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

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Jurisprudential creation of new time-limit for applying to administrative courts did not unduly interfere with right of access to a court, but immediate application to ongoing proceedings was in breach of Article 6 § 1

In today's **Chamber** judgment[1] in the case of Legros and Others v. France (applications nos. 72173/17 and 17 others) the European Court of Human Rights held, unanimously, that there had been:

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

a violation of Article 1 of Protocol No. 1 (protection of property) in the case of Mr Legros (application no. 72173/17).

The Court ruled on complaints from 18 individuals concerning the immediate application to ongoing proceedings of a new time-limit for lodging claims in the administrative courts, as enshrined by the *Conseil d'État* in its *Czabaj* decision of 13 July 2016 (Judicial Assembly, no. 387763). In that decision the *Conseil d'État* had laid down the principle that, where an administrative decision failed to notify the procedures and time-limits for an appeal against it, it was only possible to challenge that decision, in the absence of specific statutory or regulatory time-limits, within a "reasonable time", which would not exceed, as a general rule, one year from the time that the person concerned was notified or became aware of the decision, unless special circumstances were demonstrated by the applicant.

First, the Court took the view that the creation of a new admissibility requirement through judicial interpretation, on grounds that justified the departure from the case-law that had resulted in the creation of a "reasonable time" within which any application had to be lodged with the administrative courts, did not unduly interfere with the right of access to a court as secured by Article 6 § 1 of the Convention, even though it was liable to affect the very essence of the right of appeal.

Secondly, the Court considered that the immediate application to ongoing proceedings of this new rule on the time-limit for applying to the administrative courts, which, for the applicants, had been both unforeseeable in principle and unassailable in practice, had restricted their access to a court to such an extent that the very essence of that right had been impaired. There had therefore been a violation of Article 6 § 1 of the Convention.

As to application no. 72173/17, as a result of the applicant's having been the victim of a violation of Article 6 § 1 of the Convention, the Court found that the restriction in question had not struck the fair balance required by Article 1 of Protocol No. 1 and that there had therefore been a violation of that Article.

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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Principal facts

The applicants are 16 French nationals and two Algerian nationals. On 13 July 2016 the *Conseil d'État*'s decision in the *Czabaj* case (Judicial Assembly, no. 387763) introduced a new time-limit for lodging applications with the French administrative courts, which was immediately applied to the applicants' ongoing proceedings before those courts.

Three of the 18 applicants saw their applications declared inadmissible at first instance on the basis of the *Czabaj* decision. Mr Meynier had asked the Rennes Administrative Court to set aside an administrative decision docking points from his driver's licence. That application had been lodged on 24 July 2014, four years after the applicant had been informed of the decision. Mr Trani had applied to the Bastia Administrative Court for review of administrative orders that had resulted in the expropriation of plots of land he owned. That claim had been lodged on 22 June 2013, 26 years after notification of the order complained of. Lastly, Mr Maillard had requested that the Lille Administrative Court review decisions concerning his appointment to the grade of Principal Tax Inspector for the *département,* and the reclassification of his post to that of Divisional Inspector of Public Finances. The application had been lodged on 18 June 2014, nearly three years after the applicant had been informed of the decisions. The administrative courts of Rennes, Bastia and Lille had dismissed the applicants' respective applications on the grounds that they had not been lodged within the reasonable time allotted for the purpose of applying to those courts. The decisions had been upheld on appeal by the Administrative Court of Appeal and by the *Conseil d'État*.

Of the 15 remaining applicants, three had their applications declared inadmissible on appeal, on the basis of the *Czabaj* decision. After a period of 14 years, Mr Legros had applied for judicial review of the decision by which a municipality had exercised its right of pre-emption in respect of property he owned. The Cergy-Pontoise Administrative Court, to which he had applied on 11 December 2013, granted his request. However, that judgment was set aside by the Versailles Administrative Court of Appeal on the grounds that the application had not been lodged at first instance within the reasonable time allotted for that purpose. After a period of almost two years, Ms Baclet had applied for judicial review of the decision by which the president of the council for the Alpes-Maritimes *département* had terminated her employment contract. The Nice Administrative Court, to which she had applied on 24 June 2016, had dismissed her application on the merits, without ruling on its admissibility. Subsequently, the Marseilles Administrative Court of Appeal had rejected the applicant's appeal on the grounds that the application lodged with the Nice Administrative Court had exceeded by some ten months the reasonable time allotted for that purpose. Lastly, after a period of three years, Ms Koulla had requested that the Lille Administrative Court review the decisions by which a municipality had refused to acknowledge that her illness was attributable to her working conditions. Although that court, to which she had applied on 4 November 2013, had found her application admissible, the Douai Administrative Court of Appeal overturned the judgment on the grounds that it had not been lodged within a reasonable time. All three appeal decisions were subsequently upheld by the *Conseil d'État*.

Lastly, the 12 remaining applicants' appeals on points of law were declared inadmissible on the basis of the *Czabaj* decision. These applicants had all been dismissed by the liquidators of the company of which they were employees. The labour inspector had authorised their dismissals and that decision had been upheld by the Minister for Social Affairs, Employment and Solidarity. Six years after notification of those two decisions, the applicants had asked the Lille Administrative Court to set them aside, in applications lodged on 24 April 2012 and 6 December 2012. Those requests had been granted by that court and, subsequently, by the Douai Administrative Court of Appeal. However, on an appeal on points of law, the *Conseil d'État* had considered that the applications lodged by the applicants with the Lille Administrative Court had exceeded the reasonable time allotted for that purpose. The *Conseil d'État* had concluded that the requests were inadmissible for having been made out of time.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) of the Convention, the applicants complained of the immediate application of the new "reasonable time" requirement for the lodging of applications with the administrative courts, in accordance with the *Conseil d'État*'s *Czabaj* decision of 13 July 2016, while the proceedings in their cases were ongoing. Relying on Article 1 of Protocol No. 1 (protection of property), Mr Legros (application no. 72173/17) complained of unjustified interference with his right to peaceful enjoyment of his possessions, in particular owing to the domestic courts' rejection of his application as out of time.

The applications were lodged with the European Court of Human Rights on 29 September 2017, 28 November 2017, 6 and 9 August 2018, 5 October 2018, 23 June 2020, 24 June 2020 and 20 July 2020.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

Article 6 § 1

The principle of imposing, through judicial interpretation, a time-limit on the right to apply to the courts

The Court noted that, in the *Czabaj* decision, the *Conseil d'État* had, by judicial interpretation, created a procedural time-limit for applying to the administrative courts that might, in certain cases, entail the inadmissibility of an application challenging an individual administrative decision, thereby preventing the courts from examining the case on the merits. It observed that the *Conseil d'État* had refrained from characterising the nature of the reasonable limitation period allotted for such applications as enshrined in that decision.

The Court considered that, since the national authorities had deliberately refrained from doing so, it was not its task to clarify the nature of the relevant limitation period in the light of domestic law. It noted that, according to the terms of the *Czabaj* decision, "the sole purpose" of the rule thus laid down was "to impose a time-limit on the consequences of the penalty for failure to mention the procedures and time-limits for lodging applications". It observed that the establishment of that new time-limit could be understood as having sought not only to circumscribe the scope of the penalty for the administration's failure to stipulate the procedures and time-limits for applying to the courts – which constituted a safeguard for the addressee of an administrative decision – but also to sanction potential abuses of the right of appeal on the part of applicants. The Court considered that this new admissibility rule not only concerned the manner in which the right of appeal was exercised, but was liable to affect the very essence of that right.

Having clarified the above points, the Court first reiterated that it considered that States enjoyed a certain margin of appreciation as to the development of rules governing access to a court. It pointed out that a change in the case-law did not in itself constitute a breach of the rights secured by

Article 6 of the Convention and that it was not its task to give an opinion as to the appropriateness of such a change.

Secondly, the Court noted that the rule derived from the *Czabaj* decision had explicitly sought to ensure the proper administration of justice and respect for the principle of legal certainty. The Court acknowledged that those were legitimate aims.

Thirdly, as to the reasonable relationship of proportionality between the means employed and the aims pursued, the Court noted that the "reasonable time" enshrined in the *Czabaj* decision was normally set at one year. It observed that, of the rules and practices in force in three other European States and those implemented in the field of European Union law, the one-year limitation period was the longest of those applicable in cases where information on the relevant procedures and time-limits had been either lacking or deficient. Accordingly, the Court took the view that the creation of a reasonable limitation period for the lodging of applications with the administrative courts, which was set, as a general rule, at one year from the time when the applicant had become aware of the relevant decision, afforded applicants a period that could not, in principle, be regarded as insufficient to enable them to apprise themselves of the procedures and time-limits for the purpose of challenging that decision.

Fourthly, the Court noted that this reasonable limitation period was only triggered in the event of the inapplicability of the regulatory two-month time-limit under ordinary law – namely, in the specific situation where the author of the decision complained of had failed to inform its addressee of the procedures and time-limits for appeals – and that the period ran from the time when the applicant became aware of that decision, the determination of which was subject to endorsement by the courts.

Fifthly and lastly, the Court emphasised that the *Czabaj* decision provided that the reasonable limitation period could be extended depending on the particular circumstances of each case.

Accordingly, the Court took the view that the creation, through judicial interpretation, of a new admissibility requirement, on grounds that were sufficient to justify a departure from precedent, did not unduly interfere with the right of access to a court, as secured by Article 6 § 1 of the Convention, even though it was liable to affect the very essence of the right of appeal.

The application to ongoing proceedings of a new time-limit for applying to the administrative courts

The Court next addressed, in the light of the particular circumstances, the question whether the application of the new approach to the ongoing proceedings in question had breached the principle of legal certainty to such an extent that it had interfered with the very essence of the applicants' right of appeal.

First, it noted that, at the time when the applicants had lodged their respective applications with the administrative courts of first instance, the rules concerning the limitation period and its applicability were governed by the provisions of Articles R. 421-1, R. 421-3 and R. 421-5 of the Administrative Courts Code, section 19 of the Law of 12 April 2000 and Articles L. 112-3, L. 112-6 and R. 112-5 of the Code on the Relationship between the Public and the Administration. Moreover, there had been well-established administrative case-law which clarified the applicability criteria for the relevant time-limit and allowed for challenges to individual administrative decisions to be brought indefinitely.

The Court observed that the new ground of inadmissibility resulting from the departure from precedent had been established after the date on which each applicant's first-instance application had been lodged. It followed that the immediate application to the ongoing proceedings of the new rule as to the time-limit for applying to the administrative courts meant that the ground of inadmissibility had been applied retrospectively to all the applicants.

The Court found that no procedural error was attributable to the applicants as regards the relevant time-limit at the point when their applications had been lodged at first instance. It further noted that, in a number of the cases under consideration, it was solely on account of the time the administrative courts had taken to rule on the case that the *Czabaj* decision had become applicable to the ongoing proceedings.

The Court observed that the sole ground on which the applicants' applications had been declared inadmissible had been their failure to comply with the new reasonable limitation period derived from judicial interpretation.

Except in the case of Ms Baclet, the applicants' applications to the administrative courts had never been decided on the merits, or had been decided in their favour before being declared inadmissible by an Administrative Court of Appeal or by the *Conseil d'État*.

Secondly, the Court noted that, according to the applicants, the departure from precedent had been, from their point of view, wholly unforeseeable given the lack of any indication of its impending implementation. The Court considered that, at the time that they had applied to the administrative courts, the applicants could not reasonably have foreseen the content of the *Czabaj* decision or its effects on the admissibility of their respective applications.

Thirdly, the Court observed that the demonstration of special circumstances did not lead the courts to disregard the requirement that applications be lodged within a reasonable time, but merely extended the relevant time-limit. The Court found, however, that the courts had not considered that such circumstances had been demonstrated in any of the cases in question. The Court took the view that, in the absence of established case-law in that regard at the relevant time, it had been difficult for the applicants to foresee the nature of the special circumstances on the basis of which the period might have been extended.

Consequently, the Court considered that the applicants, in relation to their respective cases, had lacked a reasonable prospect of having the one-year reasonable limitation period extended. They could therefore not be regarded as having effectively been afforded, in the circumstances of their cases, the opportunity to challenge the ground of inadmissibility derived from the new case-law which had been applied to them retrospectively.

Fourthly, the Court noted that the Government had provided no other explanation for the failure to postpone the application of the new time-limit other than rehearsing the very reasons given in the *Czabaj* decision, whereas, subsequent to that decision, the *Conseil d'État* had in particular decided on a similar postponement in implementing a rule on extinctive time-limits.

The Court concluded that it could not have been foreseen that the applicants' applications to the administrative courts, which had been lodged prior to the *Czabaj* decision's departure from precedent, would be rejected as out of time by the retrospective implementation of the new time-limit resulting from that decision. In addition, it pointed out that any observations they may have filed had not been such as to extend the "reasonable time" which that new decision had set, as a general rule, at one year. Consequently, the Court considered that the application to the ongoing proceedings of the new rule on the time-limit for applying to the administrative courts, which, for the applicants, had been both unforeseeable in principle and unassailable in practice, had restricted their access to a court to such an extent that the very essence of that right had been impaired.

The Court therefore considered that there had been a violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1 (application no. 72173/17)

The Court noted that, since his application had been declared inadmissible on appeal as a result of the retrospective implementation of the reasonable limitation period for applications to the administrative courts, the applicant in question had been unable to assert his rights as to the merits

of his case before the Administrative Court of Appeal, where he had been the respondent. His appeal on points of law had ultimately been rejected by the *Conseil d'État*.

Although the procedure for admitting appeals on points of law was not in itself open to criticism, the applicant – who had had serious arguments to make before the domestic courts on the merits of his case – had ultimately been deprived of the opportunity to obtain a court ruling on the merits of the dispute as to whether his right to peaceful enjoyment of his possessions had been infringed, since the Administrative Court of Appeal had declared his initial application inadmissible.

The Court reiterated that the applicable proceedings must afford the individual a reasonable opportunity of putting his or her case to the relevant authorities for the purpose of effectively challenging the measures interfering with his or her property rights. Accordingly, the Court considered that, as a result of the applicant's having been the victim of a violation of Article 6 § 1 of the Convention, the restriction in question had not struck the fair balance required by Article 1 of Protocol No. 1, to his detriment, and that there had therefore been a violation of that Article.

Just satisfaction (Article 41)

The Court held that France was to pay Ms Koulla, Ms Baclet, Mr Meynier and Mr Maillard 3,000 euros (EUR) each in respect of non-pecuniary damage, Mr Maillard EUR 9,240 in respect of costs and expenses, and that, as to the sum to be awarded to Mr Legros and to Ms Koulla in respect of pecuniary damage, the question of the application of Article 41 was not ready for decision and, accordingly, should be reserved in whole.

The judgment is available only in French.

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