

APPLICATION N° 23997/94

Annie MECILI v/FRANCE

DECISION of 15 May 1995 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) The right of access to a court does not include a right to have criminal proceedings instituted against third persons and does not therefore guarantee the right to have an application to join proceedings as a civil party declared admissible*
- b) Even where compensation is not being sought, the filing of a complaint with an application to join the proceedings as a civil party falls within the scope of the notion of civil rights and obligations*
- c) In determining the fairness of criminal proceedings, the Commission must examine them as a whole*

Article 13 of the Convention:

- a) Inapplicable where the main complaint is outside the scope of the Convention*
- b) Only someone who has an arguable claim that there has been a violation of the Convention can claim the right to an effective remedy before a national authority*

Article 25 of the Convention: *Widow whose husband was murdered considered to be an indirect victim of an alleged breach of the Convention*

THE FACTS

The applicant, born in 1949, of French nationality, is an administrative assistant on a temporary contract. She was represented before the Commission by Ms. Claire Waquet, a member of the 'Conseil d'Etat' and Court of Cassation Bars.

The facts, as submitted by the applicant, may be summarised as follows:

1 On 7 April 1987 the applicant's husband, who had dual French and Algerian nationality, was murdered in the hallway of his block of flats in Paris.

On 10 April 1987 a judicial investigation was instituted against a person or persons unknown for murder and on 13 April 1987 the applicant applied to join the proceedings as a civil party.

On 19 May 1987 the police investigating the case were informed by an anonymous source that A, an Algerian citizen, had committed the murder on the orders of the Algerian military security.

On the instructions of the investigating judge at Paris tribunal de grande instance, the police stopped and questioned A and his girlfriend B on 10 June 1987 and took them into police custody. Having been released and then re-arrested and questioned in connection with other proceedings in which they were charged with membership of a terrorist organisation, A and B were deported to Algeria on 14 June 1987 without having been brought before the investigating judge.

The applicant learned of A's arrest and deportation at the end of September 1987 when a weekly, *Le Point*, published an article revealing these events.

On 4 October 1987 the crime squad sent the documents relating to A's arrest and questioning to the investigating judge. These documents revealed that the search carried out at A's home had yielded several pieces of evidence pointing towards a political killing in which A had apparently been directly involved.

In 1989 the Minister of the Interior sent the complete ministerial case-file on A and B to the investigating judge. The applicant was thus informed that emergency deportation proceedings had been brought against A and B on 11 June 1987 and that their deportation orders had been signed on 12 June 1987 on the grounds of convictions secured against them several years earlier.

2 The applicant considered that the ministerial decision to deport A and B had obstructed progress in the investigation into her husband's murder and on 21 December 1989 she filed a complaint against a person or persons unknown, together with an application to join the proceedings as a civil party, for criminal malfeasance in public office and misuse of public office resulting in interference with her liberty within the meaning of Articles 183 and 114 of the Criminal Code respectively.

In a judgment of 27 October 1992 the Indictments Chamber of Lyon Court of Appeal ruled that the application to join the criminal malfeasance proceedings as a civil party was inadmissible on the grounds that

' given the nature of a public prosecution, its use must be strictly confined to the specific cases provided for in the Code of Criminal Procedure,

Article 2 of the Code of Criminal Procedure provides that anyone who has personally suffered damage directly caused by an offence may institute civil proceedings for damages,

Annie Mecili who has moreover been joined as a civil party in the proceedings in Paris relating to her husband's murder and who may in those proceedings rely on her right under Article 6 of the Convention to a fair and public hearing within a reasonable time, and ask the investigating judge to order all necessary investigations both in France and abroad, cannot claim to have personally suffered damage directly caused by the alleged offences,

interference with the discovery of the truth cannot be construed as direct damage for the purposes of the statutory provision allowing victims to apply to join proceedings as a civil party

The Court of Cassation dismissed the applicant's appeal on 5 October 1993

3 On 20 November 1992 the investigating judge made an order discontinuing the murder proceedings. On appeal by the applicant the Indictments Chamber of Paris Court of Appeal set this order aside in a judgment of 31 March 1993 stating that the investigation should be continued and appointing an investigating judge to that end. This investigation is not yet complete.

COMPLAINTS

The applicant complains that the inadmissibility ruling in respect of her application to join the criminal malfeasance proceedings as a civil party violated the guarantees laid down in Article 6 of the Convention and obstructed progress in the murder investigation to which she is a party. She alleges that she was thus denied a fair and impartial hearing. She argues that as she had filed an application to join the proceedings as a civil party at the same time as filing her complaint regarding her husband's murder, she is necessarily a victim of the machinations which removed the suspected murderer from the courts' jurisdiction.

Invoking Article 13 of the Convention, the applicant argues that she has a twofold claim for lack of an effective remedy: firstly, the judgments complained of prevented her from obtaining a ruling on the removal, by ministerial decision, of her husband's suspected murderers from the courts' jurisdiction, secondly, they deprived her application to join the murder proceedings as a civil party of any practical effect.

THE LAW

1 The applicant complains of a violation of Article 6 of the Convention on the ground that she did not have a fair and impartial hearing as her application to join the criminal malfeasance proceedings as a civil party was held inadmissible in a decision which had the added effect of obstructing the discovery of the truth regarding her husband's death

Article 6 of the Convention provides, in so far as relevant

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

The Commission observes that the applicant, as a party to the domestic proceedings and as a wife affected by the death of her husband (No 9348/81, Dec 28 2 83, D R 32 p 190), can claim to be a victim within the meaning of Article 25 of the Convention

The Commission recalls that although the guarantees laid down in Article 6 of the Convention do not include a right for individuals to have criminal proceedings instituted (No 16734/90 Dec 2 9 91 D R 72 p 236) this provision does apply to the reporting of an offence with an application to join the proceedings as a civil party, even where compensation is not being sought The Court has held that in such cases the complainant is seeking not only to secure a conviction against a defendant but also to obtain compensation for the damage caused by the offence, and that it must therefore be accepted that the outcome of the proceedings is decisive for the determination of civil rights within the meaning of Article 6 para 1 of the Convention (Eur Court H R , Tomasi judgment of 27 August 1992, Series A no 241 A, p 43 para 121)

The Commission takes the view, however, that in so far as Article 6 para 1 of the Convention does not guarantee a right to institute criminal proceedings, this provision cannot, *a fortiori* be construed as guaranteeing a right to apply to join the criminal proceedings as a civil party The case-law referred to above must therefore be understood to mean that Article 6 para 1 of the Convention cannot be invoked in respect of a complaint with an application to join the proceedings as a civil party unless that application has been held admissible in the domestic legal system of the country concerned

The Commission therefore considers that, on the facts, the applicant cannot claim that the courts violated Article 6 of the Convention by ruling inadmissible her complaint, with an application to join the proceedings as a civil party, of criminal malfeasance in public office and misuse of public office resulting in interference with her liberty

It follows that this part of the application is incompatible *ratione materiae* with the Convention and must be rejected pursuant to Article 27 para 2 of the Convention

As regards the murder proceedings, however, the Commission considers that in filing an application to join the proceedings as a civil party, the applicant showed that she was seeking financial compensation for the damage suffered as a result of the offence. As she was joined as a party to those proceedings, the Commission's view is that the outcome thereof was decisive for the determination of her civil rights and that Article 6 para 1 of the Convention applies to this part of the application.

The Commission recalls, however, that the question whether criminal proceedings comply with the requirements of Article 6 para 1 of the Convention must be decided on the basis of an assessment of the proceedings as a whole and not on the basis of an isolated factor or specific aspect of the proceedings (No 12002/86, Dec 8 3 88, D R 55 p 218).

The Commission notes that in this case the applicant has failed to substantiate her complaints in any way, but confines herself to contesting the decision to deport two individuals from France, without providing any details as to the conduct of the murder investigation which is still continuing.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention.

2 The applicant invokes Article 13 of the Convention, complaining that she did not have an effective remedy as the impugned judgments prevented her from obtaining a decision on the suspected murderers' removal from the courts' jurisdiction, thereby depriving her application to join the murder proceedings as a civil party of any practical effect.

Article 13 provides that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority.

The Commission recalls its case-law to the effect that the right to an effective remedy cannot be claimed where the complaints made are outside the scope of the Convention (No 9984/82, Dec 17 10 85, D R 44 p 54) or where the applicant does not have an arguable claim that there has been a violation of the Convention (No 13135/87, Dec 4 7 88, D R 56 p 268).

The Commission has examined above the complaints based on Article 6 of the Convention. It considers that they are partly outside the scope of the Convention and have not been fully substantiated. Article 13 of the Convention is therefore inapplicable in this case.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.