

APPLICATION N° 24142/94

Nathalie RAPPAPORT v/FRANCE

DECISION of 6 April 1995 on the admissibility of the application

Article 6, paragraphs 1 and 3 (b) and (c) of the Convention *An appeal to the Court of Cassation (France) by a lawyer acting in person in her own case failed for late filing of the memorial setting out the grounds of her appeal yet Article 585 of the Code of Criminal Procedure does not lay down a fixed time limit for litigants in person to file a memorial. No violation of the right to a fair trial having particular regard to fact that the applicant is a lawyer (reference to the Melin judgment)*

Article 6, paragraph 3 of the Convention *The guarantees specified in Article 6 para 3 must be interpreted in the light of the general notion of a fair trial contained in Article 6 para 1*

Article 13 of the Convention *Where the Commission has examined proceedings under Article 6 para 1 there is no need for the matter to be considered in the context of Article 13, which has less stringent requirements*

THE FACTS

1 *Particular circumstances of the case*

The applicant, a French citizen, was born in 1962 and lives in Paris where she practises as a lawyer

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

The applicant was sent a demand dated 2 January 1991 for the payment of fixed penalties and additional fines. Following this she was summoned to appear before Paris Police Court on 11 March 1992 in relation to 28 parking offences committed in Paris.

On 22 April 1992, Paris Police Court found the applicant guilty on all charges and sentenced her to pay 26 fines of 250 French francs (FRF) each and two fines of FRF 600 each. The applicant appealed against this judgment.

On 18 June 1993 Paris Court of Appeal upheld the judgment.

On 20 June 1993 the applicant filed a notice of appeal against the judgment of 18 June 1993 with the registry of Paris Court of Appeal.

On 14 October 1993, the Principal State Counsel attached to Paris Court of Appeal notified the applicant that the Court of Cassation had, in a judgment of 6 September 1993, ruled her appeal inadmissible because no grounds of appeal had been lodged.

2 *Relevant domestic law*

Code of Criminal Procedure

Article 584

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

Article 585

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

Article 585-1 (Law No 93 1013 of 24 August 1993, Art 42)

"Save where the President of the Criminal Division permits otherwise, a convicted appellant shall present his memorial to the registry of the Court of Cassation on or before the expiry of one month from the date of the notice of appeal. The same applies to the filing of the notice of acting by the appellant's lawyer."

COMPLAINTS

1. The applicant complains that she was not given a fair trial within the meaning of Article 6 of the Convention in that her appeal to the Court of Cassation was declared inadmissible for lack of grounds without her having being given a time-limit for filing her memorial. She claims that she was not informed that failure to comply with the time-limit for filing a memorial could be penalised by the appeal being ruled inadmissible.

2. The applicant also complains that Article 13 of the Convention was violated in that she was unable to avail herself of an effective remedy before the Court of Cassation.

THE LAW

1. The applicant complains that her right to a fair trial has been violated, invoking Article 6 of the Convention, which provides, *inter alia*,

"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:

b. to have adequate time and facilities for the preparation of his defence,

c. to defend himself in person or through legal assistance of his own choosing ..."

The Commission recalls at the outset that the requirements of Article 6 para. 3 are constituent elements, amongst others, of the right to a fair trial guaranteed by paragraph 1 of that Article (Eur. Court H.R., Colozza judgment of 12 February 1985, Series A no. 89, p. 14, para. 26). It will therefore examine the applicant's complaint under Article 6 para. 1 in conjunction with Article 6 para. 3 (b) and (c).

The Commission also recalls that in the Melin case (Eur. Court H.R., judgment of 22 June 1993, Series A no. 261-A) which dealt with, *inter alia*, the procedure under Article 585 of the Code of Criminal Procedure for appealing to the Court of Cassation, the Court held that the French law procedure complied with the requirements of Article 6 in the light of the very specific circumstances of the case, namely the fact that the applicant was himself a member of the Court of Cassation and "Conseil d'Etat" Bar and, hence, "well versed in the routines of judicial procedure" (Melin judgment, *loc cit.*, p. 12, para. 24).

The Commission observes that Article 585 of the Code of Criminal Procedure allows a convicted appellant to dispense with the services of a member of the Court of Cassation and "Conseil d'Etat" Bar for the purposes of filing his or her memorial with the Court of Cassation. In the present case, the applicant had not instructed such a lawyer and therefore the judge in charge of preparing the case for the Court of Cassation did not notify her of any time limit.

The Commission notes that the applicant is a practising lawyer. The mere fact that she is not a member of the "Conseil d'Etat" and Court of Cassation Bar does not mean that she was exempt from the need to show diligence and, if need be, to enquire at the Court of Cassation registry as to the procedure to be followed. The Commission recalls that the relevant rules have been held to be "sufficiently coherent and clear" to comply with Article 6 of the Convention (Eur. Court H R., Melin judgment, *loc cit*, p. 12, para 24). It considers that it was not, on the facts, impossible for the applicant to produce a memorial.

Having regard to the specific facts of the case and taking into account the applicant's profession, the Commission considers that she cannot claim to have been ignorant of the Court of Cassation's procedural rules. Consequently, the Commission takes the view that she was not deprived of the opportunity of mounting a real and effective defence before the Court of Cassation simply because there was no precise time limit for filing a memorial.

Accordingly, the applicant has not in any way been hindered in the effective enjoyment of the rights guaranteed by Article 6 of the Convention and her complaint must be rejected as manifestly ill-founded under Article 27 para. 2 of the Convention.

2. The applicant complains that she had no effective remedy within the meaning of Article 13 of the Convention since the Court of Cassation refused to hear her appeal. Article 13 of the Convention provides as follows :

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity "

The Commission considers that, having regard to its decision relating to Article 6 para. 1, it is unnecessary to examine the application from the standpoint of Article 13 of the Convention since the requirements of the latter provision are less strict than, and are here absorbed by, those of Article 6 para. 1.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE