



A civil claim for damages by Nicolas Sarkozy, then serving President of the Republic, did not breach the applicant's right to a fair trial

In today's **Chamber** judgment¹ in the case of [Thiam v. France](#) (application no. 80018/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned criminal proceedings brought against the applicant, in the course of which the former President of the French Republic, Nicolas Sarkozy, applied to join the proceedings as a civil party.

The Court found that Mr Sarkozy's intervention as a civil party in the criminal proceedings against Mr Thiam had not created an imbalance in the parties' rights and in the conduct of the proceedings.

The Court also held that the participation in the proceedings of a public figure who played an institutional role in the career development of judges was capable of casting a legitimate doubt on the latter's independence and impartiality. However, after examining the manner in which judges were appointed, their statutory condition and the particular circumstances of the case, it saw no reason to conclude that the judges called upon to decide in the applicant's case were not independent for the purposes of Article 6 § 1 of the Convention.

Principal facts

The applicant, Abdoul Aziz Thiam, is a Mauritanian national who was born in 1978.

In September 2008 the Société Générale bank lodged a criminal complaint against a person or persons unknown for forgery, uttering forged documents, and fraud, following complaints by Mr Sarkozy, the then President of the Republic, about banking operations conducted on his account. In October 2008 the public prosecutor began a judicial investigation in respect of fraud within an organised gang. During the investigation Mr Sarkozy applied to join the proceedings as a civil party.

In June 2009 the investigating judge committed Mr Thiam and six other persons for trial before the criminal court. They were accused of having obtained telephone accounts, mobile telephones and the payment of subscriptions using banking information pertaining to a third party.

Before the trial court, the applicant claimed that Mr Sarkozy's application to join the proceedings as a civil party was inadmissible. In July 2009 the court found the applicant guilty of the charges against him and sentenced him to one year's imprisonment. It held that Mr Sarkozy's application to join the proceedings as a civil party was admissible on the basis of the right of access to a court, but deferred its decision on his claim for damages. In January 2010 the Versailles Court of Appeal varied the judgment and sentenced the applicant to eight months' imprisonment. In respect of the civil action, it ordered the applicant to pay compensation to Mr Sarkozy.

The applicant appealed on points of law and asked the Court of Cassation, in the meantime, to refer a question relating to the compatibility of Article 2 of the Code of Criminal Procedure with respect to

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.

the separation of powers and the rights of the defence, and to the right to a fair trial, to the Constitutional Council for a preliminary ruling on constitutionality (QPC). In November 2010 the Court of Cassation decided not to refer the QPC on the grounds that the question was not new and had no serious merit, in that, in reality, it raised a question which fell within the jurisdiction of the ordinary courts.

In June 2012 the plenary Court of Cassation found that the President of the Republic, in his status as victim, was entitled to exercise the rights of a civil party during his term of office.

It considered that the defendant had not shown that he had suffered from a breach by the French institutions of his right to a fair trial, since the mere fact that judges were appointed by the President did not render them subordinate to him. Each party had also been able to present its arguments and discuss those of the opposing party throughout the preliminary investigation and the oral proceedings before the court, and then before the court of appeal. The Court of Cassation quashed in part the appeal court judgment with regard to the failure to provide reasons for the unsuspended prison term imposed on the applicant, and remitted the case.

In January 2014 the Versailles Court of Appeal altered the sentence imposed on the applicant and sentenced him to ten months' imprisonment, suspended.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial / right to have witnesses examined) the applicant alleged that the fact that the President of the Republic had joined the proceedings as a civil party had breached the principle of equality of arms and had infringed the right to an independent and impartial court.

The application was lodged with the European Court of Human Rights on 13 December 2012.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3 (d)

With regard to the allegation that the principle of equality of arms had been breached, Mr Thiam complained, firstly, of the imbalance caused by the fact that the President of the Republic was allegedly protected by Article 67 of the Constitution from legal proceedings to punish any abuse of his involvement as a civil party in the criminal proceedings. The Court noted in the present case that the conditions for bringing such proceedings had not been met, since no decision discontinuing the proceedings or discharging the applicant had been issued and Mr Sarkozy had not instituted the criminal proceedings. It had to be concluded that the President's intervention in the proceedings had not deprived Mr Thiam of equal treatment in respect of the conduct of those proceedings.

Mr Thiam then alleged that, in order for the trial to be fair, there ought to have been a confrontation with the President of the Republic before the investigating judge or during the oral proceedings before the domestic court. The Court noted that, under the Constitution, the President of the Republic could not be required to appear as a witness. In consequence, his absence from the trial did not contravene Article 6 of the Convention, since it was based on serious legal grounds and on objective considerations. Furthermore, the national courts had not referred to any evidence adduced by the civil party that required them to test its credibility and reliability in a hearing. In the present case, the nature of the case and the evidence available did not therefore require that Mr Sarkozy be examined.

Mr Thiam also alleged a breach of the principle of equality of arms on account of the support given by the public prosecutor's office to the civil party. The Court noted that there was no indication in the file that Mr Sarkozy's involvement had encouraged the public prosecutor's office to act in a way that would unduly influence the criminal court or prevent the applicant from bringing an effective defence. Nor did it appear that Mr Thiam had been denied adversarial proceedings.

The Court concluded that the intervention of Mr Sarkozy as a civil party in the proceedings had not had the effect of creating an imbalance in the parties' rights and the conduct of the proceedings. It therefore held that there had been no violation of Article 6 § 1 with regard to the principle of equality of arms.

Concerning the allegation of a lack of impartiality on the part of the court which had tried the applicant, the Court pointed out that Mr Thiam's guilt had been established by evidence that was separate from Mr Sarkozy's civil action. Furthermore, the applicant had not alleged that the domestic courts had acted on instructions from the President of the Republic. Consequently, the Court considered that there was nothing in the conduct of the applicant's trial to indicate that it had not been impartial.

Turning to an assessment of whether the court that had tried the applicant had been independent, the Court noted, firstly, that the duration of judges' terms of office and the existence of guarantees against outside pressures were such as to guarantee their functional independence and protect them from external pressure, especially with regard to the executive. Under French law, judges' tenure was constitutionally guaranteed and accompanied by detailed rules on the promotion and discipline of judges. Decisions affecting the appointment of members of the judiciary and their career progress, transfer and promotions were taken following the intervention of the National Legal Service Commission (CSM) and after adversarial proceedings. In disciplinary matters, the CSM ruled as a disciplinary board and imposed any penalty directly, so its decisions in this area had a judicial character.

With regard to the procedure for appointing judges, the Court emphasised that, although it was exercised by the President of the Republic, the power to make appointments implied "approval" by the CSM, meaning that the executive could not appoint a judge if it went against the CSM's opinion. In addition, for the appointment of judges on the bench of the Court of Cassation, and also of presidents of appeal courts and of *tribunaux de grande instance*, the relevant CSM body put forward candidates' names and examined their candidatures alone, before selecting the individual whom it considered most suitable. Furthermore, an application for judicial review could be lodged with the *Conseil d'Etat* against a decree appointing a judge. It thus followed from the CSM's powers that the fact that the President of the Republic signed the decrees appointing new judges or ordering their promotion or appointment to a new post did not, as such, undermine the independence of the persons concerned.

However, the Court noted that Mr Sarkozy was still president of the CSM when the judges of the criminal court and the appeal court had decided on the applicant's case. The President of the Republic's intervention in the proceedings could thus have led Mr Thiam to query his influence on

the professional future of the judges whom he had helped to appoint and who were required to rule on a claim relating to his private interests.

The Court considered, however, that this fact was not sufficient to establish a lack of independence. Mr Thiam had not submitted any concrete evidence capable of showing that he could objectively have feared that the judges from the *tribunal de grande instance* and the appeal court were under Mr Sarkozy's influence.

Equally, the case submitted to the judges had had no connection with the President of the Republic's political functions and he had neither instituted the proceedings nor provided evidence intended to establish the applicant's guilt. Furthermore, the Court of Cassation had delivered its judgment on a date when Mr Sarkozy no longer chaired the CSM. The revision of the French Constitution, resulting from the Law of 23 July 2008, had entered into force after the appeal court's judgment of January 2010, and it transferred the chairmanship of the CSM from the President of the Republic to the First President of the Court of Cassation.

In conclusion, the Court found no reason to conclude that the trial courts called upon to rule in the applicant's case were not independent within the meaning of Article 6 § 1 of the Convention.

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.