



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

COURT (CHAMBER)

CASE OF MELIN v. FRANCE

(Application no. 12914/87)

JUDGMENT

STRASBOURG

22 June 1993

In the case of Melin v. France*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. GÖLCÜKLÜ,

Mr L.-E. PETTITI,

Mr S.K. MARTENS,

Mr R. PEKKANEN,

Mr A.N. LOIZOU,

Mr J.M. MORENILLA,

Mr A.B. BAKA,

Mr L. WILDHABER,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 30 January and 25 May 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 25 May 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12914/87) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Pierre-André Melin, on 21 November 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under paragraph 1 of Article 6 taken in conjunction with paragraph 3 (b) and (c) thereof (art. 6-1, art. 6-3-b, art. 6-3-c).

* The case is numbered 16/1992/361/435. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings. He also sought leave, as a former lawyer, to present his own case (Rule 30 para. 1). The President of the Court granted this request on 22 June 1992.

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 May 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr A.N. Loizou, Mr J.M. Morenilla, Mr A.B. Baka, Mr L. Wildhaber and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr S.K. Martens and Mr R. Pekkanen, substitute judges, replaced Mr Repik, whose term of office had come to an end on 1 January 1993 due to the dissolution of the Czech and Slovak Federal Republic (Articles 38 and 65 para. 3 of the Convention and Rule 22 para. 1) (art. 38, art. 65-3), and Mr Macdonald, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 2 November 1992 and the Government's memorial on 20 November. On 4 January 1993 the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations. On the same day the applicant lodged his claims under Article 50 (art. 50) of the Convention.

5. On 12 January 1993 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 January 1993. The Court had held a preparatory meeting beforehand. Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 para. 5, second subparagraph).

There appeared before the Court:

- for the Government

Mr B. GAIN, Head of the Human Rights Section,

Department of Legal Affairs, Ministry of Foreign Affairs, *Agent*,

Mr P. TITIUN, magistrat,

on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,

Mr J. CARRÈRE, magistrat,
on secondment to the Department of Criminal Affairs and
Pardons, Ministry of Justice,
Mr D. CARON, magistrat,
legal officer at the Court of Cassation, *Counsel*;
- for the Commission
Mr J.-C. SOYER, *Delegate*;
- the applicant.

The Court heard addresses by Mr GAIN for the Government, by Mr SOYER for the Commission and by the applicant.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. Mr Pierre-André Melin, a French national, lives off private means and resides at Courbevoie (Hauts-de-Seine). He formerly practised as a lawyer.

8. On 6 May 1985 the Nanterre Criminal Court convicted him of fraud and sentenced him to a suspended term of sixteen months' imprisonment, combined with an order (*mise à l'épreuve*) requiring him, *inter alia*, to compensate the victim for the damage which he had sustained.

9. The applicant appealed immediately to the Versailles Court of Appeal, which, giving judgment on 15 January 1986 in Mr Melin's presence, upheld the lower court's guilty verdict. On the other hand, it deferred pronouncement of sentence until 25 June 1986 as the accused had undertaken to reimburse the victim within six months if the court were to find him guilty. This aspect of the proceedings is not in issue. The typed text of the judgment was filed with the registry on the same day as its delivery.

10. Two days later Mr Melin lodged an appeal on points of law against the Court of Appeal's judgment with the latter's registry (Article 576 of the Code of Criminal Procedure). He stated that he reserved the right "to put forward any other relevant ground once he had received the certified copy of the decision in question".

According to the applicant, he requested a copy of the judgment on the same occasion. A registry official allegedly took down his address and the case references, so as to be able to send him one in return for a forty franc fiscal stamp.

The Government maintain that there were two possibilities: either the applicant had not requested a copy and could not therefore be surprised at

not receiving one; or he had in fact asked for one, in which case a copy had undoubtedly been sent to him.

11. On 14 February 1986 the appeal file reached the registry of the Court of Cassation. Three and a half months later, on 27 May, the Criminal Division dismissed the appeal because no grounds had been put forward and because the contested judgment did not disclose any procedural defect. This decision was notified to Mr Melin on 18 June and recorded that the party seeking damages had submitted a memorial.

12. In a letter of 23 June to the President of the Criminal Division, the applicant explained that he had been unable to submit a memorial because he had not had available to him the text of the judgment of 15 January 1986; in addition he complained that the judge-rapporteur had failed to communicate to him a time-limit for the submission of a memorial.

On 4 July the Chief Registrar replied to him that, as the judgment of the Court of Cassation was final, he could not appeal against it.

13. Throughout these various proceedings Mr Melin had conducted his own defence, though he had been assisted by a lawyer at first instance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The main provisions of the Code of Criminal Procedure referred to in this case are as follows:

Article 485

"Every judgment shall include a statement of its reasons and an operative part.

The operative part shall record the offences of which the accused have been found guilty or in respect of which they have been held liable, the sentence pronounced, the laws applied and the orders made with regard to civil claims.

The judgment shall be read out by the president."

Amended by Law no. 85-1407 of 30 December 1985, which came into force on 1 February 1986, this provision is now worded as follows:

"Every judgment shall include a statement of its reasons and an operative part.

The reasons shall constitute the basis of the decision.

The operative part shall record the offences of which the accused have been found guilty or in respect of which they have been held liable, the sentence pronounced, the laws applied and the orders made with regard to civil claims.

The judgment shall be read out by the president or by one of the judges; in so doing the president or judge may confine himself to the operative part ..."

Article 486

"...

After it has been signed by the president and the registrar, the original copy shall be lodged with the court registry not later than three days after the delivery of the judgment. The fact that it has been so lodged shall be recorded in the register kept in the registry specifically for this purpose.

..."

According to the Court of Cassation's case-law, failure to comply with the formalities laid down in Article 486 does not entail the nullity of the judgment in issue. Thus the belated lodging of the original copy of a judgment cannot render the judgment void where no prejudice has ensued for the applicant (Criminal Division, 27 November 1984, Bulletin criminel no. 370).

Article 512

"The rules laid down for the criminal courts shall apply in the courts of appeal, subject to the provisions set out below."

Article 554

"Service of decisions, where such service is necessary, shall be effected at the request of the prosecuting authority or of the party claiming damages."

Article 568

"The prosecuting authority and all the parties shall have five clear days in which to appeal to the Court of Cassation after the delivery of the impugned judgment.

..."

Article 584

"An appellant on points of law may lodge a memorial, bearing his signature and setting out the grounds of his appeal, with the registry of the court from whose judgment he is appealing, either when he gives notice of appeal or within the following ten days. The registrar shall issue him with a receipt."

Article 585

"After expiry of this time-limit, a convicted appellant may transmit his memorial directly to the Court of Cassation; the other parties may not avail themselves of this provision without the services of a lawyer who is a member of the Court of Cassation Bar.

..."

Article 588

"Where one or more lawyers have been instructed, the judge- rapporteur shall set down a time-limit for the memorials to be filed with the registrar of the Criminal Division."

Article 590

"The memorials shall set out the grounds of appeal and cite the legal provisions whose violation is alleged.

A fiscal stamp must be affixed, except where the appellant has been sentenced after conviction of a serious criminal offence (crime).

They must be lodged within the prescribed time-limit. No additional pleading may be joined thereto after the judge- rapporteur has filed his report. If a memorial setting out additional grounds is lodged belatedly, it may be declared inadmissible."

Article 604

"In cases concerning any category of criminal offence, the Court of Cassation may give judgment on the appeal on points of law immediately after expiry of a period of ten days, which period begins to run on the date on which the Court of Cassation receives the file.

..."

PROCEEDINGS BEFORE THE COMMISSION

15. Mr Melin applied to the Commission on 21 November 1986. Relying on paragraphs 1 and 3 (b) and (c) of Article 6 (art. 6-1, art. 6-3-b, art. 6-3-c), he complained that he had not received in good time a copy of the judgment of the Versailles Court of Appeal and that he had been informed neither of the time-limit for submitting a memorial to the Court of Cassation nor of the date of the hearing at which his appeal was examined.

16. The Commission declared the application (no. 12914/87) admissible on 11 April 1991. In its report of 9 April 1992 (made under Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of paragraph 1 of Article 6, taken in conjunction with paragraph 3

(b) and (c) thereof (art. 6-1, art. 6-3-b, art. 6-3-c). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

17. In their memorial the Government asked the Court "to dismiss Mr Melin's application".

18. The applicant requested the Court to "hold that in this instance [he had] indeed been the victim of a breach of the provisions of Article 6 paras. 1, 3 (b) and 3 (c) (art. 6-1, art. 6-3-b, art. 6-3-c) of the ... Convention ...".

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 PARAS. 1 AND 3 (b) AND (c) (art. 6-1, art. 6-3-b, art. 6-3-c)

19. Mr Melin relied on paragraphs 1 and 3 (b) and (c) of Article 6 (art. 6-1, art. 6-3-b, art. 6-3-c) of the Convention, according to which:

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

...

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;

..."

He maintained that, when the Criminal Division of the Court of Cassation had delivered its judgment on 27 May 1986, he had still been

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 261-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

waiting to be sent the text of the Court of Appeal's judgment, a copy of which he had requested. Without knowledge of the Court of Appeal's reasoning he had not been able to draw up his memorial setting out the grounds for his appeal. He had needed a copy of the judgment, despite the fact that he had been present when it was pronounced, because the President had only read out its operative provisions. In breach of Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c), the Court of Cassation had failed (a) to set a time-limit for him to produce his memorial; (b) to communicate to him the observations of the civil party; and (c) to inform him of the date of the hearing at which his appeal was to be examined.

The Commission subscribed to this view in substance.

20. According to the Government, who invoked in this connection Articles 554 and 568 of the Code of Criminal Procedure, it was in no way necessary to serve the judgment in question on the applicant as he had been present when it was delivered and it had been for him, if he so wished, to go to the registry to consult the original or to request a copy. There was no evidence that he had in fact tried to do so.

In addition, the applicant had had the benefit of a longer period within which to file submissions because he had not designated a lawyer to act for him before the Court of Cassation. Moreover, it was not the practice to effect specific notifications of the date of the hearing, with the result that the parties were placed on an equal footing, irrespective of whether they were assisted by counsel.

Finally, Mr Melin could hardly complain of the failure to communicate to him the civil party's observations since he had not filed a memorial.

21. As the requirements of paragraph 3 (b) and (c) of Article 6 (art. 6-3-b, art. 6-3-c) are specific aspects of the right to a fair trial, guaranteed under paragraph 1 (art. 6-1), the Court will consider all the applicant's complaints in the light of the three provisions taken together (see, among other authorities, the *Hadjianastassiou v. Greece* judgment of 16 December 1992, Series A no. 252, p. 16, para. 31).

22. In the present case the Court does not have to assess as such the French system of notifying judgments given in criminal proceedings by courts of appeal. It has to confine itself, in so far as possible, to examining the problem raised by the specific case before it.

23. The Government did not deny that every accused had the right to be informed of the grounds for his conviction, the right to have adequate time and facilities for the preparation of his appeal on points of law and the right to have the opposing party's observations communicated to him. It is nevertheless necessary to determine whether these rights, which are inherent in the notion of fair trial (see the *Hadjianastassiou* judgment, cited above, p. 16, para. 33), were violated in this instance by acts imputable to the French judicial authorities.

24. In order to resolve this question the Court has had regard to the very specific circumstances of the case. Mr Melin had practised as a lawyer and had worked in the chambers of a lawyer of the Conseil d'État and Court of Cassation Bar. He therefore knew that in accordance with the legislation in force the authorities were under no obligation to serve on him the judgment delivered on 15 January 1986, whose pronouncement he had attended. As the Government stressed, it was thus not unreasonable to expect him to adopt one of the following three courses of action. First, even though he was under no legal obligation to do so, he could have consulted the original of the judgment in question at the registry of the Versailles Court of Appeal. Secondly, assuming that he did unsuccessfully request a copy as he claimed, he could and should have repeated that request during the four and a half months which followed the pronouncement of the judgment. A final possibility remained open to him; he could have made enquiries at the Court of Cassation's registry as to the date on which the court was to give judgment and sought an adjournment so as to be able to file a memorial in good time and to have the opportunity to present his case. Being well versed in the routines of judicial procedure, he must have known that the latter is subject to relatively short time-limits, especially as the relevant rules were sufficiently coherent and clear (for an example of the contrary situation, see the *de Geouffre de la Pradelle v. France* judgment of 16 December 1992, Series A no. 253-B, pp. 42-43, paras. 33-35).

25. In conclusion, the applicant cannot claim that the authorities made it impossible for him to produce a memorial. As he had deliberately waived his right to be assisted by a lawyer, he was under a duty to show diligence himself. Accordingly, he did not suffer any interference with the effective enjoyment of the rights guaranteed under Article 6 (art. 6).

FOR THESE REASONS, THE COURT

Holds by five votes to four that there has been no violation of Article 6 (art. 6).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 June 1993.

Rudolf BERNHARDT
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the joint dissenting opinion of Mr Bernhardt, Mr Pekkanen, Mr Baka and Mr Wildhaber is annexed to this judgment.

R. B.
M.-A. E.

**JOINT DISSENTING OPINION OF JUDGES BERNHARDT,
PEKKANEN, BAKA AND WILDHABER**

In the present case, when the Court of Appeal gave its judgment on 15 January 1986, only the operative part of the judgment was orally pronounced, in the presence of the applicant. Two days later, Mr Melin lodged an appeal on points of law against the judgment; on 27 May 1986 the Court of Cassation dismissed the appeal. Between the first and the last of these dates, Mr Melin was neither officially informed of the reasons of the judgment of the Court of Appeal, nor did he receive any information concerning the proceedings and the date of the hearing before the Court of Cassation and the observations submitted to it by the civil party. Mr Melin also asserts that he expressly asked the registry of the Court of Appeal to send him a copy of the judgment of 15 January 1986, and the Government cannot exclude the possibility that he did in fact make this request.

In criminal matters, the State must ensure that the accused is officially informed of the essential and decisive steps and elements also in cassation procedures, and it cannot put the burden in this respect entirely on the accused or convicted person. In our view, Article 6 (art. 6) of the Convention has been violated.