

APPLICATION N° 24667/94

Maxime FREROT v/FRANCE

DECISION of 20 May 1996 on the admissibility of the application

Article 6, paragraph 1 and paragraph 3 (b) and (c) of the Convention

- a) *The requirement of fairness in criminal proceedings obliges the national authorities to take steps to ensure that the applicant enjoys effectively the right to which they have recognised he is entitled*
- b) *The applicant, assisted by a defence lawyer of his own choice, dismisses him at the end of the trial; the lawyer is immediately assigned by the court to act for the applicant, but declines to do so, whereupon a further defence lawyer is officially assigned with the agreement of the applicant, who applies, unsuccessfully, for the trial to be adjourned.*

In concluding that, in spite of the refusal to adjourn the case, the applicant had a fair trial and an effective defence, the Commission finds that the evidence was examined, that the civil parties and the applicant were able to address the court and that an adjournment would have delayed the trial.

Article 6, paragraph 3 of the Convention : *The guarantees contained in Article 6 para. 3 should be construed in the light of the general concept of a fair trial contained in Article 6 para 1.*

THE FACTS

The applicant, a French national, born in 1956, is unemployed and currently in prison in Fresnes (France) He was represented before the Commission by Mr Antoine Beauquier, a lawyer practising in Paris, whom he dismissed on 24 October 1995

A *Particular circumstances of the case*

The facts, as submitted by the parties, may be summarised as follows

In judgments of 7 February and 21 April 1992, the Indictments Division of Paris Court of Appeal committed the applicant, who is a member of the organisation "Action Directe", for trial at Paris Assize Court on charges of murder, several counts of attempted murder and intentional homicide, armed robbery and handling stolen goods, criminal conspiracy, possessing and carrying weapons, forging and using forged cheques, using explosives to cause criminal destruction or damage to immovable and moveable property and an explosives offence

The applicant's trial was fixed for 9 to 15 October 1992 before Paris Assize Court

At the beginning of the hearing on 14 October 1992, the applicant dismissed his lawyer, Mr R , after having learned, in the course of the morning, that Mr R "[had made] comments to the media which were both contrary to [his] line of defence and hostile towards [him], without having informed [him]'

The President of the Assize Court immediately assigned Mr R to act for the applicant, but Mr R declined to do so, saying that he "did not agree with certain convictions held by his client", and left the courtroom

The hearing was adjourned Shortly before it resumed, Mr F came to find the applicant and informed him that he had been assigned by the Chairman of the Paris Bar to assist the applicant during the day's proceedings

When the hearing resumed, the applicant requested that it be adjourned to a later date Mr F submitted that he had been assigned by the Chairman of the Bar to assist the applicant only during the day's proceedings and that he could not provide him with an effective defence

The court gave an interlocutory judgment dismissing the application for an adjournment and stating that it would proceed immediately to hear the closing speeches on the grounds that

"the accused has been assisted by his lawyer throughout the investigation stage and up to the hearing, he has an officially-assigned lawyer in the person of Mr R. neither the court, nor its President, nor the prosecution is responsible for [his] absence at this stage of the proceedings, the course of justice must be allowed to proceed so that judgment can be given within a reasonable time "

In a judgment of 14 October 1992, the Assize Court convicted the applicant as charged and sentenced him to life imprisonment, with no remission for at least 18 years

The applicant appealed against that judgment and the interlocutory judgment on points of law, arguing, *inter alia*, that there had been a breach of Article 6 para 3 of the Convention and section 317(1) and (2) of the Code of Criminal Procedure

In a judgment of 20 October 1993, the Court of Cassation dismissed his appeal, on the following grounds

" although Article 6 para 3 of the Convention recognises the accused's right to legal assistance of his own choosing, the obligation to ensure that the course of justice can proceed and judgment be given within a reasonable time means that a case should not inevitably be adjourned where the lawyer who was initially retained is absent,

this is the position in cases such as this, where the accused, who has had sufficient time to prepare his defence both before and during the hearing, indulges, with the collusion - whether deliberate or not - of his lawyer, in delaying tactics during the final stage of the trial,

in such circumstances, in the absence of the lawyer initially retained by and then officially assigned to the accused, who, disregarding his duties, left the courtroom, the accused may, if he wishes - a possibility provided for under the above mentioned Article 6 para 3(c) - defend himself in person,

given the attitude of the officially-assigned lawyer, who sought to limit his role to providing purely formal assistance, the President therefore acted correctly, in order to satisfy the provisions of Article 6 para 3(c), in allowing [the accused] to address the court, whereupon, in accordance with section 346 of the Code of Criminal Procedure, the accused addressed the court last "

B *Relevant domestic law*

Code of Criminal Procedure

Section 274

"The accused shall be invited to choose a lawyer to assist him in his defence. If he fails to do so, the President or his deputy shall officially assign him a lawyer. This assignment shall be void if the accused subsequently chooses a lawyer "

Section 307

"A hearing cannot be interrupted but must proceed until the Assize Court has pronounced judgment.

A hearing may be adjourned for the time necessary for the judges and the accused to rest."

Section 317

"The accused must be represented by a defence lawyer at the hearing. If the lawyer chosen or appointed under section 274 fails to appear, the President shall officially assign him a lawyer "

COMPLAINTS

1 The applicant considers that he did not have adequate time and facilities for the preparation of his defence, contrary to Article 6 para 3(b) of the Convention

2 He also invokes Article 6 para 3(c) of the Convention, alleging that he did not have legal assistance in the true sense

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 March 1994 and registered on 22 July 1994

On 24 February 1995, the Commission decided to give notice of the application to the respondent Government and invited them to submit written observations on its admissibility and merits

On 13 September 1995, the Commission decided to grant the applicant legal aid

The respondent Government submitted observations on 13 July 1995 and the applicant's lawyer replied on 19 October 1995. The applicant filed his own observations on the same day

In a letter of 24 October 1995, the applicant dismissed his lawyer, contesting the appropriateness and the reasoning of the observations he had drafted. In a letter of 27 October 1995, the applicant's lawyer informed the Commission that he was withdrawing his observations

On 22 January 1996, the Commission decided to adjourn its examination of the application, inviting the parties to submit further information, particularly on the dismissal of the applicant's lawyer

The applicant submitted further observations on 17 January 1996 and the respondent Government submitted theirs on 8 March 1996.

THE LAW

The applicant complains that he did not have sufficient time and facilities for the preparation of his defence and that he had no legal assistance before the Assize Court. He invokes Article 6 para 3 (b) and (c) of the Convention, which provide that

"3 Everyone charged with a criminal offence has the following minimum rights

b to have adequate time and facilities for the preparation of his defence,

c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

The Commission recalls that, according to its established case-law (see, *inter alia*, *Can v Austria*, Comm Report 12 7 84, para 48, Eur Court H R, Series A no 96, p 15), the specific guarantees contained in Article 6 para 3 must be interpreted in the light of Article 6 para 1 of the Convention, which provides that

"In the determination of any criminal charge against him, everyone is entitled to a fair hearing by an independent and impartial tribunal established by law"

The Commission will therefore first set out the parties' arguments from the specific standpoint of Article 6 para 3(b) and Article 6 para 3(c) and then examine the applicant's complaints under those provisions, but will assess them in the light of the overall and general requirement of fairness in the criminal trial which resulted in the applicant's conviction

The respondent Government argue that the complaint is manifestly ill founded. They submit that the applicant, who was actively and effectively assisted by Mr R from the beginning of the proceedings (including during the preliminary investigation stage) until his dismissal, had every opportunity to organise and prepare his defence and did not at any time complain of any shortcoming on the part of his lawyers. The Government observe that the applicant dismissed his lawyer on the final day of the trial, that is, after all the evidence had been produced and examined and all the civil parties had addressed the court, so that both Mr R and the applicant had been given an opportunity to challenge it. Moreover, the Assize Court did several times allow the applicant and his lawyer to address the court

The Government contend that the applicant bore sole responsibility for his lack of legal representation and that he could not have been unaware that an officially-assigned lawyer, appointed on the last day of the trial, would be unable to defend him as efficiently or effectively as a lawyer of his own choice who had already been acting for him for several years and was fully acquainted with the case. It follows that Mr. R.'s dismissal, for which the applicant has given no convincing or compelling reason, looks more like a delaying tactic, particularly as the applicant had, as early as the investigation stage, made anti-Semitic remarks in his lawyer's presence.

The Government submit further that the other members of "Action Directe", who were tried more than a year after the applicant, also dismissed, before the closing speeches, the lawyer whom they had previously retained. This was, moreover, the same lawyer as the one dismissed by the applicant, that is, Mr. R.

The applicant categorically denies the Government's allegations, including their submission that certain other members of "Action Directe" had also dismissed their lawyers.

He submits that he made his reasons for dismissing Mr. R. clear to the President of the Assize Court. Since 1990, he had had a number of discussions with Mr. R. during which he had explained the politics of "Action Directe" and the problems of anti-social cultures, particularly the Jewish culture. He submits that he expected Mr. R. to defend him forcefully and not passively. His dismissal of Mr. R. cannot therefore be considered to lack convincing, legitimate or compelling grounds. Moreover, Mr. R. himself declined his official assignment on the ground that he "did not agree with certain convictions held by his client".

The applicant stresses that he did not at any time refuse the assistance of Mr. F., the lawyer subsequently assigned to represent him at the hearing. Nevertheless, this was bound to be an unsatisfactory solution, given that Mr. F., at the time of his appointment, was unacquainted with the case, which was complex and required sufficient time to examine the many documents on the file. The applicant therefore requested the President of the Assize Court to adjourn the case in order to allow his lawyer time to prepare and run his defence properly.

He notes, lastly, that the day on which he dismissed his lawyer, i.e. 14 October 1992, was not the final day of the proceedings, as the Government claim, but the penultimate day, in so far as the trial was listed for 9 to 15 October 1992. It was in fact the President of the Assize Court who, on 14 October 1992, after the interlocutory judgment dismissing the application for legal assistance and an adjournment had been read out, decided to curtail the trial by one day.

The Government consider that the applicant did have legal assistance throughout the proceedings. Referring to the Artico case (see Eur. Court H.R., judgment of 13 May 1980, Series A no. 37), they argue that the conduct of the defence is mainly a matter for the accused and his lawyer, as the national authorities cannot be held responsible

for a shortcoming on the part of an officially-assigned lawyer. The Government stress that the applicant must bear sole responsibility for the loss of the defence lawyer of his choice, having dismissed him, without any valid grounds, at the end of his trial.

They note subsequently that, under French law, officially-assigned lawyers cannot refuse to represent a defendant unless they have apprised the President of the Assize Court of the reasons for their refusal and the President has accepted them. Mr R. therefore breached the rules of professional ethics - for which he incurred a disciplinary sanction - when, despite having been officially assigned to represent the applicant, he left the courtroom without informing the President of the reasons for his refusal or, at least, without the President having accepted them.

The Government acknowledge that in some circumstances the State may be under a duty to take measures to ensure the effective enjoyment of the right to free legal assistance. In this case, the immediate official assignment of a lawyer in the person of Mr R., and then of Mr. F., constituted such measures. The Government consider that the immediate assignment of the lawyer whom the applicant had just dismissed was in the applicant's interests, since Mr. R. was acquainted with the case. The Government add that the separate, or even conflicting, interests inherent in the defence of each of the co-accused appearing at the trial made it impossible to entrust the applicant's defence to the lawyer acting for his co-accused.

The Government note, lastly, that the applicant was able to address the court in person. He was given this opportunity after the civil parties, the prosecution and the lawyers acting for his co-accused had made their submissions. He was thus able to defend himself in person.

The applicant disputes these arguments. He argues that it is clear from the aforementioned *Artico* judgment that the State must provide an accused with effective and not merely formal legal assistance. He submits in this respect that the Convention must protect concrete and effective, and not merely theoretical or illusory, rights. In this case, as the legal assistance provided by Mr F. was ineffective, he had been obliged to apply to the court for an adjournment in order to allow his lawyer time to provide him with more than merely formal legal assistance. Mr. F. himself acknowledged that his presence was purely symbolic and that he could provide the applicant with merely formal assistance.

The applicant considers it indisputable that, in view of the duty to respect the right to an effective defence, the Assize Court should have assigned a lawyer capable of replacing the absent lawyer, i.e. Mr. R. By refusing to do so, or to adjourn the hearing until such time as the accused could be afforded an effective defence, the Assize Court violated the provisions of Article 6 para. 3(c) of the Convention.

The Commission recalls that the requirement of fairness in a criminal trial obliges the competent national authorities to take steps to ensure that the applicant

enjoys effectively the right to which they have recognised he is entitled (see Eur. Court H.R., *Artico v. Italy* judgment of 13 May 1980, Series A no. 37, p. 18, para. 36).

In this case, the applicant had retained Mr R in the proceedings before the Assize Court and had been assisted by him from the beginning of the proceedings. When the applicant decided to dismiss his lawyer, the latter was immediately assigned by the President of the court

After the same lawyer refused that assignment, on the ground that he "disagreed with certain convictions held by his client", the President of the Assize Court immediately assigned another lawyer, Mr. F. However, when the hearing resumed the applicant sought an adjournment which the court refused to grant, holding, in an interlocutory judgment, that

"the accused ... has been assisted by his lawyer throughout the investigation stage and up to the hearing; ... he has an officially-assigned lawyer in the person of Mr. R.; ... neither the court, nor its President, nor the prosecution is responsible for [his] absence at this stage of the proceedings, the course of justice must be allowed to proceed so that judgment can be given . . . within a reasonable time."

In the circumstances, the Commission agrees with the Government that the applicant was properly defended from the beginning of the proceedings. The applicant, who was assisted by the lawyer of his choice from the investigation stage, was able to organise and prepare his defence properly and had not expressed any doubts as to the effectiveness or the efficiency of his lawyer's handling of the case until he dismissed him near the end of the trial.

Furthermore, after the applicant dismissed his lawyer and he (the lawyer initially retained by the applicant) had been officially assigned by the court to represent the applicant but had declined to do so, a second lawyer was appointed, with the agreement of the applicant, who then applied, unsuccessfully, for his trial to be adjourned.

The fact that, as a result, the applicant was assisted by a lawyer who did not have a detailed knowledge of the case does not appear, in the circumstances of the case, to have compromised the fairness of the proceedings. The dismissal of the applicant's lawyer and the court's refusal to grant an adjournment occurred on what was the last day of the trial, after all the evidence had been produced and examined in adversarial proceedings and all the civil parties, except two, had addressed the court, so that the defence had been given several opportunities beforehand to challenge the evidence and, by doing so, to influence the outcome of the proceedings. Moreover, the applicant addressed the court at the end of the trial.

Moreover and above all, the applicant has himself always maintained that his defence should be viewed from a political and not a legal standpoint. In the circumstances, it is difficult to see how the applicant, who is a political militant, can have been disadvantaged in his defence.

The Commission notes further that an adjournment of the case to another session of the Assize Court would have seriously delayed the course of justice. Under the French system, proceedings before the Assize Court are almost exclusively oral. It follows that where a trial is adjourned, it has to be recommenced from the very beginning. This principle, known as the principle that Assize Court proceedings should be continuous, is set out in section 307 of the Code of Criminal Procedure (see *Relevant domestic law*). Consequently, any Assize Court trial which has been suspended in mid-term has to be recommenced from the very beginning (see Angevin, "La pratique de la cour d'assises, traité-formulaire", *Litac* 1989, p. 186, no. 461).

In the light of all the circumstances, the Commission considers that there has been no violation of the applicant's right to a fair trial or of the guarantees provided for in Article 6 para. 1 of the Convention, and that the applicant's defence, which was conducted adequately and effectively, complied with the specific requirements of Article 6 para. 3(b) and (c) of the Convention.

It follows that the application is 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