(TRANSLATION)

THE FACTS

The facts of the case, as submitted by the parties, may be summarised as follows.

The two applicants are American citizens residing in Allentown (Pennsylvania, United States). The first applicant is an attorney-at-law in Allentown and is the father of the second applicant. The latter, born in 1949, has no occupation. They are represented before the Commission by Mr. Claude Serge Aronstein, a lawyer practising in Brussels.

On 2 May 1975, the second applicant, at the time a medical student in Belgium, was injured in a traffic accident. A collision between him, while he was riding a motorcycle, and Mr. V., driving a lorry with a trailer, had serious consequences for the second applicant.

Efforts to obtain a friendly settlement of the matter failed, and the criminal investigation opened by the public prosecutor ("procureur du Roi") for the Louvain Judicial District was discontinued.

By a summons of 13 September 1979 the applicants instituted civil proceedings on the basis of Articles 1382 and 1383 of the Civil Code against Assurances Générales de France (hereinafter referred to as A.G.F.), as the insurers of Mr. V.,

to obtain the sum of 50 million Belgian francs in compensation for the injuries resulting from the accident.

On 27 March 1979 the Brussels Court of First Instance declared that the accident in which the second applicant had been injured was a direct consequence of fault and carelessness on the part of Mr. V., insured by A.G.F. Consequently, the Court ordered A.G.F. to make an advance payment of 100,000 francs to the second applicant and of one franc to the first by way of damages. Before deciding on the remainder, the Court appointed a legal expert.

Following an appeal by the insurance company, Brussels Court of Appeal, in a judgment dated 19 May 1981, dismissed the plaintiffs' claim on the ground that Mr. V. had not been at fault.

On 8 September 1981 the applicants, represented by counsel at the Court of Cassation, Mr. J. Dassesse, appealed to the Court of Cassation. In their appeal, they alleged that the judgment failed to deal with their submissions that Mr. V. could easily have seen the motorcycle and that his lorry should have been equipped in such a way that he could see to the right. They also claimed that the court had not dealt with their submission that the second applicant would not have foreseen the manœuvre of Mr. V.'s vehicle.

On 20 November 1981 counsel for A.G.F. lodged a memorial in reply in which the basis of the legal arguments advanced by the applicants was challenged.

On 28 December 1981 Mr. J. Dassesse, acting on the instructions of Mr. C.S. Aronstein, representing the applicants before the Commission, lodged a counter-memorial. Although the lodging of such a memorial was not provided for in Article 1094 of the Judicial Code, the applicants explained that it was nevertheless admissible in view of the requirements of a fair hearing and the rights of defence. They also criticised the reference in the above-mentioned memorial in reply to the Belgian Court of Cassation's case-law according to which "the obligation to provide reasons for judgments does not involve any obligation to reply to submissions which do not constitute separate arguments". Lastly, they pointed out that violations of the law, as set out in their memorial, constituted violations of the Convention, *inter alia* of Articles 6, 13, 14 and 18.

On 14 October 1982 a public hearing was held before the First Chamber of the Court of Cassation. The judge-rapporteur made his report at the hearing. Mr. Dassesse, when asked to speak, referred to the terms of his appeal to the Court. Similarly, counsel for A.G.F. referred to his memorial in reply. Immediately afterwards, the Advocate General ("Avocat général"), Mr. Ballet, made oral submissions in favour of rejecting the appeal. The Court then reserved its judgment pending deliberations.

The same day, after deliberating in private in the presence of Advocate General Ballet, the Court dismissed the appeal. In its judgment, it firstly declared that it could not take the counter-memorial into account. It considered in this connection that the legal bar on a reply by the appellant to the memorial of the respondent, except in the case where the latter objected to the admissibility of the appeal, was not incompatible with the requirements of a fair hearing as set out in Article 6 of the Convention and, in particular, with the rights of defence embodied therein, as the parties were able to expound all their arguments on the subject-matter of the dispute in the memorials they were entitled to lodge.

With regard to the arguments concerning a lack of reasons in support of the judgment, the Court, in examining each argument, considered that the judgment had replied to the submission that Mr. V. could easily have seen the motorcycle and that it (the Court) was not obliged to reply to the submissions concerning the lorry's equipment, as these were now irrelevant. With regard to the submission that the second applicant could not have foreseen the manœuvre of Mr. V.'s vehicle, the Court considered that the decision contained in the judgment was legally justified and properly reasoned.

COMPLAINTS

The applicants' complaints may be summarised as follows.

1. The applicants complain that the judgments of the Court of Appeal and the Court of Cassation are not sufficiently reasoned either in terms of rigour or from the legal point of view. Comparing the length of their appeal submissions and their Court of Cassation memorial with the length of the judgments of both courts, they feel that in terms of sheer quantity the courts have not satisfied the requirements of Article 6 regarding a fair hearing. According to the applicants, the proper administration of justice requires that an appropriate, comprehensive and logical reply should be given to each of the grounds and arguments — both as to the law and as to the facts — put forward by each party.

2. The applicants also complain that the Court of Cassation, by refusing to consider their counter-memorial of 28 December 1981, ignored the provisions of Article 6 of the Convention, in particular the principle of equality of arms. They argue that the requirements of a fair hearing include the right for an appellant before the Court of Cassation to submit a memorial of his own in answer to the respondent's memorial in reply. They point out that it is not possible to draw up a single procedural document containing, in advance, a reply to and a refutation of any objections which may be raised subsequently.

3. The applicants complain that their counsel was not authorised to speak after A.G.F.'s counsel, whereas the latter, being invited to speak after the former, was able to reply to him immediately. In their opinion, this constitutes disregard for the necessary oral and adversarial nature of proceedings, respect for which constitutes

an essential element of the right to a fair hearing, as well as a violation of the principle of equality of arms before the Court of Cassation.

4. The applicants argue that the Court of Cassation, having delivered its judgment on the very day of the hearing, could not have given serious consideration either to any oral submissions made by the parties to the Court at the public hearing on the same day, nor to the oral submissions of the public prosecutor (Ministère public). They allege that this practice is inconsistent with the necessary oral and adversarial nature of proceedings and conclude that the publicity of proceedings before the Court of Cassation is inadequate.

5. The applicants further complain that they were not informed of the submissions of the Ministère public before the hearing, which made it impossible for them to reply thereto. They state that the public prosecutor often communicates his opinion to the Court of Cassation judges forming the Chamber and, in all cases, to the judge-rapporteur. The latter and the Advocate General appointed by the Attorney General discuss the case as well as the judge-rapporteur's draft judgment. Following these close contacts, they agree on the text of a draft judgment. According to the applicants, this procedure is incompatible with the principle of equality of arms as well as with the adversarial and oral nature of proceedings, while also being inconsistent with the principle of the rights of the defence, as the main steps in the decision-making process take place outside the public hearing.

6. The applicants also complain of the fact that they were not able to reply to the oral submissions of the public prosecutor, since he was the last to speak at the hearing.

7. The applicants allege an infringement of the right to a fair hearing and of the principle of equality of arms on the ground that the Advocate General attached to the Court of Cassation took part in the Court's deliberations. They consider that the maxim "justice must not only be done ; it must also be seen to be done" is not compatible with the Advocate General participating in any way whatever in the deliberations of the Supreme Court. Even if the substance is impeccable, appearances must be equally so.

8. Lastly, the applicants, summing up the foregoing arguments, allege that the cassation proceedings generally failed to respect the fundamental rights of the defence.

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THE LAW

1. The applicants complain of a lack of reasons in the judgments of the Court of Appeal and the Court of Cassation. They consider that the requirements of a fair hearing were unfulfilled not only because of a series of errors, omissions or silences

in the reasons provided by the two courts, but also because of the relative brevity of the judgments in question. They invoke Article 6 para. 1 of the Convention, the first sentence of which reads as follows:

> "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 established by law."

The Commission recalls its established case-law according to which Article 6 is applicable to proceedings in cassation (see, *inter alia*, Eur. Cour H.R., Delcourt judgment of 17 January 1970, Series A no. 72, p. 12, para. 27). The way in which the article is applied depends, however, on the special features of the proceedings in question (*ibid.*). Account should therefore be taken of the fact that the applicants' appeal was of limited scope in that only points of law and not of fact could be invoked.

To the extent that the applicants complain that the judgments delivered by the Court of Appeal and the Court of Cassation in their case are insufficiently reasoned, the Commission firstly recalls that it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It accepts that in certain specific circumstances the absence of reasons in a court decision might raise an issue as to the fairness of the procedure which is guaranteed by Article 6 para. 1 of the Convention (No. 8769/79, Dec. 16.7.81, D.R. 25 p. 241). Nevertheless, when a court does state its reasons, it is presumed that the requirements of Article 6 have been respected. The Commission also points out that this provision does not imply that the reasons set out by a court must deal in detail with each of the points which one of the parties may consider to be fundamental to his case, and that a party does not have an absolute right to require the court to provide reasons for the rejection of each of his arguments. As to the right guaranteed by Article 6 para. 3 (d) of the Convention, the domestic court retains a certain measure of discretion in the matter (No. 5460/72, Dec. 2.4.73, Yearbook 16 pp. 153, 168).

In the present case, the Commission notes that the Court of Cassation, after pointing out that the judgment was not required to reply to irrelevant submissions, took the view that the Court of Appeal's decision was legally justified and properly reasoned. It also notes that the applicants have failed to show that either the Brussels Court of Appeal or the Court of Cassation, having regard to the special features of the proceedings in question, ignored any essential element in the defence. The mere fact that the judgments criticised are shorter and less detailed than the applicants' appeal submissions and their memorial to the Court of Cassation is not sufficient to affect the presumption that the requirements of Article 6 were met in the present case.

Accordingly, examination of this complaint, as presented, does not reveal any appearance of a violation of the right to a fair hearing as guaranteed by Article 6 para. 1. It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 of the Convention.

2. The applicants complain of a violation of the right to a fair hearing on the ground the Court of Cassation refused to take their counter-memorial of 28 December 1981 into consideration. They claim that Article 1094 of the Judicial Code, which restricts the scope of a counter-memorial to a reply to an objection to the admissibility of the appeal, gives rise to a situation of inequality to the advantage of the respondent, since the latter may reply in writing to the arguments of the appellant, whereas the reverse is not true.

The Government consider that the obligation for the appellant to set out all his grounds at once, a rule dictated by the nature of the hearing before the Court, does not infringe the principle of equality of arms. In this respect, they emphasise that the respondent, in his memorial in reply, must confine himself to countering the legal arguments put forward by the appellant in support of the grounds of his appeal and that during the oral stage of proceedings the appellant may amplify his arguments either by submitting a memorandum of pleadings or by addressing the Court orally. Furthermore, the lodging of counter-memorials might, in the Governement's view, have the effect of slowing down the proceedings, an assertion which the applicants contest.

The Commission notes that Article 1094 of the Judicial Code does not provide for the lodging of a counter-memorial except where the respondent before the Court of Cassation has objected to the admissibility of the appeal. In the present case, as the respondent's memorial in reply was limited to challenging the basis of the grounds of appeal, and did not include an objection to its admissibility; the Court of Cassation refused to take the applicant's counter-memorial into consideration.

The Commission is of the opinion that the right to a fair hearing, a right which includes the principle of equality of arms, does not preclude States from regulating the exchange of memorials. Moreover, it recalls that it has repeatedly held that the right to a fair hearing, in both civil and criminal proceedings, entails that everyone who is a party to such proceedings shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent (see, *inter alia*, No. 2804/66, Dec. 16.7.68, Yearbook 11 pp. 381, 398-400).

Given the circumstances of the present case and in view of the fact that the Court of Cassation concerns itself only with questions of law, the Commission considers that the fairness of the proceedings was not prejudiced by the fact that the applicants could not respond to A.G.F.'s memorial in reply. This memorial merely discussed the legal arguments underlying the grounds advanced by the applicants' counsel in the memorial submitted to the Court of Cassation. During the pleadings,

moreover, Mr. Dassesse and Mr. Aronstein had an opportunity, either by addressing the Court orally or by submitting a memorandum of pleadings, to amplify the grounds set out in the appeal to the Court of Cassation and, thereby, respond to the legal observations in the respondent's memorial in reply.

Accordingly, the Commission considers that the applicants did have an opportunity to present their arguments in a way which did not place them at a disadvantage vis-à-vis their opponent. Examination of this complaint, as submitted, does not therefore reveal any appearance of a violation of the applicants' right to a fair hearing as guaranteed by Article 6 para. 1.

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

3. The applicants complain that, during the hearing before the Court of Cassation, their counsel was not allowed to reply orally to A.G.F.'s counsel. They allege a violation of the right to a fair hearing as well as disregard for the necessary oral and adversarial nature of proceedings.

The Government, pointing out that neither Mr. Dassesse nor Mr. Aronstein spoke during the hearing, maintain that the applicants' counsel before the Court of Cassation could have replied, where appropriate, to the respondent's pleadings. They acknowledge that pleadings before the Court of Cassation are rare, but note that this is due both to the nature of cassation proceedings, which involve only legal questions, and to the comprehensiveness of the parties' memorials and memoranda (if any). The applicants reply that the right to plead is limited and illusory.

The Commission recalls that the Convention organs have already made several pronouncements on the question of the absence of public proceedings before a Supreme Court or a Court of Cassation. It has itself acknowledged that, in view of the technical nature of questions discussed before supreme courts and the impersonal nature of the legal issues submitted to them, the absence of oral proceedings before such courts did not infringe Article 6 para. 1 of the Convention (see, *inter alia*, No. 7221/75, Dec. 6.10.76, D.R. 7 p. 104). The European Court of Human Rights in the Axen case (judgment of 8 December 1983, Series A no. 72, p. 13, para. 28) and the Sutter case (judgment of 22 February 1984, Series A no. 74, p. 13, para. 30) has considered in substance that the absence of public proceedings before a higher court dealing only with questions of law after a public hearing of the case had been held in a lower court did not infringe Article 6 para. 1 of the Convention.

In the present case, however, the applicants do not complain of the absence of public proceedings before the Court of Cassation, whose proceedings are partly oral, but of a lack of opportunity to reply to the pleadings of the respondent.

Insofar as Belgian legislation provides for an oral procedure before the Court of Cassation, such a procedure must obviously meet the requirements of Article 6 para. 1 of the Convention.

In the present case, the Commission notes that neither the applicants' counsel before the Court of Cassation nor the respondent's counsel addressed the Court but merely referred to their respective memorials. It is clear that the only addresses made during the hearing were those of the judge-rapporteur and of Advocate General Ballet.

It follows that the applicants' complaint that their counsel was not able to reply to the respondent's lawyer is unjustified and that the complaint must be rejected as manifestly ill-founded, in accordance with Article 27 para. 2 of the Convention.

4. The applicants complain that the Court of Cassation, having delivered judgment on the same day as the hearing, could not have given any consideration either to any oral submissions by the parties before the court or to the oral submissions of the public prosecutor attached to the Court. They allege a violation of the necessary oral and adversarial nature of proceedings, maintaining that as a result the hearing was clearly pointless.

The Government explain that the promptness with which the Court of Cassation normally delivers judgment is due to the mainly written nature of the proceedings and the preliminary work carried out by each of the Court's judges, who study the parties' memorials and, as appropriate, their hearing notes, the report and the draft or drafts of the judge-rapporteur. Furthermore, the Government point out that the questions submitted to the Court of Cassation in the present case raised few legal problems since the appeals alleged a lack of supporting reasons.

In view of the mainly written nature of proceedings before the Court of Cassation and the fact that the applicants' appeal did not involve any difficult legal questions, the Commission considers that the fact that the Court of Cassation, after deliberation, delivered judgment on the same day as the hearing is not in itself sufficient to show that the provisions of Article 6 were infringed.

Recalling that it has already concluded that it does not appear from the facts, as submitted by the applicants, that any essential ground advanced by them was ignored by the Court of Cassation, the Commission finds no appearance of disregard for the necessary adversarial, oral and public nature of proceedings with which Article 6 para. 1 of the Convention requires compliance.

Consequently, the application is manifestly ill-founded in this respect, too, and must be rejected in accordance with Article 27 para. 2 of the Convention.

5. The applicants also complain that they were not informed before the hearing of the submissions of the public prosecutor attached to the Court of Cassation and that the parties were unable to address the Court after the public prosecutor at the hearing. They consider that this situation is especially serious as, in practice, the Ministère public notifies his opinion to the judges of the Court or, at least, to the judge-rapporteur. Close contacts are established between the judge-rapporteur and the representative of the public prosecutor, as a result of which they agree on the

text of a draft judgment. The applicants claim an infringement of the principle of equality of arms, disregard for the adversarial and oral nature of proceedings and a violation of the rights of the defence.

The Government consider that the principles relied on by the applicants do not apply to the public prosecutor attached to the Court of Cassation, who is not a party to cassation proceedings. They refer to the Delcourt judgment in which the European Court declared that Article 6 of the Convention did not require that an accused should have the possibility of replying to the purely legal submissions of an independent official attached to the Court of Cassation as its assistant and adviser (*loc.cit.*, p. 20, para. 41). The Government acknowledge that the public prosecutor has contacts with the judge-rapporteur, but maintain that such a dialogue between two neutral officials, far from being reprehensible, contributes to justice being done in the best possible manner. The applicants retort that the nature of the public prosecutor's task is not in itself a sufficient reason to keep its representative at the Court of Cassation out of the Court's proceedings.

The Commission will concentrate on the circumstances of the present case, while pointing out that, contrary to the situation in the aforesaid Delcourt case, the public prosecutor attached to the lower courts involved was not a party to the dispute. This was a civil case in which the defendant was an insurance company, A.G.F. The applicants could therefore expect to the treated on an equal footing with the insurance company. In this connection, the Commission reiterates its observation that the applicants did have a reasonable opportunity to defend their interests in conditions which did not place them at any disadvantage vis-à-vis their opponent.

The Commission notes that it is not denied in the present case that the public prosecutor at the Court of Cassation could not have been considered a party to the proceedings before the Court. In assisting the Court of Cassation in its role of reviewing the legality of contested decisions, the main task of the public prosecutor at the Court is to provide an opinion on legal questions referred to the Court. His submissions are therefore aimed at helping the Court by devising possible solutions. In the present case, his submissions could only contain legal observations on the validity of the legal arguments advanced by the applicants. Moreover, the Commission notes that it is difficult to establish the nature of any consultations between the representative of the public prosecutor at the Court of Cassation and the same Court's rapporteur. They do, however, involve an exchange of views on legal questions raised by the appeal to the Court. Even if the two officials agreed on the solution to be adopted, such an agreement would not be binding on the Court since it comprises five judges and takes its decisions by a majority of at least three of them.

The Commission recalls that, in the Delcourt case (*loc.cit.* p. 20, para. 41), the European Court considered that Article 6 of the Convention did not require, even by implication, that an accused should have the possibility of replying to the purely legal submissions of an independent official attached to the highest court in Belgium

as its assistant and adviser. Since the present case involves a civil dispute, the Commission considers that the European Court's opinion is all the more applicable thereto. Therefore, having regard to the task of the public prosecutor at the Court of Cassation, the Commission takes the view that the fact that the applicants did not have an opportunity to reply, either in writing or orally, to the submissions of the public prosecutor's official representative and were not informed of the substance of any consultations between him and the judge-rapporteur does not imply any breach of the rights guaranteed by Article 6 para. 1 of the Convention.

It follows that this aspect of the application must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 of the Convention.

6. Similarly, the applicants question the participation of the public prosecutor at the Court of Cassation in the Court's deliberations, considering that this constitutes an infringement of the right to a fair hearing and of the principle of equality of arms which is implicit in that right.

The Government point out that Belgian practice, based on Article 1109 of the Judicial Code, is due, firstly, to the fact that the public prosecutor at the Court of Cassation is not a party to the case and, secondly, to the fact that his role is limited to providing an independent opinion on legal questions raised by the appeal. In civil cases, moreover, it is inconceivable that the litigant, who is necessarily assisted by a lawyer before the Court of Cassation, should view the public prosecutor as an adversary or even as a party, since he is not involved in the dispute. There can therefore be no semblance of partiality.

The applicants refer for the most part to the arguments put forward by a minority of the Commission in the Delcourt case and to the arguments noted by the Court, which show how difficult it sometimes is, particularly for an outsider, to distinguish between the public prosecutor attached to the Court of Cassation and that attached to lower courts. Without questioning the personal impartiality of Advocate General Ballet, who made submissions in their case, the applicants consider that the public prosecutor at the Court of Cassation does not offer guarantees of sufficient independence and impartiality, and they refer to the maxim "justice must not only be done, it must also be seen to be done".

Even taking account of this maxim, quoted in the Delcourt judgment (*loc. cit.*, p. 17, para. 31) and alluded to by the Court in cases raising problems of impartiality on the part of officials who took part in the same criminal case in two separate capacities (see, *inter alia*, Eur. Court H.R., Piersack judgment of 1 October 1982, Series A no. 53, pp. 15-16, para. 31, and De Cubber judgment of 26 October 1984, Series A no. 86, p. 14, para. 26), the Commission acknowledges that it is difficult to argue that, in a civil case, the litigant might regard as an adversary the public prosecutor at the Court of Cassation whose submissions advocate the rejection of his appeal.

Indeed, the distinction between the public prosecutor attached to the Court of Cassation and that attached to lower courts is clearer in civil than in criminal cases (on this point, see the Delcourt judgment, *loc. cit.*, p. 16, para. 30) since, in principle, the public prosecutor at lower courts is not involved in the dispute. He may of course, in certain cases determined by law, act as either the principal party or a co-party. This is not, however, so in the present case.

Furthermore, since the assistance of a lawyer before the Court of Cassation is obligatory in civil cases, any doubt which may exist in the mind of the litigant in this regard can be dispelled by the lawyer. The Commission is bound to note that no doubt was entertained by the applicants regarding either the status or the impartiality of Advocate General Ballet.

The Commission also notes, with regard to the role of the public prosecutor at the Court of Cassation, that, by attending the Court of Cassation deliberations in a non-voting capacity, the public prosecutor is merely continuing his role of providing legal assistance and advice, drawing the Court's attention to any risks of case-law discrepancies between its chambers, risks which may become apparent only during deliberations. The public prosecutor therefore ensures that the unity of case-law is maintained during deliberations.

Accordingly, having regard to the status and the role of an independent and impartial judicial organ played by the public prosecutor at the Court of Cassation in civil cases, the Commission considers that the fact that Advocate General Ballet took part in the Court's deliberations did not place the applicants in a position contrary to the provisions of Article 6 para. 1 of the Convention or, more specifically, to the right to a fair hearing.

It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 27 para. 2 of the Convention.

7. Lastly, as a consequence of the foregoing six complaints combined, the applicants complain that the Court of Cassation proceedings, viewed as a whole, violated the fundamental rights of the defence. They consider that the gravity of their complaints is compounded by the fact that they are interlocking.

The Commission, having declared that each of the foregoing six complaints is ill-founded, considers that the complaint based on all six combined should also be declared ill-founded.

This complaint must therefore be rejected in accordance with Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.