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

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Criminal conviction for fraud after administrative sanction imposed by National Medical Council's disciplinary board

In its decision in the case of **Faller v. France** (application no. 59389/16) and **Steinmetz v. France** (no. 59389/16) the European Court of Human Rights has unanimously declared the applications inadmissible.

The case concerned two doctors who complained that they had been convicted by a criminal court for fraud on account of acts for which they had already been punished.

The applicants had first been found liable by the National Medical Council's disciplinary board (social security division), in 2009, for professional misconduct in their treatment of patients under social security schemes. They had been banned from treating patients under this regime for four months, two of which were suspended, pursuant to Articles L. 145-1 and L. 145-2 of the Social Security Code. They had subsequently been convicted and sentenced in 2014 by the Court of Appeal of Colmar.

The Court found that the 2009 decision against the applicants pursuant to the Social Security Code had not been a "conviction" for an "offence" within the meaning of Article 4 of Protocol No. 7 (right not to be tried or punished twice) to the European Convention on Human Rights and that this Article was therefore inapplicable.

The decision is final.

Principal facts

The applicants, Bernard Faller, who was born in 1953 and lives in Colmar (France), and Michel Steinmetz, who was born in 1950 and lives in La Couarde Sur Mer (France), both French nationals, are doctors specialising in functional rehabilitation. They are partners in a practice in Colmar and operate under the social security system with the right to set their own fees.

Upon analysing requests for reimbursements and the findings of investigations carried out in the applicants' surgery between February and July 2007, the Primary Health Insurance Office (CPAM) of Colmar found that the applicants had billed undue fees. Moreover, in April 2008, an inspection of the surgery by the Nuclear Safety Authority revealed that the X-rays were being carried out on the premises by staff who did not hold official qualifications.

The chief medical officer for Colmar filed a complaint against the applicants with the Regional Medical Council for Alsace.

In two decisions handed down on 28 November 2008, the social-security division of the Alsace Regional Medical Council banned the applicants from treating patients under social security schemes for 24 months, 12 of which were suspended.

The applicants appealed to the social-security division of the National Medical Council. In two decisions handed down on 15 October 2009, the decisions of 28 November 2008 were partly quashed and the duration of the ban was set at four months, two of which were suspended. The chief medical officer for Colmar appealed on points of law before the *Conseil d'État*, which on 9 September 2019 declared the appeal inadmissible.

In the meantime, on 17 April 2008, the CPAM of Colmar filed a complaint against the applicants with the public prosecutor of Colmar. The CPAMs of Sélestat and Mulhouse filed similar complaints on

26 September 2008 and 19 January 2009. A judicial investigation was opened on 25 March 2009 on a charge of fraud.

On 21 March 2014 the Criminal Court of Colmar acquitted the applicants on the charge of double invoicing. However, it found them guilty of fraud, illegal practice of the profession of medical X-ray operator and deception as to the nature, quality or regime of a service provided. It sentenced each of them to a suspended term of four months' imprisonment and a fine of 25,000 euros (EUR).

On 28 May 2015 the Colmar Court of Appeal upheld the judgment of 21 March 2014 in so far as it found the applicants guilty of illegal X-ray operation and of deception as to the nature, quality or origin of a service, while setting aside the remainder. It also found them guilty of having, in Colmar, deceived the health insurance office, which constituted the offence of fraud. The Court of Appeal sentenced each of the applicants to a suspended term of 18 months' imprisonment, a fine of EUR 25,000 and a one-year disqualification from medical practice. It also ordered them jointly and severally to pay the civil parties (the CPAMs of Haut-Rhin and Bas-Rhin and the Agricultural Social Insurance Fund for Alsace) a total of EUR 674,184.75 in damages and EUR 8,000 in costs.

The claimants appealed on points of law to the Court of Cassation, which dismissed the appeal in a judgment of 3 May 2016.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 7 October 2016.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice) to the Convention, the applicants complained that they had been convicted before a criminal court of fraud on the basis of acts for which they had already been punished.

The decision was given by a Committee of three judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Latif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Anne-Marie Dougin, *Deputy Section Registrar.*

Decision of the Court

Article 4 of Protocol No. 7 (right not to be punished twice)

The applicants had first been found liable by the National Medical Council's disciplinary board (social security division), in 2009, for professional misconduct in their treatment of patients under social security schemes. They had been banned from treating patients under this regime for four months, two of which were suspended, pursuant to Articles L. 145-1 and L. 145-2 of the Social Security Code. They had subsequently been sentenced by the Court of Appeal of Colmar to a suspended term of 18 months' imprisonment, a fine of EUR 25,000 and a disqualification from practising medicine for one year, also being ordered jointly and severally to pay the civil parties a total of EUR 674,184.75 in damages and EUR 8,000 in costs. This conviction was unquestionably to be characterised as "criminal" within the meaning of the Convention.

The question before the Court was thus whether the applicants, on whom a sanction had first been imposed for misconduct, in connection with the treatment of patients under social security schemes, had subsequently been convicted for a "criminal offence" within the meaning of Article 4 of Protocol No. 7 to the Convention.

In the *A and B v. Norway* judgment, the Court had explained that, in order to determine whether proceedings were criminal for the purposes of Article 4 of Protocol No. 7, the three "Engel" criteria relating to the notion of "criminal charge" within the meaning of Article 6 § 1 of the Convention had to be applied: the legal classification of the offence in domestic law, the nature of the offence itself and the nature and severity of the penalty incurred. The Court reiterated its long-standing view that disciplinary proceedings did not as such fall within the "criminal" sphere.

Applying the "Engel" criteria, the Court found, firstly, that the applicants had appeared before the disciplinary bodies of the Medical Council for professional misconduct in connection with the treatment of patients under social security schemes, within the meaning of Article 145-1 of the Social Security Code, an offence which, under French law, did not fall within the scope of the criminal law. Secondly, the very nature of the offence under Article 145-1 of the said Code was not criminal. Thirdly, the sanctions that could be imposed under Article 145-2 of the Code were not criminal, since they consisted of a warning, a reprimand, a temporary or permanent disqualification from practice and, in the case of improper billing, reimbursement or repayment of sums unduly received. Finally, the Court noted that while the disqualification could, admittedly, be regarded as severe since it affected a doctor's ability to practise his or her profession, Article 145-2 of the Code did not provide for fines or for custodial measures. The Court thus concluded that the decision taken against the applicants under Articles L. 145-1 and L. 145-2 of the Social Security Code had not been a "conviction" for an "offence" within the meaning of Article 4 of Protocol No. 7.

The applications thus had to be rejected.

The decision is available only in French.

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