

**APPLICATION N° 23326/94**

**Marie-Claude MAHAUT v/FRANCE**

**DECISION** of 6 July 1995 on the admissibility of the application

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**Article 6, paragraph 1 of the Convention:**

- a) *The right of access to a court does not include a right to have criminal proceedings instituted against third persons and does not therefore guarantee the right to have an application to join such proceedings as a civil party declared admissible*
- b) *Even where no express claim is made for compensation, the reporting of an offence, with an application to join the proceedings as a civil party, falls within the scope of the concept of civil rights and obligations.*
- c) *Inapplicable, for lack of a civil right, to proceedings (France) in which an application to join criminal proceedings as a civil party is held inadmissible owing to the fact that the prosecution is time-barred.*

**Article 7, paragraph 1 of the Convention:** *Compelling someone to retire early does not constitute holding that person guilty of an offence within the meaning of this Article.*

**Article 8, paragraph 1 of the Convention:** *Assuming that this provision covers a right to protect a deceased relative's reputation, such a right is guaranteed by the possibility (France) of applying to join criminal proceedings as a civil party or lodging a civil claim.*

**Article 25 of the Convention:** *Can the sister of someone who has been compelled to take early retirement claim to be a victim of that measure? (Question unresolved).*

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## THE FACTS

The applicant, born in 1927, is a French citizen and lives in Auxerre. She was represented before the Commission by Mr. Henri Boerner, a member of the Bordeaux Bar.

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

In 1982 the applicant's twin sister, who was a doctor at the "Protection Maternelle et Infantile" ("PMI"), which is a regional organisation providing antenatal and child care, died shortly after being compelled to take early retirement on account of her mental health. She had filed a large number of claims with the administrative courts in connection with her employment, some of which were taken over by the applicant after her sister's death.

The applicant did not have an opportunity to study her sister's administrative file until 1986. She considered that the authorities' decision to compel her sister to take early retirement had been made on the basis of misleading or tendentious documents and, seeking to vindicate her sister, she reported an offence to the prosecuting authorities on 9 March 1987, with an application to join the proceedings as a civil party, alleging forgery and the making of false instruments.

On 29 August 1991 the investigating judge ordered the case to be discontinued, after finding that even though the presentation of one of the documents was defective, it dated from 1981 and the prosecution was therefore time-barred.

The applicant appealed against that decision. On 3 March 1992 the Indictments Division of Bordeaux Court of Appeal upheld the lower court's ruling that the prosecution was time-barred and declared the applicant's application to join the proceedings inadmissible on the ground that she had not herself suffered any damage.

The applicant appealed on points of law, alleging, *inter alia*, that time had stopped running for the purposes of the limitation period. In a judgment of 3 May 1993, which was served on 16 June, the Court of Cassation dismissed the applicant's appeal, holding that her arguments to the effect that time had stopped running for the purposes of the limitation period were inadmissible because she had raised them for the first time before the Court of Cassation. The court then held that as the prosecution was time-barred, the civil action had no object.

## COMPLAINTS

The applicant alleges that Article 6 para. 1 of the Convention was violated in two respects. She considers first of all that the proceedings were unfair because the investigating judge and the Indictments Division did not fulfil their duty to examine and take into account the documents on the file and the evidence submitted to them. She claims that the proceedings were also unfair in that the investigating judge and the Indictments Division failed to examine her submission that the limitation period had been suspended. She also complains of the length of the proceedings and, particularly, of the fact that it took four years to prepare the case for trial.

She complains further that there was a violation of Article 8 of the Convention in that the court's dismissal of her application to join the proceedings as a civil party prevented her from defending her twin sister's non-pecuniary rights and thus infringed her right to respect for her family life.

Her final complaint is that there was a violation of Article 7 of the Convention in that the decision to compel her sister to retire early was nothing less than a "penalty upon conviction by an administrative body", which had caused her sister to become acutely depressed and had ultimately killed her, even though she had done nothing which could be described as an offence.

## THE LAW

1 The applicant submits that the complaint she filed with the prosecuting authorities and her application to join the proceedings as a civil party were dealt with neither fairly nor within a reasonable time. She invokes Article 6 para 1 of the Convention, the relevant part of which reads:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

As regards the applicability of Article 6 para. 1, the Commission recalls the case-law of the European Court of Human Rights that an application to join proceedings as a civil party "is equivalent to filing a claim for compensation in civil proceedings", as the civil party thereby demonstrates the importance which they attach "not only to the criminal conviction of the accused but also to securing financial reparation for the damage sustained" (Eur. Court H R , *Moreira de Azevedo* judgment of 23 October 1990, Series A no 189, p. 17, para 67) The right to compensation claimed by the civil party depends on the outcome of his complaint, in other words on the conviction of the perpetrators of the offence in question, but it is a civil right, notwithstanding the fact that the criminal courts have jurisdiction (Eur Court H R , *Tomasi* judgment of 27 August 1992, Series A no 241-A, p. 43, para 121)

Once the civil party is joined in the criminal proceedings, they can therefore invoke Article 6 para. 1 since the proceedings, by their very nature, involve a decision determining civil rights and obligations within the meaning of that provision. The Commission has clarified in this respect that the civil party does not have to have made an express claim for compensation or to have quantified his loss (see *Acquaviva v France*, Comm. Report 4 794, para 88, Eur Court H R , to appear in Series A and *Hamer v. France*, Comm Report 21 295, paras. 85 86, Eur Court H R , to appear in Series A)

In the instant case, the Commission notes that the applicant was never joined as a civil party. The investigating judge ordered the proceedings to be discontinued without ruling on the admissibility of the applicant's application to join the proceedings as a civil party. The Court of Appeal ruled this application inadmissible and upheld the investigating judge's decision that the prosecution was time-barred. Finally, the Court of Cassation held that as the prosecution was time-barred, the application to join the

proceedings as a civil party was invalid for lack of object. That court dismissed the applicant's arguments that time had stopped running for the purposes of the limitation period because they were submitted at too late a stage. In short, from the start of the proceedings, all the courts found that there was no basis on which to bring criminal proceedings due to the expiry of the relevant limitation period.

The Commission considers that the criminal proceedings which were held to be time-barred did not themselves concern the civil rights upon which the applicant was relying. Admittedly, the ruling that the action was time-barred did, on the facts, make it impossible for the applicant to rely on any civil rights which may have arisen as a result of the conviction of a third person, but she had no right to request such a conviction in any case. The Commission refers here to its established case-law that the Convention does not guarantee a right to bring criminal proceedings as such. If, as was the case here, the prosecution is barred for any reason, civil rights which would otherwise have arisen as a direct result of a conviction cannot arise and cannot therefore be determined in the proceedings in which the procedural bar is found.

The Commission observes, furthermore, that the applicant was not prevented from bringing proceedings in the civil or administrative courts and indeed availed herself of this opportunity in so far as, after her sister's death, she took over a number of claims her sister had filed. Her right of access to a court to assert her civil rights was not therefore violated by the criminal courts' decisions to dismiss her application to join the proceedings as a civil party (see, *mutatis mutandis*, No. 7116/75, Dec. 4 10 76, D R. 7 p. 91).

As the proceedings which are the subject of the applicant's complaint did not contain any decision concerning her civil rights, Article 6 para. 1 does not apply to those proceedings.

It follows that the complaints under Article 6 para. 1 must be rejected as incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 27 para. 2 of the Convention.

2 The applicant also considers that the dismissal of her application to join the proceedings as a civil party infringed her right to respect for her family life because it prevented her from defending her twin sister's non-pecuniary rights. She invokes Article 8 which provides, *inter alia*, that:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

Even assuming that this provision confers a right on the members of a deceased person's family to protect that person's reputation or to request the institution of criminal proceedings in respect of offences against that person, this right is secured in domestic law by the ability to apply to join the proceedings as a civil party. The Commission does not consider the restrictions emanating from the rules governing applications to join proceedings as a civil party in French law to be disproportionate. The Commission notes further that it was open to the applicant to bring an action in the civil courts until the expiry of the ten-year limitation period.

It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 27 para. 2 of the Convention.

3. The applicant claims finally that her sister's compulsory early retirement was nothing less than a "penalty upon conviction by an administrative body", which caused her sister to become acutely depressed and ultimately killed her, even though she had done nothing which could be described as an offence. She invokes Article 7 of the Convention, which provides in so far as relevant:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

The Commission notes that as the applicant was not herself directly affected by her sister's compulsory early retirement, it is not clear whether she can claim to be a "victim", within the meaning of Article 25 of the Convention, of that measure.

The Commission notes, in any case, that Article 7 of the Convention enshrines the rule that only the law can define an offence and prescribe a penalty and that it prohibits retrospective application of the criminal law. The Commission considers that this provision is therefore inapplicable in this case, since compelling someone to retire early is not in itself a punitive measure.

It follows that this complaint must be rejected under Article 27 para. 2 of the Convention on the ground that it is incompatible *ratione materiae* with the provisions of the Convention

For these reasons, the Commission,

by a majority,

**DECLARES THE APPLICATION INADMISSIBLE** in respect of the complaints under Article 6 para. 1 of the Convention,

unanimously,

**DECLARES INADMISSIBLE** the remainder of the application