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

CASE OF PEREZ v. FRANCE

(Application no. 47287/99)

JUDGMENT

STRASBOURG

12 February 2004

In the case of Perez v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mr C. BÎRSAN,
Mr P. LORENZEN,
Mr K. JUNGWIERT,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr K. TRAJA,
Mr A. KOVLER,
Mr J. BORREGO BORREGO, *judges*,

and Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 12 November 2003 and 21 January 2004,

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

PROCEDURE

1. The case originated in an application (no. 47287/99) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mrs Paule Perez ("the applicant"), on 5 October 1998.

2. The applicant, who had been granted legal aid, was represented by Mr P.-F. Divier, a lawyer practising in Paris. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that at the end of the investigation during which she was joined as a civil party, the procedure before the Court of Cassation had not been fair.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). On 30 January 2003 it was declared admissible by a Chamber of that Section, composed of Mr C.L. Rozakis, President, Mr J.-P. Costa, Mrs F. Tulkens, Mr P. Lorenzen, Mrs N. Vajić, Mr E. Levits, Mr V. Zagrebelsky, judges, and Mr S. Nielsen, Deputy Section Registrar. On 5 June 2003 a Chamber of that Section, composed of the following judges: Mr Rozakis, President, Mr Costa, Mrs Tulkens, Mr Lorenzen, Mr Levits, Mr. A. Kovler and Mr. Zagrebelsky, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The Grand Chamber decided that there was no need to hold a hearing on the merits of the case (Rule 59 § 3). The applicant and the Government each filed observations on the merits and on the question of the applicability of Article 6 of the Convention, which had been joined to the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1933 and lives in La Plaine des Cafres (Réunion, France).

9. On 31 July 1995 she went to the gendarmerie in La Plaine des Cafres to file a complaint of having been assaulted by her two children. She said that her children had come to see her about a lawsuit between them concerning the non-payment of maintenance to which she was entitled because of her ill-health. While the applicant was in the front passenger seat of a motor car driven by her daughter, her son, who was in the back, had allegedly immobilised her and used a syringe to inject her twice with an unknown substance. She said she had quickly got out of the car and gone to hospital.

10. The applicant was found to have marks of injections. Moreover, after a witness had come forward, the gendarmes found a syringe which when tested was found to bear traces of diazepam and benzoic acid, both of which also form part of the chemical make-up of valium.

11. An investigation was begun on the grounds of assault with an offensive weapon resulting in total unfitness for work for more than eight days (reduced to less than that during the investigation).

12. During the investigation, the applicant joined the proceedings as a civil party.

13. On 14 March 1997 the Saint-Pierre investigating judge ruled that there was no case to answer on the ground that there was insufficient evidence that anyone had committed the offence. He found that the applicant's son, "who had allegedly given her the injection, had left the *département* to return to his dental practice abroad, in Gabon", that "he had given his mother an injection of a substance which was medically harmless at that dosage..." and "that, in the absence of precise information as to his address, it did not [seem] practicable to interview [the son] given the difficulty of enforcing any request for evidence to be taken on oath in Gabon". The decision was apparently served on the applicant on the same day by registered post with acknowledgment of receipt.

14. On 7 April 1997 the applicant went to the investigating judge's registry and, claiming that she had not received a copy of the decision, refused to sign the notice of appeal drafted by the registrar. She asserted that she had drafted a personal notice of appeal and lodged it at the registry on that same day. In her written observations to the court of appeal, the applicant requested, *inter alia*, that the investigating judge be made to stand down, that the investigation be resumed, that it be formally recorded that "her complaint [related to] premeditated assault with an offensive weapon resulting in thirty days' total unfitness for work and, given the results of the tests on the syringe, with criminal intent", and that her children be "brought to the *département* by force in order to explain themselves".

15. By a judgment of 8 July 1997, the Indictment Division of the Court of Appeal of Saint-Denis-de-la-Réunion found that the applicant had appealed "by letter addressed to and received on 7 April 1997 by the investigating judge's registry", and that she had gone to the registry on the same day and refused to sign the notice of appeal. The Indictment Division therefore ruled that her appeal was inadmissible on the grounds that she had missed the legal deadline and had failed to sign the notice of appeal.

16. On 11 July 1997 the applicant appealed on points of law. On 21 July 1997 she filed personal observations in which she submitted that the Court of Appeal had, in its judgment of 8 July 1997, disregarded certain provisions of the Code of Criminal Procedure: firstly, "the judgment did not meet the essential conditions required for it to be lawful", having been given by "judges who had not attended all the hearings in the case" and, secondly,

the grounds set out in the impugned judgment relating to service of the decision that there was no case to answer were "insufficient" because they did not address the arguments she had put forward at the hearing. She alleged that there had been a breach of Articles 592, 575-6, 593 and 646 of the Code of Criminal Procedure.

17. In a judgment of 21 April 1998, the Criminal Division of the Court of Cassation dismissed her appeal in the following terms:

> " ...
>
> Given the personal written observations filed;
>
> On the sole ground of appeal, based on a breach of Articles 485 and 183 of the Code of Criminal Procedure;
>
> Whereas, firstly, the particulars of the judgment under appeal establish that it was given in the conditions prescribed by Article 485, third paragraph, of the Code of Criminal Procedure;
>
> Whereas, secondly, the Court of Appeal was correct in finding that the appeal of 7 April 1997 against the decision that there was no case to answer served on 14 March 1997 was out of time in accordance with the conditions laid down in Article 183 of the Code of Criminal Procedure;
>
> ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Civil Code

18. The relevant provisions are as follows:

Article 1382

"Any act that causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it."

Article 1383

"Everyone shall be liable for the damage he has caused not only by his own acts, but also by his negligence or carelessness."

Article 1384, first paragraph

"Everyone shall be liable not only for the damage caused by his own act but also for that caused by persons for whom he is responsible or by things he has in his keeping."

B. The Code of Criminal Procedure

19. The relevant provisions are as follows:

Preliminary Article

"I. – Criminal proceedings shall be fair and provide for all parties to be heard and shall maintain a balance between the rights of the parties.

...

II. – The courts shall ensure that victims are kept informed and their rights safeguarded during any criminal proceedings.

..."

Article 1

"Public prosecutions for the punishment of offenders shall be brought and conducted by officers of the State legal service or by those public officials empowered to do so by law.

Such prosecutions may also be brought by the injured party, under the conditions laid down in this Code."

Article 2

"Anyone who has personally suffered damage directly caused by a criminal offence may bring civil-party proceedings to seek compensation for such damage.

Discontinuance of such proceedings shall neither terminate nor stay the public prosecution ..."

Article 3

"Civil-party proceedings may be conducted simultaneously with the public prosecution and before the same court.

Civil-party proceedings may be brought for any head of damage, whether pecuniary or physical or non-pecuniary, caused by the acts under prosecution."

Article 4

"Civil-party proceedings may also be conducted separately from the public prosecution.

However, judgment in civil-party proceedings brought in a civil court shall be suspended until final judgment has been given in any public prosecution."

Article 5

"A party who has brought proceedings in a civil court may not refer the same complaint to a criminal court unless the prosecution has preferred charges in that court before the civil court has ruled on the merits."

Article 81-1

"An investigating judge may, of his own motion, on the instructions of the prosecuting authorities or at the request of the civil party, do anything lawful to enable him to assess the nature and extent of the damage suffered by the victim or to gather information about the victim's personality."

Article 82-1

"The parties may, during the investigation, submit a written and reasoned request to the investigating judge that they be interviewed or questioned, that a witness be heard, that a confrontation be arranged or that they be taken to the scene of the crime, that one of them be ordered to produce an item relevant to the investigation, or that any other action be taken which they believe is necessary for uncovering the truth. In order to be valid, such a request must comply with the provisions of the tenth paragraph of Article 81; it must relate to specific actions and, where it relates to an interview, must identify the person sought to be interviewed."

Article 85

"Anyone who claims to have suffered damage as a result of a serious crime [*crime*] or other serious offence [*délit*] may, by lodging a criminal complaint, join the criminal proceedings as a civil party on application to the appropriate investigating judge."

Article 87, first paragraph

"A civil-party application may be made at any time during the investigation."

Article 88

"The investigating judge shall record in an order the lodging of the complaint. According to the civil party's means, he shall determine the amount of security for costs which that party must, if he has not obtained legal aid, deposit at the registry and the time-limit for doing so if the complaint is not to be declared inadmissible. He may exempt the civil party from paying security."

Article 186, second paragraph

"A civil party may appeal against decisions not to begin or to discontinue the investigation and against orders that harm his civil interests. ..."

Article 418

"Anyone who, in accordance with Article 2, claims to have suffered damage caused by a criminal offence may, if he has not already done so, lodge a civil-party complaint at the hearing itself.

Representation by a lawyer is not mandatory.

A civil party may, in support of his complaint, file a claim for damages in the amount of the loss he has suffered."

Article 419

"A civil party shall lodge his complaint either prior to the hearing at the registry or during the hearing itself by making a declaration recorded by the registrar or by filing pleadings."

Article 420-1

"...

With the consent of the public prosecutor, the victim may also file a claim during the police investigation for restitution or damages by making a formal statement recorded by a police officer. Such a claim shall count as a civil-party complaint if it is decided to prosecute and the case is referred directly to a criminal or police court.

...

In the event of a dispute over the ownership of the objects whose restitution is requested or where the court does not find sufficient reasons for a decision in the claim itself, the supporting documents or the file, the decision on the civil claim shall be adjourned to a later hearing to which all parties shall be summoned by the prosecution."

20. Articles 2-1 to 2-19 concern the exercise of civil-party rights by associations or public-law entities.

C. Other elements of domestic law

21. In order for a civil-party complaint to be admissible, it is sufficient if the circumstances on which it is based permit the investigating judge to accept the possibility that the alleged damage may have occurred and that there may be a direct link between that damage and the commission of an

offence (see, *inter alia:* judgments of the Court of Cassation, Criminal Division ("*Cass. crim.*"), 9 February 1961, Dalloz, 1961, p. 306; 5 March 1990, *Bulletin criminel* ("*Bull. crim.*") no. 103; 11 January 1996, *Bull. crim.* no. 16; 8 June 1999, *Bull. crim.* no. 123; 6 September 2000, *Bull. crim.* no. 263). The investigating judge must determine whether the complainant can establish a "possible" interest in lodging the complaint, and not find a civil-party application inadmissible on purely abstract grounds for lack of such an interest (*Cass. crim.*, 6 February 1996, *Bull. crim.* no. 60). A decision by the investigating judge that a civil-party application is inadmissible does not prevent the party in question from lodging a further complaint with the trial court (*Cass. crim.*, 15 May 1997, *Bull. crim.* no. 185).

22. The Court of Cassation considers that a civil party is free not to exercise his right to claim compensation for his losses (*Cass. crim.*, 10 October 1968, *Bull. crim.* no. 248; 19 October 1982, *Bull. crim.* no. 222).

23. Even where compensation for losses falls outside the competence of the criminal courts, a civil-party application is admissible in so far as it assists in proving the offence (*Cass. crim.*, 10 February 1987, *Bull. crim.* no. 64).

24. "C*ivil proceedings must await the outcome of criminal proceedings*" (Article 4 § 2 of the Code of Criminal Procedure). The civil court must suspend judgment until the criminal court has issued a final ruling in the prosecution. The prosecution must be brought before or during the civil trial. The two sets of proceedings must be based on the same facts, even though the purpose, case and parties do not have to be identical. An application for a suspension must be made to the civil judge, and may be made for the first time at the appeal stage or before the Court of Cassation. Once ordered, a stay is binding on both the civil court and the parties until a final decision has been made in the prosecution, failing which the civil proceedings are null and void.

25. "*A final criminal judgment prevails over a civil claim.*" A civil court is bound by the final decision in a prosecution. The primacy of a decision in a criminal case is not prescribed by law in the strict sense but derives from case-law. It is an absolute rule, binding not only on the parties to the criminal trial but also on third parties. As application of the rule is not mandatory on public policy grounds, this rule cannot be relied on by the prosecution or by the judge of his own motion. Decisions by investigating judges are not binding on the civil courts. Accordingly, the only criminal decisions which are binding are the final and irrevocable decisions of the trial courts. Moreover a civil court is bound only by "findings of a criminal nature": a civil court hearing a civil case will be bound by an acquittal, but not by that part of the criminal court's decision which deals with a claim for damages. Such "findings", namely the reasons and the operative part, must be "certain" (which excludes findings expressed in doubtful or uncertain

terms, except for acquittals "for lack of evidence" which are binding on a civil court) and "necessary" (what the judge must find to justify his decision – the elements of the offence, its classification, the aggravating circumstances which determine such classification, and the finding of guilt or not as the case may be). Generally speaking, the reasons do not have the same binding effect as the operative part unless they form its essential underpinning.

D. Recommendations of the Committee of Ministers

26. Recommendation No. R (83) 7 on participation of the public in crime policy, adopted by the Committee of Ministers on 23 June 1983, advocates the establishment of an efficient system of legal aid for victims so that they may have access to justice in all circumstances.

27. Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, adopted by the Committee of Ministers on 28 June 1985, provides:

> " ...
>
> 9. The victim should be informed of
>
> – the date and place of a hearing concerning an offence which caused him suffering;
>
> – his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice;
>
> – how he can find out the outcome of the case;
>
> 10. It should be possible for a criminal court to order compensation by the offender to the victim. To that end, existing limitations, restrictions or technical impediments which prevent such a possibility from being generally realised should be abolished;
>
> 11. Legislation should provide that compensation may either be a penal sanction, or a substitute for a penal sanction or be awarded in addition to a penal sanction;
>
> 12. All relevant information concerning the injuries and losses suffered by the victim should be made available to the court in order that it may, when deciding upon the form and the quantum of the sentence, take into account:
>
> – the victim's need for compensation;
>
> – any compensation or restitution made by the offender or any genuine effort to that end;
>
> 13. In cases where the possibilities open to a court include attaching financial conditions to the award of a deferred or suspended sentence, of a probation order or of any other measure, great importance should be given among these conditions to compensation by the offender to the victim;

...”

28. Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation, adopted by the Committee of Ministers on 17 September 1987, “recommends that the governments of member States take the following measures”:

“...

4. ensure that victims and their families, especially those who are most vulnerable, receive in particular:

...

– assistance during the criminal process, with due respect to the defence;

...”

29. Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted by the Committee of Ministers on 6 October 2000, provides:

“ ...

34. Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.”

THE LAW

30. The applicant, who was joined as a civil party during the investigation, complained of the unfairness of the procedure before, and about the judgment given by, the Court of Cassation. She relied on Article 6 § 1 of the Convention, the relevant provisions of which are as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing by [a] ... tribunal ...”

31. The Court must consider whether Article 6 is applicable, the question having been joined to the merits in the admissibility decision. The applicant argued that it was, the Government that it was not.

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

1. The Government

32. After noting certain facts relating to the relevant domestic law, the Government observed that, by making a civil-party complaint, a victim may seek not only compensation, but also the punishment of the offender, and the benefit of the rights of a party to the criminal proceedings (access to the file, applications for decisions, etc.) and of the powers of an investigating judge in gathering evidence of the facts and the damage suffered.

33. They observed that significant legal consequences flowed from the distinction between civil-party complaints aimed at punishing the offender on the one hand and those seeking compensation or also seeking compensation on the other: to be joined as a civil party did not mean that the claim for compensation was also admissible, nor did it dispense the civil party from the need to claim compensation before the trial court; the claim for compensation had to be made at the latest before the criminal court of first instance; finally, a civil party who failed to make such a claim could subsequently apply to a civil court within the limitation period applicable to civil actions.

34. Turning to the applicability of Article 6 in general terms, the Government submitted first of all that only the civil limb of Article 6 § 1 was involved, the victim not being a defendant but a complainant. The question to be determined was therefore whether civil-party proceedings required the courts to determine a "dispute" (*contestation*) concerning a "civil right or obligation".

35. The Government submitted that the right to claim compensation, arising from the civil wrong committed by the offender, was a civil right to which Article 6 § 1 of the Convention applied. They observed, however, that victims did not always exercise that right and might have as their sole purpose to trigger or be joined in a prosecution. In those two cases, the Government argued that victims were not exercising a civil right (see *Hamer v. France*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III).

36. Accordingly, the Government took the view that a civil-party complaint was not, without more, sufficient to bring the related proceedings "*a priori* within the ambit of Article 6". They argued that such a broad interpretation would encompass rights as yet excluded, such as the right to launch or be associated with a prosecution, or even to uphold one's honour without claiming anything other than non-pecuniary redress.

37. The Government sought to define a criterion that would enable a distinction to be made between those proceedings which came under Article 6 and those which did not, while observing that the criteria adopted by the Court in the past were not satisfactory, particularly the criterion of the "decisive outcome of the proceedings". The making of a "claim for compensation" was the only criterion capable of applying to all proceedings, provided of course that it could be rigorously defined and that its legal consequences were clearly determined. A victim who made a civil-party application asserted a civil right only from the time when he made a claim for compensation for the damage caused by the offence.

38. Drawing an analogy with the Court's case-law on summary civil proceedings, to which Article 6 does not apply, the Government contended that a victim must unequivocally state his intention to claim compensation for the damage suffered, thus setting the starting-point of the "dispute" and making Article 6 applicable.

39. Such a criterion could be applied equally to concluded and to continuing proceedings, because it would suffice to check whether the victim had made such an "unequivocal" claim or not. The Article 6 safeguards would apply as from the making of the claim for compensation. Lastly, the claim, which could be made at any stage in the proceedings (and even at the beginning if appropriate), would not have to be detailed, a distinction being made between the making and the quantification of a claim for compensation.

40. In view of the foregoing, the Government submitted that Article 6 § 1 was not applicable, because the applicant had failed to make a claim during the proceedings for compensation for the damage directly caused by the offence.

2. The applicant

41. Part of the applicant's observations took the form of a broader description of the French preliminary investigation procedure. While noting that in theory the possibility of being joined to the proceedings as a civil party brought with it considerable benefits by virtue of its hybrid punitive and compensatory character, she asserted that the investigation stage was "in the actual practice of French criminal procedure a peculiar world of its own where any manner of violation of Article 6 § 1 of the Convention may occur out of reach of any form of scrutiny and virtually beyond all

supervision" (pre-judgment of the merits, role of the prosecution, confidentiality of the investigation, etc.).

42. In the applicant's submission, civil-party proceedings constituted nothing less than an obstacle course of devices designed to discourage or even prevent someone from making a complaint: the setting of prior payments into court at prohibitive levels, refusal to launch an investigation, refusal to widen its scope, conduct of the police investigation and other ploys. With regard to civil compensation, she considered that a finding of no case to answer left the complainant to face the civil court in the worst possible conditions. Moreover, a victim who was restricted to purely civil proceedings would thereby be deprived of a form of "private revenge".

43. For the applicant, it was imperative for Article 6 to apply as soon as the civil party joined the proceedings, whether the case was pending or concluded.

44. On the question of the applicability of Article 6 in the instant case, she observed that she had gone to the gendarmerie in July 1995 to lodge a simple complaint. That complaint had first led to preliminary enquiries, then to a decision by the public prosecutor to open a judicial investigation. Accordingly, she lodged a civil-party complaint with the investigating judge when the prosecution had already begun.

45. In so doing she had clearly shown her intention to seek redress for the specific damage resulting from the assault she had reported to the gendarmes and which was under investigation. The mention during the investigation of the problem of the non-payment of her maintenance was irrelevant to her intentions, particularly as she was without the assistance of a lawyer at that stage in the proceedings.

46. By analogy with *Moreira de Azevedo*, the applicant submitted that, in lodging a civil-party complaint, she had demonstrated her interest not only in criminal sanctions against the offenders but also in pecuniary compensation for the damage she had suffered, and that her failure to submit a formal claim for damages could not be held against her (*Moreira de Azevedo v. Portugal*, judgment of 23 October 1990, Series A no. 189, pp. 16-17, §§ 63-68). She further cited *Tomasi*, in which the investigation had likewise been concluded with a finding of no case to answer (*Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A).

B. The Court's assessment

1. Case-law

47. The Court has delivered a number of judgments about civil-party proceedings. In *Tomasi* (cited above), it ruled as follows (p. 43, § 121):

"Article 85 of the Code of Criminal Procedure provides for the filing of a complaint with an application to join the proceedings as a civil party. According to the case-law of the Court of Cassation (Crim. 9 February 1961, Dalloz 1961, p. 306), that provision simply applies Article 2 of that Code ...

...

The investigating judge will find the civil application admissible – as he did in this instance – provided that, in the light of the facts relied upon, he can presume the existence of the damage alleged and a direct link with an offence (ibid.).

The right to compensation claimed by Mr Tomasi therefore depended on the outcome of his complaint, in other words on the conviction of the perpetrators of the treatment complained of. It was a civil right, notwithstanding the fact that the criminal courts had jurisdiction (see, *mutatis mutandis*, the Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, p. 17, § 67)."

48. Thus, the Court inferred that Article 6 of the Convention was applicable from a combination of domestic law, namely Articles 2 and 85 of the Code of Criminal Procedure, and the admissibility of civil-party proceedings at the domestic level. In fact, unless the complaint was found inadmissible by the appropriate judge, domestic law appeared to entail *ipso facto* the applicability of Article 6.

49. However, in *Acquaviva*, whereas the Commission had applied Article 6 on the basis of *Tomasi*, the Court considered it necessary to ascertain whether the proceedings in issue concerned a dispute over the applicants' "civil rights and obligations" (*Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A, p. 14, § 45).

50. Applying case-law on specific situations unconnected with the issue of civil-party proceedings (*Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, and *Kerojärvi v. Finland*, judgment of 19 July 1995, Series A no. 322), the Court sought to ascertain "whether there was a dispute ('*contestation*') over a 'right' which [could] be said, at least on arguable grounds, to be recognised under domestic law". The "dispute", which should be genuine and serious, could relate not only to the existence of a right but also to its scope and the manner of its exercise. Moreover the Court considered that the outcome of the proceedings should be directly decisive for the right in question (*Acquaviva*, cited above, p. 14, § 46). It found that Article 6 § 1 was applicable, for the following reasons (ibid., pp. 14-15, § 47):

"By choosing the avenue of criminal procedure, the applicants set in motion judicial criminal proceedings with a view to securing a conviction, which was a prior condition for obtaining compensation, and retained the right to submit a claim for damages up to and during the trial.

The finding of self-defence – which excluded any criminal or civil liability – made by the Indictment Division of the Versailles Court of Appeal ... deprived them of any right to sue for compensation. The outcome of the proceedings was therefore, for the

purposes of Article 6 § 1, directly decisive for establishing their right to compensation."

51. In *Hamer* (cited above), which, unlike *Tomasi* and *Acquaviva*, did not concern a finding of no case to answer but a decision on the merits made by the trial court, the Court referred to the fact that in *Acquaviva* it had considered that the finding of self-defence reached by the Indictment Division of the Versailles Court of Appeal deprived the civil parties of any right to claim compensation (*Acquaviva*, cited above, p. 15, § 47). Having noted that Mrs Hamer had not made any claim for compensation during the preliminary investigation or in the assize court and that she could subsequently file a claim in the civil courts, the Court found that, unlike the position in *Acquaviva*, the proceedings were not decisive for the purposes of Article 6 § 1 of the Convention.

52. The Court confirmed this case-law in *Aït-Mouhoub v. France*, (judgment of 28 October 1998, *Reports* 1998-VIII). It held that the second applicant's complaint concerned a civil right, because he had expressly mentioned the financial loss caused by the alleged offences. Moreover, it inferred the "decisive" nature of the proceedings for establishing his right to compensation from the text of Article 85 of the Code of Criminal Procedure under which the complaint had been made: the complaint was "designed to ... secure a conviction that would have enabled him to exercise his civil rights in regard to the alleged offences and, in particular, to obtain compensation for the financial loss". For the Court, it was irrelevant that he had not quantified his loss at the time of lodging his complaint, since in French law it was open to him to submit a claim for damages up to and during the trial (p. 3226, § 44; see also *Acquaviva*, cited above, pp. 14-15, § 47).

53. In 1999 the judgment in *Maini v. France* was delivered on the basis of similar reasoning (no. 31801/96, §§ 28-29, 26 October 1999). In that case, which concerned a finding of no case to answer, the Court stated that proceedings turning on the liability of the police officers were bound to fail and constituted a nugatory remedy in so far as the applicant, having failed to prove his allegations in the criminal courts, stood no chance of succeeding in the civil courts (ibid., § 30).

2. The limits of the above case-law

54. The Court considers that its case-law may present a number of drawbacks, particularly in terms of legal certainty for the parties, in that after *Tomasi* it found it necessary to ascertain whether, firstly, there was a "dispute" over a "civil right" which was arguably recognised under domestic law and, secondly, whether the outcome of the proceedings was directly decisive for such a right.

55. The existing case-law, and therefore the criteria usually applied following *Tomasi*, tends to over-complicate any analysis of the applicability

of Article 6 to civil-party proceedings in French law. In any event, such an analysis may prove difficult in a case which is still pending in the domestic courts, or in which the criminal issues have been decided. The Court can neither substitute itself for the domestic courts by assessing the evidence submitted by the applicant in support of his complaint (and thereby risk making mistakes) nor prejudge the chances of success of subsequent appeals, even assuming that it is not artificial to separate out a number of proceedings all designed to remedy the same damage.

56. The Court thus wishes to end the uncertainty surrounding the applicability of Article 6 § 1 of the Convention to civil-party proceedings, particularly since a number of other High Contracting Parties to the Convention have similar systems.

3. A new approach

57. The Court notes that, although it has found the concept of "civil rights and obligations" to be autonomous, it has also held that, in this context, the legislation of the State concerned is not without importance (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, p. 30, § 89). Whether or not a right is to be regarded as civil within the meaning of that term in the Convention must be determined by reference not only to its legal classification but also to its substantive content and effects under the domestic law of the State concerned. Moreover, the Court, in the exercise of its supervisory function, must also take account of the object and purpose of the Convention.

58. The Court considers it necessary to examine the domestic legislation on civil-party applications in the French criminal courts.

59. In French law victims of an offence may, under Article 4, first paragraph, of the Code of Criminal Procedure, pursue a civil action separately from the prosecution, in the civil courts. They may also pursue it in the criminal courts simultaneously with the prosecution, under Article 3, first paragraph, of that Code. The second paragraph of Article 3 specifies that a civil claim is admissible in respect of all the damage caused by the offence being prosecuted.

60. French law thus gives the victim of an offence the option of choosing between civil and criminal proceedings. Under the civil option, the fact that the damage is caused by a criminal offence means that civil procedure is only applied subject to certain rules: the irrevocability of the choice (Article 5 of the Code of Criminal Procedure – see paragraph 19 above); the principle whereby "civil proceedings must await the outcome of criminal proceedings" (see paragraph 24 above); and the principle that "a final criminal judgment prevails over a civil claim" (see paragraph 25 above).

61. The criminal option, with which the Court is concerned here, is exercised by way of a civil-party complaint, which is subject to certain

conditions and produces certain consequences (see paragraphs 19 et seq. above). Civil-party proceedings are brought either "by intervention", after the prosecution has already started, by means of an application to the investigating judge or the trial court for leave to join the proceedings, or "by instigation", in other words by means of a civil-party complaint or a direct summons before the trial court. Although a civil-party victim faces certain constraints in as much as he can no longer testify and is exposed to sanctions for failure or abuse, he enjoys the benefit of being a party to the criminal trial, is kept informed of the steps in the proceedings, may file requests for documents and lodge appeals and, above all, may obtain compensation from the criminal courts for the damage he has suffered.

62. In view of the foregoing, there can be no doubt that civil-party proceedings constitute, in French law, a civil action for reparation of damage caused by an offence. In these circumstances, the Court therefore sees no reason, *a priori*, to consider it otherwise for the purposes of applying Article 6 § 1 of the Convention.

63. While the Government highlighted the distinction between a civil-party application to join proceedings (intervention in the trial) and a civil action (claim for compensation), the Court does not believe that this distinction rules out the applicability of Article 6. On the contrary, all joined civil parties are in their own right both parties to the proceedings for the defence of their civil interests and entitled to claim compensation at any stage in those proceedings. The fact that they may choose not to claim compensation at a particular stage in the proceedings does not detract from the civil nature of their claim, nor does it take away their right to make such a claim at a later stage, which they cannot in any case be shown not to have exercised until the end of the trial of the merits. Moreover, contrary to the Government's assertion, French law does not necessarily create a dichotomy between "civil-party proceedings" and a "civil claim"; the former is in reality only a type of the latter which is commenced by instigation or intervention.

64. The Government also considered it necessary to establish that a "*contestation*" does not begin until a "claim for compensation" has been lodged. In this respect the Court notes that the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 § 1 restrictively: conformity with the spirit of the Convention requires that the word "*contestation*" should not be construed too technically and that it should be given a substantive rather than a formal meaning. Besides, it has no counterpart in the English text of Article 6 § 1 (see *Moreira de Azevedo*, cited above, pp. 16-17, § 66). Moreover, if the making of a civil-party complaint amounts to the same thing as making a civil claim for indemnification, it is immaterial that the victim may have failed to lodge a formal claim for compensation: by acquiring the status of civil parties, victims demonstrate the importance they attach not only to the

criminal conviction of the offender but also to securing financial reparation for the damage sustained (ibid., p. 17, § 67).

65. In any event, it is conceivable that Article 6 may be applicable even in the absence of a claim for financial reparation: it suffices if the outcome of the proceedings is decisive for the "civil right" in question (ibid. pp. 16-17, § 66; see also *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 14, § 29).

66. In the light of the foregoing, there is no doubt that in French law proceedings whereby someone claims to be the victim of an offence are decisive for his "civil rights" from the moment he is joined as a civil party. In fact, Article 6 is applicable to proceedings involving civil-party complaints even during the preliminary investigation stage taken on its own (see *Tomasi, Acquaviva* and *Maini*, cited above; and *Zuili v. France* (dec.), no. 46820/99, 21 May 2002), and even, where appropriate, if there are pending or potential proceedings in the civil courts. On this last point, the Court considers that it would be artificial to hold that the outcome of proceedings brought in the criminal courts by the victim of an offence ceases to be decisive merely because of the existence of pending or potential civil proceedings, being compelled to note as a matter of fact that in French law criminal proceedings prevail over civil proceedings both in terms of the means available to establish the facts and gather evidence and in terms of the principle whereby "civil proceedings must await the outcome of criminal proceedings" and, for that matter, that whereby "a final criminal judgment prevails over a civil claim".

67. The Court further notes that, even where criminal proceedings are determinative only of a criminal charge, the decisive factor for the applicability of Article 6 § 1 is whether, from the moment when the applicant is joined as a civil party until the conclusion of those criminal proceedings, the civil component remains closely connected with the criminal component (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 62, ECHR 2002-I), in other words whether the criminal proceedings affect the civil component. *A fortiori*, Article 6 must apply to proceedings relating both to the criminal charge and to the civil component of the case.

68. That being so, the Court, in connection with such proceedings as relate exclusively to the determination of a criminal charge, wishes to explore the close link which exists in French law between civil-party proceedings and prosecutions. Civil-party proceedings brought "by way of instigation" automatically trigger a prosecution. This consequence, though significant, constitutes only one aspect of civil-party proceedings by way of instigation, which are not thereby deprived of their "civil" character. In this respect the Court notes that, in an earlier case against France, it agreed with the Government in finding that a civil party could not be regarded as the opponent of the prosecution, nor necessarily as its ally, given that their respective roles and purposes were clearly distinct (see *Berger v. France*,

no. 48221/99, § 38, ECHR 2002-X). In addition to what has been noted above, the Court also observes that the withdrawal of the victim's complaint does not bring the prosecution to an end, save in exceptional cases. Lastly, the Court notes that, in its Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted on 6 October 2000, the Committee of Ministers expressed the view that victims should be able to challenge decisions of public prosecutors not to prosecute by, *inter alia*, authorising parties to engage private prosecution (see paragraph 29 above).

69. Nonetheless, the fact is that the Court of Cassation accepts the principle of civil proceedings for purely punitive purposes, which may explain why legal theory refers indiscriminately to "civil proceedings for punitive purposes" and to "civil-party complaints for punitive purposes".

70. The Court considers that in such cases the applicability of Article 6 has reached its limits. It notes that the Convention does not confer any right, as demanded by the applicant, to "private revenge" or to an *actio popularis*. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see *Golder v. the United Kingdom*, judgment of 21 February 1975*,* Series A no. 18, p. 13, § 27; *Helmers*, cited above*,* p. 14, § 27; and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, p. 78, § 58). In any event, the waiver of such a right must be established, where appropriate, in an unequivocal manner (see, *mutatis mutandis, Colozza and Rubinat v. Italy*, judgment of 12 February 1985, Series A no. 89, pp. 14-15, § 28, and *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 46, ECHR 2002-VII).

71. The Court concludes that a civil-party complaint comes within the scope of Article 6 § 1 of the Convention, except in the cases referred to in the previous paragraph.

72. Such an approach is consistent with the need to safeguard victims' rights and their proper place in criminal proceedings. Simply because the requirements inherent in the concept of a "fair trial" are not necessarily the same in disputes about civil rights and obligations as they are in cases involving criminal trials, as evidenced by the fact that for civil disputes there are no detailed provisions similar to those in Article 6 §§ 2 and 3 (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 32) does not mean that the Court can ignore the plight of victims and downgrade their rights. In any event, the Code of Criminal Procedure, in a preliminary Article introduced by law no. 2000-516 of 15 June 2000, expressly sets out certain principles fundamental to criminal trials, including "a balance between the rights of the parties" and

that the "rights [of victims shall be] safeguarded" (see paragraph 19 above). Lastly, the Court draws attention for information to the text of Recommendations Nos. R (83) 7, R (85) 11 and R (87) 21 of the Committee of Ministers (see paragraphs 26-28 above), which clearly specify the rights which victims may assert in the context of criminal law and procedure.

4. Application of the above criterion to the facts of the case

73. The Court considers that this new approach should be adopted and, in accordance with the object and purpose of the Convention, the derogations from the safeguards embodied in Article 6 § 1 should be interpreted restrictively (see *Pellegrin v. France* [GC], no. 28541/95, § 64, ECHR 1999-VIII).

74. The Court finds that in this case the applicant lodged a civil-party complaint during the criminal investigation, exercised her right to claim reparation for the damage caused by the offence of which she was allegedly the victim, and did not waive that right.

75. The proceedings therefore come within the scope of Article 6 § 1 of the Convention, and the objection raised by the Government that the application is incompatible *ratione materiae* with the provisions of the Convention must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. The parties' submissions

1. The applicant

76. The applicant maintained that the decision that there was no case to answer was not only disputable, but moreover had never duly been served on her. Although she had refused to sign the notice of appeal drafted by the registrar, she had herself drafted and lodged a signed notice of appeal within the requisite time-limit. The Indictment Division had failed to reach a clear decision about her allegation that the discontinuation order had not been validly served and the Court of Cassation, in declining to annul the appeal ruling, had misdirected itself, had not given sufficient reasons for its decision and had failed to address some of the grounds of appeal.

77. She also criticised the fact that the Court of Cassation had singled out a breach of Articles 485 and 183 of the Code of Criminal Procedure as the sole ground of appeal whereas, in her statement of appeal, she had listed breaches of Articles 592, 575-6, 593 and 646 of that Code. She inferred that the Court of Cassation had declined to issue a ruling based on the applicable law. Finally, she alleged that her right to a fair trial had been infringed and

criticised the Court of Cassation for having failed to censure the judgment of the Indictment Division on the ground of its composition at the time when the judgment was made.

2. The Government

78. The Government submitted that the applicant had had a fair hearing. They noted that the Court of Cassation, asked to rule on a judgment to the effect that the applicant's appeal was inadmissible because it was out of time, had fully addressed the ground criticising the presence, during the reading of the judgment, of a judge who had not attended the deliberations. The Court of Cassation considered that the reading of the judgment complied with Article 485, third paragraph, of the Code of Criminal Procedure, which provides that the judgment shall be read by the president or by one of the judges. The Government asserted that according to case-law the judgment may be read in the absence of the other judges (*Cass. crim.,* 17 June 1992, *Bull. crim.* no. 243). They noted moreover that Article 592, cited by the applicant, was inapplicable because it only covered a situation where the deciding judges had not attended the deliberations, which was not the case here.

79. With regard to the allegation that the reasons were insufficient, the Government submitted that the Indictment Division had given reasons and that its decision had later been endorsed by the Court of Cassation. Finally, they took the view that the Court of Cassation was not obliged to deal expressly with all the Articles of the Code of Criminal Procedure cited by the applicant, because the duty to give reasons did not require a detailed answer to be given to each argument.

B. The Court's assessment

80. The Court notes that the right to a fair trial as guaranteed by Article 6 § 1 of the Convention includes the right of the parties to the trial to submit any observations that they consider relevant to their case. The purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 16, § 33), this right can only be seen to be effective if the observations are actually “heard”, that is duly considered by the trial court. In other words, the effect of Article 6 is, among others, to place the “tribunal” under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 19, § 59).

81. Moreover, while Article 6 § 1 does oblige the courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to

every argument (ibid., p. 20, § 61, and *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, p. 12, § 29; see also *Jahnke and Lenoble v. France* (dec.), no. 40490/98, ECHR 2000-IX).

82. Finally, the Court also notes that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *inter alia*, *García Ruiz v. Spain*, [GC], no. 30544/96, § 28, ECHR 1999-I). In any event it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national legislation (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 115, ECHR 2000-VII).

83. The Court considers, in the light of the facts of the case, that the provisions of Article 6 § 1 of the Convention were not infringed.

Accordingly, there was no basis for the applicant's purely technical challenge to the effect that the Court of Cassation had neglected to mention all the domestic legislative provisions she had relied on. Besides, the Court agrees with the Government that some of those provisions were plainly inapplicable.

The Court further finds that the Court of Cassation took due account of and effectively addressed all of the applicant's grounds of appeal. The applicant's allegation that the Court of Cassation had not given sufficient reasons for its decision was therefore misconceived.

84. In conclusion, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection that the application is incompatible *ratione materiae* with the provisions of the Convention;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 February 2004.

Luzius WILDHABER
President

Paul MAHONEY
Registrar