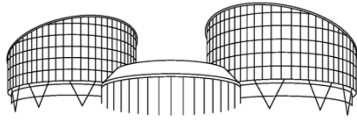

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 186 (2022)
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Article 6 § 1 right of access to a court violated by overly formalistic Court of Cassation decision that an appeal not filed electronically was barred notwithstanding practical hurdles faced by applicant

In today's **Chamber** judgment[1] in the case of Xavier Lucas v. France (application no. 15567/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (access to a court) of the European Convention on Human Rights.

The case concerned a requirement to issue proceedings in the Court of Appeal electronically using the *e-barreau* platform. The Court of Appeal had held that the applicant's paper application to set aside an arbitral award could be entertained on the ground that the online form did not allow users to enter that type of application or the capacity in which the parties were named. However, the Court of Cassation took the opposite view, holding that the application should have been filed electronically.

Consistent with the applicant's submission that it had been impossible in fact to file the application on the *e-barreau* platform, the Court found that in order to file it electronically on *e-barreau* the applicant's lawyer would have had to fill out the form using inaccurate legal terms. It further noted that the Government had not shown that specific information about how to lodge such an application had been made available to users.

The Court held that by giving precedence to the rule that proceedings in the Court of Appeal were to be issued electronically, while disregarding the practical hurdles faced by the applicant in doing so, the Court of Cassation had taken a formalistic approach that was not needed to ensure legal certainty or the proper administration of justice and which therefore had to be regarded as excessive.

The Court concluded that a disproportionate burden had been placed on the applicant, upsetting the proper balance between, on the one hand, the legitimate concern of ensuring adherence to the formalities for the issuance of court proceedings and, on the other, the right of access to a court.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Xavier Lucas, is a French national who was born in 1967 and lives in Tournai.

At the relevant time, Mr Lucas and Financière Vauban, a company, were members of another company, Édifices de France. The members of Édifices de France had a financial dispute which they submitted to arbitration.

By an award of 15 November 2013 the arbitrator held Mr Lucas and Financière Vauban jointly and severally liable to repay certain sums.

Mr Lucas applied to the Douai Court of Appeal to have the arbitral award set aside. His lawyer made the application on paper and sent it to the court registry. The respondents objected that the application was barred from consideration on the merits because it had not been filed electronically.

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.

On 29 January 2015 the judge overseeing the preparation of the case held that the application should in principle have been transmitted electronically pursuant to Articles 1495 and 930-1, first paragraph, of the Code of Civil Procedure (CPC). However, the judge determined that the applicant had shown that he had been prevented from doing so by external circumstances (*cause étrangère*) within the meaning of Article 930-1, second paragraph, and ruled that the application could proceed to consideration on the merits. That decision was appealed against.

By a judgment of 17 March 2016 the Douai Court of Appeal affirmed that the applicant's set-aside application could be entertained on the merits. It noted that neither the Order of 30 March 2011 (implementing Article 930-1 CPC) nor the agreement of 10 January 2013 between it and the ten bar associations in its jurisdiction had provided that applications to set aside arbitral awards should fall within the scope of the electronic filing requirement. The Court of Appeal observed that the electronic form available online did not allow users to enter the accurate legal specification of the type of application in question or of the capacity in which the parties were named. It therefore concluded that the applicant could not be faulted for not filing his application electronically.

That judgment was the subject of an appeal to the Court of Cassation, which quashed it on 26 September 2019 without remitting the case for further proceedings.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair hearing) and 13 (right to an effective remedy) of the Convention, the applicant complained that the dismissal of his set-aside application without consideration on the merits for failure to file it electronically had violated his right of access to a court.

The application was lodged with the European Court of Human Rights on 17 March 2020.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court of Cassation held that the application should have been filed electronically pursuant to Articles 1495 and 930-1 CPC and quashed the judgment of 17 March 2016 without remitting the case for further proceedings. The European Court held that in so doing the Court of Cassation had deprived the applicant of the opportunity to have the legality of the arbitral award reviewed by the judge hearing the set-aside application.

As to the foreseeability of the restriction on access to a court, the Court noted that Article 1495 CPC was a provision which laid down that applications to set aside arbitral awards must conform to the requirements of Article 930-1 CPC. In its view, those provisions taken together imposed an express requirement to file case documents electronically. It saw no reasonable basis on which to depart from the Court of Cassation's holding that the implementing order and local procedure agreement

could not exclude the operation of the CPC by restricting its scope. The Court therefore held that the provisions had been foreseeable.

As to whether the restriction was necessary, the Court noted that the electronic filing requirement concerned proceedings in which representation was compulsory. It operated in practice through a digital platform common to the ordinary and commercial courts and to which only lawyers had access. The Court held that it was not unrealistic or unreasonable to require legal professionals, for whom computers had long been a tool of the trade, to use such a platform.

However, the Court found that in order to file the set-aside application electronically via *e-barreau* the applicant's lawyer would have had to fill out a form using inaccurate legal terms. The Court further observed that the Government had not shown that specific information about how to lodge such an application had been made available to users. Furthermore it was the applicant's uncontroverted submission that there were no decided cases, in the courts of appeal or otherwise, on which to rely at the time.

The Court held that the applicant's counsel had not been particularly remiss in making the application on paper where the second paragraph of Article 930-1 CPC seemed to allow this by way of exception. Accordingly it did not appear to the Court that the applicant could be held accountable for the procedural mistake in issue.

While it was not for the Court to cast doubt on the legal reasoning that had led the Court of Cassation to reverse the Douai Court of Appeal, it nonetheless reiterated that, in applying rules of procedure, the courts must avoid taking an overly formalistic approach that would undermine the fairness of the proceedings.

In this case the Court held that the specific consequences of the Court of Cassation's reasoning appeared particularly harsh. By giving precedence to the rule that proceedings in the Court of Appeal were to be issued electronically, while disregarding the practical hurdles faced by the applicant in doing so, the Court of Cassation had taken a formalistic approach that was not needed to ensure legal certainty or the proper administration of justice and which therefore had to be regarded as excessive.

The Court concluded that a disproportionate burden had been placed on the applicant, upsetting the proper balance between, on the one hand, the legitimate concern of ensuring adherence to the formalities for the issuance of court proceedings and, on the other, the right of access to a court.

There had therefore been a violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,170 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.