



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

COURT (CHAMBER)

CASE OF DELTA v. FRANCE

(*Application no. 11444/85*)

JUDGMENT

STRASBOURG

19 December 1990

In the Delta case*,

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. RYSSDAL, *President*,

Mr J. CREMONA,

Mr Thór VILHJÁLMSSON,

Mr F. GÖLCÜKLÜ,

Mr L.-E. PETTITI,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr J. DE MEYER,

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

Having deliberated in private on 29 August and 20 November 1990,

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 14 December 1989, 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. 11444/85) against the French Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Michel Sophie Delta, on 4 August 1984.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention 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 Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d).

* The case is numbered 26/1989/186/246. 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.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

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 and designated the lawyer who would represent him (Rule 30).

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 27 January 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mrs D. Bindschedler-Robert, Mr F. Gölcüklü, Sir Vincent Evans, Mr R. Macdonald, Mr C. Russo and Mr J. De Meyer (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr Thór Vilhjálmsson, substitute judge, replaced Mrs Bindschedler-Robert, who was unable to take further part in the 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 lawyer for the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence on 2 March 1990, the Registrar received the applicant's memorial on 3 May. On 23 May and 8 June the Agent of the Government and the Delegate of the Commission informed the Registrar that they would submit their observations at the hearing.

5. On 8 June the Secretary to the Commission produced the file on the proceedings before the Commission which the Registrar had sought from him on the President's instructions.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 29 June that the oral proceedings should open on 27 August 1990 (Rule 38).

7. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr P. BAUDILLON, Assistant Director,

Department of Legal Affairs, Ministry of Foreign Affairs,
Delegate of the Agent,

Mr M. SIMAMONTI, magistrat,

Department of Criminal Affairs and Pardons, Ministry of
Justice,

Mrs I. CHAUSSADE, magistrat, Department of Legal Affairs,

Ministry of Foreign Affairs, *Counsel;*

- for the Commission

Mr J.-C. SOYER,
- for the applicant

Mr P.-F. DIVIER, avocat,

Delegate;

Counsel.

The Court heard addresses by Mr Baudillon for the Government, Mr Soyer for the Commission and Mr Divier for the applicant, as well as their replies to its questions.

8. On 31 August the Registrar received from the applicant's lawyer the documents which the applicant had indicated in his memorial would be filed.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mr Michel Sophie Delta is a French citizen who was born in Guadeloupe and lives there today after having spent some time in metropolitan France.

A. The police investigation

10. At 6.40 p.m. on 29 March 1983 a girl of 16, Miss Poggi, and a friend of the same age, Miss Blin, were in a Paris underground station when two coloured men accosted them. One of the men snatched a gold chain and crucifix which Miss Poggi was wearing round her neck and ran towards the exit.

11. The two girls immediately went to the central police station of the 12th District, and at 7 p.m., as a result, Mr Delta was arrested by Police Constable Bonci, accompanied by the two girls, in a building by the exit from the underground. The victim and her friend immediately said they recognised him. A search of the applicant and subsequently of the premises yielded nothing, however.

12. The applicant was taken to the central police station of the 12th District and questioned at 8.40 p.m. by Chief Inspector Mercier, an officier de police judiciaire, about his identity and means of subsistence and was then taken into police custody.

13. From 10 a.m. to 10.20 a.m. the following day, Inspector Duban, who was likewise an officier de police judiciaire, took a statement from him about the facts of the case. Mr Delta said that at about 6.30 p.m. he had been set upon by four people who had chased him into the underground and stolen a cigarette lighter and 100 francs from him. He surmised that one of

them could have committed the robbery as the two girls went by. He said that he had run away because he had been put in fear by his four attackers.

Subsequently (the exact time is not given in the police report), Inspector Duban interviewed both girls separately, each in the presence of her mother. They confirmed that the person who had been arrested was indeed the person who had committed the offence. The victim lodged a complaint alleging robbery.

Mr Delta was never formally confronted with Miss Poggi and Miss Blin.

14. The Chief Superintendent in charge of the Fourth Area police force forwarded the file to the public prosecutor's office.

B. The judicial proceedings

1. Paris Criminal Court

15. The Paris public prosecutor considered that a judicial investigation was unnecessary and accordingly used the direct committal procedure (Articles 393 to 397-7 of the Code of Criminal Procedure, as amended by the "Security and Freedom" Act of 2 February 1987).

16. On 31 March 1983 Mr Delta appeared before the 23rd Division of the Paris Criminal Court, which made an interlocutory order for a psychiatric report and a social inquiry report and remanded him in custody.

17. On 5 May the court passed a sentence of three years' imprisonment on him. The judgment contained the following reasons:

"The facts (robbery by snatching a neckchain and crucifix from the victim) [are established], notwithstanding the defendant's denials, by the evidence obtained, in particular by means of the statements of Police Constable Bonci, who gave evidence on oath. The defendant must be convicted and punished very severely, having regard to the nature of the offence committed with the use of violence.

Moreover, in a judgment dated 22 October 1981 Delta ... was sentenced to two years' imprisonment by the Paris Court of Appeal for robbery and consequently is legally a reoffender under Article 58 of the Criminal Code;

..."

18. Although they had been duly summoned by the prosecution, the two girls did not attend the trial and gave no reasons for their failure to do so. The court did not take any steps to have them brought before it under Article 439 of the Code of Criminal Procedure (see paragraph 24 below).

The accused, whose defence was in the hands of two trainee barristers who had successively been assigned to him by the court, had not submitted any pleadings suggesting that any witnesses should be examined or asking for any further inquiries to be made into the facts.

2. Paris Court of Appeal

19. Mr Delta appealed, claiming that he was the victim of mistaken identity. Relying on Article 513, second paragraph, of the Code of Criminal Procedure (see paragraph 25 below) and Article 6 para. 3 (d) (art. 6-3-d) of the Convention, he also expressly sought to have the victim, the person who was with her and two witnesses on his behalf called; he asserted that he had himself urged the concierge and a resident in the building where he had taken refuge to alert the police, as he feared for his safety if his pursuers caught up with him.

20. On 28 September 1983 the Paris Court of Appeal (10th Division) upheld the whole of the judgment of the court below after refusing the application for examination of witnesses in the following terms:

"After the defendant's arrest, Miss Poggi formally stated that he was the man who had snatched the chain from her. Miss Blin likewise identified Delta as being responsible for the snatch theft from Miss Poggi.

These statements satisfy the Court that the defendant was guilty of the offences charged and make the requested examination of witnesses unnecessary."

3. Court of Cassation

21. Mr Delta appealed on points of law, alleging a violation of Article 6 para. 3 (d) (art. 6-3-d) of the Convention and Article 513 of the Code of Criminal Procedure.

The Court of Cassation (Criminal Division) dismissed the appeal in a judgment of 4 October 1984 on the following grounds:

"It appears from the impugned judgment of the Court of Appeal that Delta, who was prosecuted for robbery and claimed to be the victim of mistaken identity, asked the Court of Appeal to order an examination of the victim and of witnesses, and that the court below, after studying the statements taken during the investigation from Miss Poggi, the victim, and from the witness Bonci, refused this application on the grounds that those statements satisfied it that the defendant was guilty of the offences charged and made the requested examination of witnesses unnecessary.

In so holding, the Court of Appeal, far from violating the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, gave its decision a legal basis.

The ground of appeal, which does no more than attempt to call in question the appeal court's final assessment of all the evidence adduced at the trial and of whether it was appropriate to order further inquiries into the facts, cannot be accepted.

..."

C. The applicant's release

22. Mr Delta was released on 9 September 1985, after spending a little over two years and five months in prison.

II. THE EXAMINATION OF WITNESSES BY CRIMINAL COURTS (JURIDICTIONS CORRECTIONNELLES DE JUGEMENT)

23. In French law the rules governing the examination of witnesses by criminal courts differ according to whether the court is hearing the case at first instance or on appeal.

A. Examination in the Criminal Court

24. The main provisions of the Code of Criminal Procedure applicable in the Criminal Court are the following:

Article 437

"Anyone called to be heard as a witness shall be required to appear, to take the oath and to give evidence."

Article 438

"A witness who fails to appear or who refuses either to take the oath or to give evidence may, on an application by the public prosecutor, be punished by the court as provided for in Article 109."

Article 439

"If a witness fails to appear and has not put forward any excuse recognised as being valid and legitimate, the court may, on an application by the public prosecutor or of its own motion, order the witness to be brought before it immediately by the police in order to be examined or adjourn the case.

..."

Article 442

"Before proceeding to examine the witnesses, the presiding judge shall question the accused and take statements from him. The public prosecutor and, through the presiding judge, the civil party seeking damages and the defence may put questions to him."

Article 444

"The witnesses shall subsequently give their evidence in turn, either as to the offences with which the accused is charged or as to his personality and morals.

The witnesses called by the prosecuting parties shall be heard first, subject to the presiding judge's discretion to determine himself the order in which the witnesses shall be heard.

With the court's leave, evidence may also be given by persons suggested by the parties and who are present at the beginning of the trial but have not been formally summoned."

Article 452

"Witnesses shall give evidence orally.

Exceptionally, however, they may, with the leave of the presiding judge, make use of documents."

Article 454

"After each witness has testified, the presiding judge shall put to him any questions he deems necessary and, where appropriate, those that are suggested to him by the parties.

A witness may withdraw after testifying, unless the presiding judge decides otherwise.

The public prosecutor, the civil party seeking damages and the accused may request, and the presiding judge may always order, that a witness should temporarily withdraw from the hearing-room after giving evidence in order to be brought back and examined if necessary after other witnesses have given evidence, with or without a confrontation."

Article 455

"During the trial the presiding judge shall, if necessary, have the exhibits shown to the accused or witnesses again and shall hear their comments."

B. Examination in the Court of Appeal

25. The procedure laid down by law for the Criminal Court also applies in principle to the Court of Appeal but subject to an important proviso in the second paragraph of Article 513 of the Code of Criminal Procedure, which reads:

"Witnesses shall be heard only if the court [of appeal] so orders."

26. This provision has given rise to a line of decisions by the Criminal Division of the Court of Cassation, which appears to have departed from these precedents in 1989, that is to say after the events in the instant case.

1. The case-law until 1989

27. The Criminal Division decided very early on that appeal courts were not required to hear afresh witnesses who had already given evidence at the original trial, even where an application had been made for them to be re-examined; it did, however, lay on them the obligation to hear and determine any applications made and to give reasons for any refusal (30 October and 13 December 1890, *Bulletin criminel* (Bull.) nos. 212 and 253; 20 October 1892, *Recueil périodique Dalloz* (DP) 1894, I, p. 140; 13 January 1916, DP 1921, I, p. 63; 20 December 1955, *Dalloz* 1956, sommaires, p. 29).

Where they considered it useful or necessary, appeal courts could summon witnesses who had not testified in the Criminal Court; but if they refused to call such witnesses, it was sufficient by way of reasons if they stated in their judgment that there was no need for further inquiries into the facts (20 October 1892, Bull. no. 212; 9 February 1924, Bull. no. 70; 5 November 1975, Bull. no. 237, p. 629).

2. The case-law since 1989

28. The Criminal Division's approach seems to have changed markedly in its Randhawa judgment of 12 January 1989:

"By Article 6 para. 3 (d) (art. 6-3-d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 'everyone charged with a criminal offence has the [right] to examine or have examined witnesses against him'. It follows that, unless it is impossible for reasons which they must specify, courts of appeal are bound, on a properly made application, to order the examination in the presence of the parties of prosecution witnesses who have not been confronted with the defendant at any stage of the proceedings.

Sarb Randhawa, who was charged with drug-trafficking and a customs offence, made an application to the Court of Appeal for an examination *inter partes* of the witnesses Joris Suray and Catherine Guillaume, whom he had had summoned and whose statements provided, he claimed, the sole basis for the finding of guilt. He said that he had not been able to have them examined at any stage of the proceedings.

In support of its refusal of this application, and although it based its finding of the defendant's guilt solely on the statements of the aforementioned witnesses, the court below noted merely that the witnesses whose examination had been sought had been interviewed during the police inquiries and the judicial investigation and that the defendant had been informed of the charges arising from their statements.

But while a refusal to hear evidence from a prosecution witness does not, as such, infringe the aforementioned provisions of the Convention, since the court may take into account any special difficulties entailed by an *inter partes* examination of a given witness, for example the risk of intimidation, pressure or reprisals, such a refusal must

nevertheless comply with the rights of the defence and the court must explain why a confrontation is impossible.

This was not so in the instant case, and the judgment must accordingly be set aside ..." (Bull. 1989, no. 13, pp. 37-38)

This approach was confirmed in a judgment of 22 March 1989 (case of X, Bull. 1989, no. 144, pp. 369-371).

PROCEEDINGS BEFORE THE COMMISSION

29. In his application of 4 August 1984 to the Commission (no. 11444/85), Mr Delta alleged a breach of Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d) of the Convention, claiming that he had not had a fair trial as his conviction was based solely on statements made to the police by witnesses whom neither he nor his counsel had been able to examine.

30. The Commission declared the application admissible on 8 September 1988.

In its report of 12 October 1989 (made under Article 31) (art. 31) the Commission expressed the opinion that there had been a violation of paragraph 1 of Article 6 taken together with paragraph 3 (d) (art. 6-1, art. 6-3-d). The full text of the Commission's opinion, which was unanimous, is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

31. In his memorial the applicant requested the Court to:

"Hold that in the instant case France violated Article 6 para. 1 taken together with paragraphs 2 and 3 (b) and (d) (art. 6-1, art. 6-2, art. 6-3-b, art. 6-3-d);

Find that there have been these violations and in consequence:

Order France to pay Mr Delta the sum of FRF 156,698.49 ... with interest at the French statutory rate from the date of the Court's decision, in compensation for the pecuniary damage sustained by Mr Delta;

Order France likewise to pay him the sum of FRF 600,000 ... with interest at the French statutory rate from the date of the Court's decision, in compensation for the non-pecuniary damage sustained by Mr Delta owing both to the violation itself and to

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 191 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

the feelings of distress which resulted from it and to the loss of liberty in difficult prison conditions for two years and seven months;

Order it to compensate Mr Divier, of the Paris Bar, direct by way of paying him the sum of FRF 24,000 ..., likewise with interest at the French statutory rate from the date of the Court's decision, in compensation for the loss of earnings he has sustained as a result of defending Mr Delta free of charge (but not under the legal-aid scheme) in both appeal and cassation proceedings;

And lastly, if the Court considers it fair, order France to compensate Mr Divier direct for the loss of earnings sustained by him on account of work done at the European Commission and Court stage but not wholly covered by legal aid, as indicated above."

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARAS. 1 AND 3 (d) (art. 6-1, art. 6-3-d)

32. Mr Delta complained that he had not had a fair trial. He relied on paragraphs 1 and 3 (d) of Article 6 (art. 6-1, art. 6-3-d) of the Convention:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal

...

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

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

The Paris Criminal Court and Court of Appeal had allegedly convicted him on the strength solely of statements made to the police by persons - the victim of a robbery, Miss Poggi, and a friend of hers, Miss Blin - whom neither his lawyer nor he himself had been able to examine or have examined before either of those two courts or, because of recourse to the direct committal procedure, before an investigating judge. They had thus, he claimed, deprived him of the opportunity to impugn the statements of the two persons concerned. The only witness heard at the trial was the police constable who had arrested Mr Delta and taken the initial statements of Miss

Poggi and Miss Blin; but he had not witnessed the attack in the underground and was not an officier de police judiciaire (see paragraph 11 above). The Court of Appeal refused to call two defence witnesses and likewise considered it unnecessary to hear evidence from the complainant and her friend. In sum, the applicant claimed that he had been tried exclusively on the basis of written evidence, in accordance with a practice of taking hearsay evidence from policemen.

The Commission accepted these arguments in substance.

33. The Government pointed out that in the Paris Criminal Court the applicant did not call any witnesses or request any further inquiries into the facts. They added that the prosecution did not fail to summon the victim of the attack and her friend, but the girls did not appear in court; there had accordingly not been any inequality of treatment between the prosecution and the defence.

In the Court of Appeal Mr Delta had indeed asked that Miss Poggi and Miss Blin should be called, together with two defence witnesses, but the Government alleged that he had only done so in order to challenge the judgment at first instance by every possible means and not in order to complain of any inequality of treatment.

Generally speaking, Article 6 para. 3 (d) (art. 6-3-d) did not, they submitted, give an accused an unlimited right to call witnesses; it allowed the judicial authorities a discretion to decide whether hearing a witness could contribute to the discovery of the truth. The applicant had in no way shown how the appearance in court of the victim and her friend or of defence witnesses who had not seen what had happened could provide any evidence of his innocence.

34. As the guarantees in paragraph 3 of Article 6 (art. 6-3) are specific aspects of the right to a fair trial set forth in paragraph 1 (art. 6-1), the Court will consider the applicant's complaint under paragraphs 3 (d) and 1 taken together (art. 6-3-d, art. 6-1), (see, among other authorities, the Windisch judgment of 27 September 1990, Series A no. 186, p. 9, para. 23).

Although the victim of the offence and her friend did not testify in court in person, they are to be regarded for the purposes of Article 6 para. 3 (d) (art. 6-3-d) as witnesses - a term to be given an autonomous interpretation (*ibid.*, p. 9, para. 23) - since their statements, as reported orally by Police Constable Bonci at the Criminal Court hearing and as recorded in writing by Inspector Duban, were in fact before the court, which took them into account.

35. The admissibility of evidence is primarily a matter for regulation by national law, and, as a general rule, it is for the national courts to assess the evidence before them. Accordingly, the Court's task under the Convention is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (*ibid.*, p. 10, para. 25).

36. In principle, the evidence must be produced in the presence of the accused at a public hearing with a view to adversarial argument. This does not mean, however, that in order to be used as evidence statements of witnesses should always be made at a public hearing in court: to use as evidence such statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3 (d) and 1 of Article 6 (art. 6-3-d, art. 6-1), provided the rights of the defence have been respected. As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness makes his statement or at some later stage of the proceedings (see the Kostovski judgment of 20 November 1989, Series A no. 166, p. 20, para. 41).

37. In the instant case Miss Poggi and Miss Blin had been interviewed, at the police-investigation stage, only by PC Bonci and the inspector who drew up the record of their statements. They were questioned neither by an investigating judge, because of recourse to the direct committal procedure (see paragraph 15 above), nor by the courts.

Before the Criminal Court the defence did not ask in their written submissions for any witnesses to be called. Nevertheless, the prosecution had duly summoned the two girls and, since they did not appear and gave no reasons for their failure to do so, the court could have made use of Articles 438 and 439 of the Code of Criminal Procedure to compel them to attend.

In the Court of Appeal, on the other hand, the defendant - relying, *inter alia*, on Article 6 para. 3 (d) (art. 6-3-d) of the Convention - expressly asked for the complainant and her friend and two defence witnesses to be summoned. This application was, however, refused (see paragraph 20 above).

Accordingly, neither the applicant nor his counsel ever had an adequate opportunity to examine witnesses whose evidence, which had been taken in their absence and later reported by a policeman who had not witnessed the attack in the underground, was taken into account by the courts responsible for trying the facts - decisively at first instance and on appeal, as the file contained no other evidence. They were therefore unable to test the witnesses' reliability or cast doubt on their credibility.

In sum, the rights of the defence were subject to such restrictions that Mr Delta did not receive a fair trial. There has accordingly been a breach of paragraph 3 (d) of Article 6 taken together with paragraph 1 (art. 6-3-d, art. 6-1).

II. ALLEGED VIOLATION OF ARTICLE 6 PARAS. 2 AND 3 (b) AND ARTICLES 17 AND 18 (art. 6-2, art. 6-3-b, art. 17, art. 18)

38. Before the Court, counsel for the applicant also relied on Article 6 paras. 2 and 3 (b) (art. 6-2, art. 6-3-b) and Articles 17 and 18 (art. 17, art. 18) of the Convention.

The alleged disregard of the presumption of innocence concerned the same facts and consequences that the Court has held to be contrary to paragraphs 3 (d) and 1 of Article 6 (art. 6-3-d, art. 6-1); in the circumstances of the case, no separate examination of it is necessary.

As regards the complaints relating to paragraph 3 (b) of Article 6 and to Articles 17 and 18 (art. 6-3-b, art. 17, art. 18), which were likewise not raised before the Commission, they fall outside the limits resulting from the Commission's decision on admissibility (see, among other authorities, the Bezicheri judgment of 25 October 1989, Series A no. 164, p. 12, para. 27). The Court accordingly has no jurisdiction to entertain them.

III. APPLICATION OF ARTICLE 50 (art. 50)

39. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision the applicant sought compensation for damage and reimbursement of expenses.

A. Damage

40. Mr Delta claimed to have suffered damage on account of the failure to comply with the requirements of the Convention and sought 156,698.49 French francs (FRF) in respect of pecuniary damage and FRF 600,000 in respect of non-pecuniary damage. The first of these sums represented loss of earnings caused by his detention, quantified on the basis of the national guaranteed minimum wage, while the second related to the feelings of distress induced by the violation of Article 6 (art. 6) and to the deprivation of liberty. In respect of both sums, the applicant claimed interest calculated at the French statutory rate, to run from the date of the Court's judgment.

41. The Government pointed out that at the time the applicant was arrested he had no occupation and was not receiving any unemployment benefit. They considered that if the Court were to find a breach, its

judgment would provide sufficient just satisfaction in respect of the non-pecuniary damage.

42. The Delegate of the Commission expressed doubts as to the existence of a causal link between the alleged violation and the damage sustained by Mr Delta on account of his loss of liberty; he left it to the Court to award a nominal sum if it wished to go beyond a finding of a violation.

43. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 (art. 6). Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it unreasonable to regard Mr Delta as having suffered a loss of real opportunities (see, among other authorities and *mutatis mutandis*, the Goddi judgment of 9 April 1984, Series A no. 76, pp. 13-14, paras. 35-36, and the Colozza judgment of 12 February 1985, Series A no. 89, p. 17, para. 38).

Taking its decision on an equitable basis, as required by Article 50 (art. 50), it awards Mr Delta compensation in the amount of FRF 100,000 in respect of the whole of the damage he suffered.

B. Costs and expenses

44. Counsel for the applicant claimed compensation for the loss of earnings he had sustained by defending Mr Delta free of charge. He sought FRF 24,000 plus interest in respect of the national proceedings, as Mr Delta had preferred to choose his own counsel and thus forgo legal aid for the proceedings in the Paris Court of Appeal and in the Court of Cassation. As regards the European proceedings, he requested the Court to decide whether compensation should be awarded and, if so, how much; however, he assessed his fees for the work done up to 1 May 1990 at FRF 44,000 and stated that his client had been legally aided in the proceedings before the Convention institutions.

45. In the Government's submission, only the expenses actually incurred by Mr Delta himself could be reimbursed. It was for the Court to assess the amount of the expenses entailed by the national proceedings, having regard to the supporting documents produced. Furthermore, the applicant had not proved that in respect of the proceedings in Strasbourg he had incurred any financial liabilities exceeding the amount of legal aid.

46. The Delegate of the Commission left the matter to the Court's discretion.

47. According to the Court's case-law, an applicant's lawyer cannot rely on Article 50 (art. 50) to claim just satisfaction on his own account (see, among other authorities, the Luedicke, Belkacem and Koç judgment of 10 March 1980, Series A no. 36, p. 8, para. 15, and the Artico judgment of 13 May 1980, Series A no. 37, p. 19, para. 40).

The claim for reimbursement of costs and expenses must therefore be dismissed.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of paragraph 3 (d) of Article 6 of the Convention taken together with paragraph 1 (art. 6-3-d, art. 6-1);
2. Holds that it is not necessary also to examine the case under Article 6 para. 2 (art. 6-2);
3. Holds that it is not called upon to consider the complaints under Article 6 para. 3 (b) and Articles 17 and 18 (art. 6-3-b, art. 17, art. 18);
4. Holds that the respondent State is to pay the applicant compensation for damage in the sum of 100,000 (one hundred thousand) French francs;
5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 December 1990.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar