

APPLICATION/REQUÊTE N° 17083/90

Nicolas MOSBEUX v/BELGIUM

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DECISION of 8 April 1991 on the admissibility of the application

DÉCISION du 8 avril 1991 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention

- a) A decision to commit for trial, which is purely preparatory and does not bind the trial court, does not involve a determination of civil rights and obligations or of a criminal charge*
- b) In determining the fairness of criminal proceedings, the Commission must examine them as a whole where proceedings have not been brought to a conclusion such determination is not possible*

Article 25 of the Convention *The Commission cannot examine the compatibility of a law with the Convention in abstracto*

(TRANSLATION)

THE FACTS

The facts of the case, as submitted by the applicant, can be summarised as follows

The applicant is a Belgian national born in 1928. He is an anaesthetist. Before the Commission he is represented by Mr Jean Bronckart, a lawyer practising in Liège.

On 1 March 1986, after suffering knife wounds in an assault, Mrs X went for treatment to the clinic where the applicant worked. There it was decided that an operation was necessary and the applicant anaesthetised Mrs X, who died during the operation.

The applicant was later charged with manslaughter on the basis of medical reports stating that there had been or might have been a medical error.

In a decision dated 24 February 1989 the "chambre du conseil" of the Liège Court of First Instance committed the applicant for trial in the Liège Criminal Court.

The applicant lodged an objection to the above decision with the Indictments Chamber of the Liège Court of Appeal, which declared it inadmissible in a judgment dated 30 May 1989 on the basis of Article 135 of the Code of Criminal Investigation, which denies a defendant the right to object to his committal for trial.

The applicant's appeal on points of law against the above judgment was dismissed on 9 August 1989 by the Court of Cassation, which declared it inadmissible pursuant to Article 416 of the Code of Criminal Investigation, under which an appeal on points of law against pre-trial decisions lies only after final judgment.

The applicant was subsequently summoned to stand trial in the Liège Criminal Court. In his final submissions of 13 September 1989 he asked that court to suspend its decision pending the outcome of the proceedings instituted before the Convention institutions. He has provided no other details of the proceedings in the Criminal Court.

COMPLAINTS

The applicant complains of a violation of Article 6 of the Convention, and in particular of non-observation of the principle of equality of arms, on the ground that he was not entitled to object to his committal for trial in the Criminal Court, whereas the prosecution and parties claiming damages are entitled to object to decisions to discontinue criminal proceedings given by the "chambre du conseil"

THE LAW

The applicant, who relies on Article 6 of the Convention, complains that he was unable to object to his committal for trial in the Criminal Court, whereas the prosecution and parties claiming damages are entitled to object to decisions to discontinue criminal proceedings given by the "chambre du conseil"

Article 6 para. 1 of the Convention guarantees the right to a fair trial, of which the principle of equality of arms is a specific aspect

The Commission notes in the first place that, apart from the exceptional case of an objection to the jurisdiction provided for in Article 539 of the Code of Criminal Investigation, a defendant is barred by the provisions of Article 135 of that Code from objecting to his committal for trial. Under the same provisions parties claiming damages and the prosecution can object when the defendant's release from custody is ordered. However, it is established case-law that the prosecution or a party claiming damages can lodge an objection whenever the decision of the "chambre du conseil" bars or hinders prosecution or impedes in any way the course of justice.

The Commission first recalls its constant case-law to the effect that it is competent to examine the compatibility of domestic legislation with the Convention only with respect to its application in a concrete case, while it is not competent to examine *in abstracto* its compatibility with the Convention (No. 7045/75, Dec. 10.2.76, D.R. 7 p. 87). In the circumstances of the present case, as the committal order of 24 February 1989 did not impede the course of justice, the prosecution would not have been entitled to lodge an objection against it.

Even supposing that that had been the case, the Commission notes that unlike a decision to discontinue criminal proceedings, which puts an end to prosecution, committal for trial is purely preparatory in character and does not bind the trial court in any way. Consequently, the committal decision of 24 February 1989 determined neither civil rights and obligations nor a criminal charge. Taking the proceedings as a whole (see, *inter alia*, No. 10300/83, Dec. 12.12.84, D.R. 40 p. 180), the Commission

notes that in any case the applicant retains - or retained - the opportunity to submit all his arguments in defence to the trial courts

It follows that examination of the application reveals no appearance of a violation of the Convention, or of Article 6 in particular, and that it must accordingly be declared inadmissible as being manifestly ill founded within the meaning of Article 27 para 2 of the Convention

For these reasons, by a majority, the Commission

DECLARES THE APPLICATION INADMISSIBLE