 1997

B *Relevant domestic law*

New Code of Civil Procedure

Section 386

"Proceedings shall lapse where none of the parties has taken any steps to pursue them for two years "

Section 1009-1

"Other than in cases where the filing of an appeal prevents execution of the decision being challenged, the president may, at the respondent's request, and after obtaining the opinion of State Counsel and the parties, order the case to be struck out of the list where the applicant fails to show that he has executed the decision being appealed, unless it appears to him that execution of the decision would result in manifestly extreme consequences

On submission of proof that the decision being challenged has been executed, the president shall order the case to be re-listed "

Consequences of administration or winding-up proceedings

Under section 369 of the Civil Code, "an administration or winding-up order has the effect of automatically staying proceedings"

A stay of this sort itself has the effect of suspending the running of the period at the end of which proceedings lapse if they have not been pursued in the meantime, as a result of section 392, which provides, "where proceedings are stayed, the running of the period at the end of which they will lapse if they have not been pursued in the meantime is also suspended"

COMPLAINT

The applicant company invokes Article 6 para 1 of the Convention

It considers that the application of section 1009-1 of the New Code of Civil Procedure to its case has impaired the very essence of its right of access to the Court of Cassation, to the point of causing such access to be definitively lost

It puts forward several different arguments to this effect

a) company D , which, in its capacity as one of the respondents, had succeeded in having the appeal struck out of the Court of Cassation list on 13 October 1992, ceased to have this capacity on 16 October 1992, the date on which the applicant company withdrew its appeal as far as D was concerned It follows, according to the applicant, that the striking-out order was no longer justified a mere three days after it was made,

b) in the absence of any application from the other two companies, C and G , (then the only remaining respondents) to have the appeal struck out, the senior president should have cancelled the striking-out order It follows, according to the applicant that the two orders - that of 6 July 1995 dismissing the application to have the appeal re-listed and that of 13 February 1996 - deprived it of its right to have its appeal determined by the Court of Cassation,

c) the senior president of the Court of Cassation dismissed the applicant company s applications to have its appeal re-listed on the erroneous basis that it had not proved that it had executed the Court of Appeal judgment, and

d) the senior president of the Court of Cassation should not have made restoring the appeal to the list subject to execution of the Court of Appeal judgment since it was, in practice, impossible for the applicant, as a company in liquidation, to comply fully with that judgment

THE LAW

The applicant company alleges a violation of Article 6 para 1 of the Convention, which provides, in so far as relevant

> "In the determination of his civil rights and obligations everyone is entitled to a hearing within a reasonable time by [a] tribunal "

The applicant complains that it was not given a fair hearing, in particular in that it was denied access to a court by virtue of the repeated dismissal of its applications to have its appeal restored to the Court of Cassation list

The Commission recalls the case-law of the Court, according to which Article 6 (1) of the Convention does not compel the Contracting States to set up courts of appeal or of cassation, nevertheless, if such courts are instituted, proceedings before them must offer the guarantees required by Article 6 (Eur Court HR, Delcourt v Belgium judgment of 17 January 1970, Series A no 11, p 14, para 25 and the case "relating to certain aspects of the laws on the use of languages in education in Belgium" (merits), judgment of 23 July 1968, Series A no 6, p 33, para 9)

As it has already held (see No 20373/92 M M v France, Dec 9 1 95, D R 80-B, p 56 and No 26386/95, Bo v France, Dec 29 11 95 unpublished), the Commission considers that the rule laid down in section 1009-1 of the New Code of Civil Procedure is aimed at ensuring the proper administration of justice

Therefore, the Commission's task is to examine whether the limitations flowing from the application of this rule have restricted the individual's access to the courts "in such a way or to such an extent that the very essence of the right is impaired" , whether they "pursue a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (Eur Court HR, Ashingdane v the United Kingdom judgment of 28 May 1985, Series A no 93, pp 24 and 25 para 57)

In the instant case, the Commission notes that the applicant company's appeal was struck out of the Court of Cassation list on the application of one of its opponents pursuant to section 1009-1 of the New Code of Civil Procedure The applicant's attempts to have the appeal restored to the list were subsequently rejected because it had failed to execute the Court of Appeal judgment

The Commission notes that the applicant complains about the orders dismissing its applications to have its appeal re-listed at the Court of Cassation On this point, the applicant contests the manner in which the senior president of the Court of Cassation interpreted and applied domestic law, a matter which is primarily for the domestic courts The Commission can discern nothing arbitrary in the reasoning on which the impugned orders are based

The Commission notes that the applicant had the opportunity to bring an appeal on points of law against the Court of Appeal judgment of 26 March 1992 ordering it to pay certain sums to the respondent companies It availed itself of this opportunity but its appeal was struck out of the Court of Cassation list on the application of one of its opponents, pursuant to section 1009-1 of the New Code of Civil Procedure, because the applicant had not paid the sums in question

The Commission recalls that, when the exercise of its right of access to the Court of Cassation was challenged in this way, the applicant failed to show that it had "taken any steps such as would convince [the court] of its willingness to comply with the Court of Appeal's decision" or to adduce "any factual circumstances such as to lead [the court] to fear or presume that such compliance would result in manifestly extreme consequences for it" Similarly before the Commission, the applicant has not argued that the sums claimed from it were disproportionate, nor demonstrated that paying these sums, as required by the judgment against it, was such as to result in "manifestly extreme consequences" for it

In these circumstances, the Commission takes the view that, on the facts, the applicant company has not suffered unreasonable limitations on its right of access to the Court of Cassation. Hence the Commission can discern no appearance of a violation of Article 6 para. 1 of the Convention (see No. 27659/95, Ferville v. France, Dec. 1.12.97, where exceptional circumstances led to the opposite conclusion being drawn from the same principles).

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE