

**APPLICATION N° 20968/92**

**Michel KEMMACHE v/FRANCE**

**DECISION** of 10 January 1994 on the admissibility of the application

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**Article 25 and Article 6, paragraph 1 of the Convention** *Criminal proceedings which continued for fourteen months after a judgment in which the European Court of Human Rights held that France had failed to comply with the reasonable time requirement After the close of the domestic proceedings a further judgment of the Court fixed the amount of compensation to be paid to the applicant without distinguishing between the earlier proceedings and that part of the proceedings subsequent to the Court's principal judgment*

*As the whole proceedings were taken into account, the applicant can no longer claim to be a victim with regard to that part of the proceedings subsequent to the Court's principal judgment*

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**THE FACTS**

The applicant, born in 1942, is a French national He is at present a prisoner at Draguignan prison

In the proceedings before the Commission he is represented by Ms Chantal Méral, a lawyer practising in Paris

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

On 16 February 1983 the applicant was charged with importing counterfeit money into France and with the use and unlawful circulation of false banknotes. Two other persons had previously been charged with the same offences

The case was sent for trial in the Alpes-Maritimes Assize Court by a judgment of the indictments division of the Lyon Court of Appeal dated 13 August 1985. That court indicted the applicant on the charge of aiding and abetting the importation of counterfeit foreign banknotes into French territory and uttering the same, and on the related charge of unlawfully circulating these false notes within the customs area.

The trial in the Assize Court was due to take place on 12, 13 and 14 June 1990. On 12 June 1990 one of the applicant's co-defendants requested an adjournment on the ground that his lawyer, appointed under the legal aid scheme on 8 June 1990, had not been able to study the file. The applicant then joined in this request, whereas the third defendant agreed to be tried immediately.

The Assize Court granted these requests. In a judgment dated 12 June 1990 it ordered the severance of the proceedings against the two defendants who had requested an adjournment and set the case down for trial at the assizes due to be held on 13 and 14 December 1990. The third co-defendant was accordingly the only one tried on 12 and 13 June 1990.

Shortly before the day of the trial the applicant requested an adjournment on the ground that he had been assaulted and taken into hospital. The president of the Assize Court appointed a psychiatric expert in order to determine whether the applicant was telling the truth.

In his report, filed on 11 December 1990, the expert stated that in his opinion the applicant was fit to stand trial.

On 12 December 1990, the day before the trial, the applicant failed to surrender to custody in accordance with the delivery into custody order and, on 13 December 1990, the president of the Assize Court ordered the severance of the two cases and adjournment of the case against the applicant

On 14 March 1991 the applicant was arrested, pursuant to the delivery into custody order, and his case was set down for trial on 24 and 25 April 1991.

In a judgment dated 25 April 1991 the applicant was sentenced to eleven years' imprisonment by the Alpes-Maritimes Assize Court.

This judgment was quashed in a judgment of the Court of Cassation dated 18 December 1991, and the case remitted to the Var Assize Court.

In a judgment dated 21 May 1992 that court sentenced the applicant to nine years' imprisonment. On the same day the applicant gave notice of an appeal on points of law.

On 15 September 1992 the applicant filed his statement of the grounds of appeal after an extension of the initial time limit of 10 September. Counsel for the customs authorities filed his pleading on 19 November 1992 and the reporting judge filed his report on 11 January 1993.

In a judgment dated 3 February 1993 the Court of Cassation dismissed the appeal.

## COMPLAINTS

The applicant complains of the length of that part of the proceedings subsequent to the judgment given by the European Court of Human Rights on 27 November 1991 in the same case, in which the Court held that France had failed to comply with the 'reasonable time' requirement laid down by Article 6 para. 1 of the Convention. Having been charged in 1983, the applicant was finally convicted on 3 February 1993, that is one year, two months and six days after the judgment of the European Court of Human Rights. He relies on Article 6 para. 1 of the Convention.

## THE LAW

The applicant complains of the length of that part of the proceedings subsequent to the judgment given by the European Court of Human Rights on 27 November 1991 in the same case, in which the Court held that France had failed to comply with the 'reasonable time' requirement. In that connection he relies on Article 6 para. 1 of the Convention, the relevant section of which is worded as follows:

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

The Government observe in the first place that the period of fourteen months in issue is a particularly short one. They further submit that during this period the courts have given judgment three times: since the Court of Cassation has given two judgments while the Assize Court has given judgment on the merits.

The Assize Court gave its judgment five months after the Court of Cassation's judgment, the Government maintain that this was speedy. As for the period of eight and a half months between the applicant's second appeal on points of law and the

Court of Cassation's judgment of 3 February 1993, the Government claim that this was largely justified by the time the parties' lawyers needed to amplify their grounds of appeal.

The applicant maintains that the period of fourteen months in issue must not be analysed in the abstract but as a continuation of the period of more than eight and a half years which had already elapsed when the European Court of Human Rights gave judgment on 27 November 1991.

The applicant further submits that he cannot be criticised for using the remedies available to him, since speediness does not exclude fairness. Further to that point, he asserts that the judgment of 18 December 1991 was the eighth since the beginning of the case in which the Court of Cassation quashed the decision of a lower court.

Lastly, he criticises the inactivity of the judicial authorities, claiming that they bear sole responsibility for the length of the proceedings.

The Commission refers in the first place to its established case-law (cf. No. 12719/87, Dec. 3 5.88, D.R. 56 p. 237) to the effect that it is clear from Article 25 para. 1 of the Convention that the Commission can receive a petition from a person, a non-governmental organisation or a group of individuals only if such person, non-governmental organisation or group of individuals can claim to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention.

It must therefore consider whether the applicant can claim to be a victim of a violation of the provisions of Article 6 para. 1 of the Convention.

The Commission recalls that the European Court of Human Rights held that France had failed to comply with the "reasonable time" requirement laid down by Article 6 para 1 of the Convention (Eur. Court H.R., Kemmache judgment of 27 November 1991, Series A no. 218) in the proceedings which began when the applicant was charged on 16 February 1983 and had not yet terminated on the day when it gave judgment. The Court also held that France had breached the provisions of Article 5 para. 3 of the Convention.

The Commission further notes that, in this judgment, the Court reserved the question of the compensation to be paid to the applicant on the ground that the criminal proceedings had not yet been concluded (*ibid.*, p. 31, para 74). It also invited the parties to submit to it their observations in writing within three months of the conclusion of those proceedings.

In a judgment dated 2 November 1993 (Eur Court H.R., Kemmache judgment, Series A no 270-B) the Court granted the applicant's claim for just satisfaction as regards the alleged non-pecuniary damage, without distinguishing between the periods before and after the principal judgment. Referring to developments in the domestic

proceedings after 27 November 1991, the Court held in particular that "the applicant must have suffered non-pecuniary damage, for which the above mentioned findings of violations do not constitute adequate redress" (*ibid*, para 11). It thus implicitly rejected the Government's arguments to the effect that the Court should disregard the proceedings conducted subsequent to its principal judgment, which had given rise to a further application lodged with the Commission.

Consequently, the Commission considers that the Court, in determining the amount of the pecuniary reparation to be paid to the applicant in respect of non-pecuniary damage caused in particular by the excessive length of the proceedings, took into account the whole of the proceedings, from 16 February 1983 to 3 February 1993. Accordingly, the applicant can no longer claim to be a victim as regards the fourteen months for which the proceedings continued after the Court's principal judgment.

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.

For these reasons, the Commission, by a majority,

**DECLARES THE APPLICATION INADMISSIBLE**