

APPLICATION/REQUÊTE N° 13814/88

Celine TJIBAOU v/FRANCE

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DECISION of 6 September 1990 on the admissibility of the application

DECISION du 6 septembre 1990 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention *When an accused has been acquitted a party claiming damages in the criminal proceedings may invoke the rights guaranteed by Article 6 para 1 in so far as his civil interests are at issue*

Article 26 of the Convention

- a) In France a party claiming damages in criminal proceedings who complains that his case was not heard by an impartial tribunal due to the composition of the jury must lodge an application for a new trial on the ground of bias (requête en renvoi pour cause de suspicion légitime) in order to exhaust domestic remedies*
- b) In France someone who complains about procedural defects in a criminal investigation must in order to exhaust domestic remedies lodge a plea of nullity prior to the decision of the Indictments Chamber to commit the accused for trial*
- c) A party claiming damages in criminal proceedings who complains that a French court having acquitted an accused on the ground of self-defence has not given a decision on the damages claim must appeal to the Court of Cassation in order to exhaust domestic remedies*

(TRANSLATION)

THE FACTS

The 35 applicants are all French nationals. They are farmers resident in New Caledonia (French overseas territory)

In the proceedings before the Commission they are represented by Mr G Tehio, a lawyer practising in New Caledonia, Mr J J De Felice and Mr M Tubiana, lawyers practising in Paris, and Mr F Roux and Mr A Ottan, lawyers practising in Montpellier

The facts of the case, as submitted by the applicants, may be summarised as follows

On 5 December 1984 seventeen Melanesians travelling in cars fell into an ambush in which ten of them were killed. On 10 and 11 December 1984 those who had carried out the attack gave themselves up and the investigating judge charged them with murder and premeditated assault with a deadly weapon

The applicants joined in the proceedings as parties claiming damages

On 29 September 1986 the investigating judge of the Noumea Court of First Instance directed that the charges be dropped, on the ground that the accused had acted in self-defence, and they were then released. On 20 November 1986 the Indictments Division of the Noumea Court of Appeal set aside the discharge order and committed the accused for trial before the New Caledonia Assize Court on charges of murder and attempted murder

The nine jurors were mainly of European origin, with not one Melanesian among them

In a judgment dated 29 October 1987 the Assize Court acquitted the accused on the ground of self-defence. It took no decision on the applicants' claims for damages. There was no appeal against the judgment in the criminal proceedings

COMPLAINTS (Extract)

The applicants allege violations of Articles 6 para 1, 13 and 14 of the Convention

In the first place, the applicants criticise the composition of the jury at the New Caledonia Assize Court. They consider that with this jury, mainly composed of persons of European origin, they were unable to exercise their right to have their case heard by an impartial tribunal, as guaranteed by Article 6 para. 1 of the Convention.

Alleging that under domestic law they did not have a remedy whereby they could challenge the composition of the jury, they rely on Article 13 of the Convention. They accordingly argue that their rights were assessed in a discriminatory way and on that basis allege a violation of Article 14 of the Convention.

The applicants further complain of the way the investigation was conducted, pleading a large number of procedural irregularities which they claim completely prejudiced the fairness of the proceedings in which they had joined as parties claiming damages, contrary to Article 6 para. 1 of the Convention.

Bearing in mind the fact that no decision was given on the civil claims, the applicants consider, firstly, that the Assize Court failed to follow established precedent in not attempting to determine whether the payment of damages was justified by a fault other than the alleged offence, and secondly that in failing to give a decision on their claims for damages the Assize Court disregarded the provisions of domestic law, which require the criminal court to decide civil claims after handing down judgment in the criminal case. In this connection they rely on Article 6 para. 1 of the Convention.

THE LAW (Extract)

1. The applicants maintain in the first place that because the jury was mainly composed of persons of European origin they did not have a fair hearing within the meaning of Article 6 para. 1 of the Convention. They claim in particular that because of the composition of the jury and the lack of a remedy whereby they could challenge its composition their rights were assessed in a discriminatory way, contrary to Article 14 of the Convention.

Secondly, the applicants criticise the way the investigation was conducted, pleading a large number of alleged procedural irregularities, which they claim completely prejudiced the fairness of the proceedings before the Assize Court.

Article 6 para. 1 provides as follows :

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing ... by an independent and impartial tribunal ...”

The Commission notes that the applicants rely on the provisions of Article 6 para. 1 of the Convention regarding the impartiality required of a tribunal which has to determine civil rights and obligations. It observes that in the present case the New Caledonia Assize Court, after ruling on the criminal charges and acquitting the accused on the ground of self-defence, gave no decision on the civil claims and that no judgment concerning those claims has been handed down by the court.

The Commission recalls that according to its settled case-law (see in particular No. 9938/82, Dec. 15.7.86, D.R. 48 p. 21) parties claiming damages may rely on the provisions of Article 6 para. 1 of the Convention in cases where the accused is acquitted in so far as their civil interests are at issue.

As Article 6 is applicable, the Commission must examine the applicants' complaint that their case was not heard by an impartial tribunal, since there were no Melanesians on the jury.

However, the Commission cannot state its opinion as to whether the facts alleged by the applicants disclose the appearance of a violation of this provision because, under Article 26 of the Convention, the Commission may only deal with a complaint "after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

With regard to the complaint relating to the composition of the jury, the Commission notes that there exists in French law an exceptional procedure, the "requête en renvoi pour cause de suspicion légitime" (application for a new trial on the ground of bias), designed to enable the Criminal Division of the Court of Cassation, if it considers the grounds pleaded for suspicion of a court's bias to be well-founded, to remove the case from that court's jurisdiction and send it for trial before a different court. Among those permitted to lodge an application of this type are parties claiming damages (Article 662 of the Code of Criminal Procedure) Consequently, the applicants could have lodged such an application in this case

The Commission considers, in accordance with its case-law (cf. No. 788/60, *Austria v. Italy*, Dec. 11.1.61, Collection 7 pp. 62-64 ; cf. also Comm. Report

30 3 63, paras 74-75, pp 54-55), that in this case the applicants had that possibility, since the provisions of Article 6 para 1 of the Convention have public policy status in French law (cf Baroum Cherif case Cass Crim 5 12 78, D 1979, I, 50, note Kehrig) Moreover, the Court of Cassation holds that the interpretation of the Convention given by the Convention institutions forms part of the Convention itself Consequently, the applicants had an effective and sufficient remedy whereby they could obtain redress in respect of the complaints they now raise, for the first time, before the Commission

This is also true of the complaint relating to Article 14 of the Convention, in so far as the applicants had the possibility of raising it before the French courts in the form of an application for a new trial on the ground of bias

As they did not use such a remedy in connection with the complaints under consideration, the applicants cannot be held to have exhausted all domestic remedies within the meaning of Article 26 of the Convention

Lastly, with regard to the complaints relating to the alleged procedural defects prior to the decision of the Indictments Division to commit the accused for trial, the Commission notes that the applicants could have lodged a plea of nullity enabling them to contest the way the investigation had been conducted at any time before the committal decision was pronounced, but failed to do so It follows that, in connection with this complaint also, the applicants have not satisfied the requirement that they exhaust domestic remedies, within the meaning of Article 26 of the Convention

Consequently, this part of the application must be declared inadmissible for non exhaustion of domestic remedies, pursuant to Article 27 para 3 of the Convention

2 The applicants also consider that by not deciding their claim for damages the Assize Court failed to follow established precedent to the effect that damages may be awarded in respect of a fault other than the alleged offence and disregarded the provisions of domestic law, which require the court to decide civil claims after handing down judgment in the criminal case

They allege a breach of the provisions of Article 6 para 1 of the Convention in that their case relating to their civil claims was not heard

In the first place, the Commission notes that there has been no judgment on the applicants' civil claims It further notes that according to French case-law,

even in the case of an acquittal on the ground of self defence, the court must give reasons for its decision to dismiss the claims of parties claiming damages (cf Cass Crim 31 May 1972 Bull Crim No 184 5 October 1976 Bull Crim No 276)

Self defence, under the clearly established case-law concerning acquittal on that ground, admittedly rules out any question of fault and obviates an action for damages on the part of the person who has made such self-defence necessary through his aggression (see the above mentioned judgments of the Criminal Division of the Court of Cassation)

However, the Commission notes that in this case, since the Assize Court had failed to give a decision on their civil claims, the applicants could have appealed to the Court of Cassation, but neglected to do so Under Article 591 of the Code of Criminal Procedure they could have entered a plea in cassation on the ground that by failing to give a decision on a claim by one of the parties the court had broken the law relying if necessary on the provisions of Article 6 para 1 of the Convention, which have public policy status in French law (cf Baroum Cherif case Cass Crim 5 12 78, D 1979, I, 50, note Kehrig) Consequently, the Commission considers that the applicants have not satisfied the requirement that they exhaust domestic remedies within the meaning of Article 26 of the Convention This complaint must therefore be rejected, pursuant to Article 27 para 3 of the Convention