

EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF CISSE v. FRANCE

(Application no. 51346/99)

(full-text version – emphasis added)

JUDGMENT

STRASBOURG

9 April 2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cisse v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 January and 19 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 51346/99) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Senegalese national, Ms Madjiguene Cisse (“the applicant”), on 30 November 1998.

2. The applicant, who had been granted legal aid, was represented by Mr S. Foreman, 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 a violation of Article 11 of the Convention.

4. 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.

5. By a decision of 16 January 2001 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was a member of (and a spokeswoman for) a group of aliens without residence permits who in 1996 decided to take collective action to draw attention to the difficulties they were having in obtaining a review of their immigration status in France.

9. Their campaign, which received widespread coverage in the press, culminated with the occupation of St Bernard's Church in Paris on 28 June 1996 by a group of some two hundred illegal immigrants, most of whom were of African origin. Ten men within the group decided to go on hunger strike. The applicant's daughter joined her mother as one of the occupiers of the church. The movement, known as the "St Bernard *sans papiers*¹" movement, was supported by several human-rights organisations, some of whose activists decided to sleep on the premises in a show of solidarity with their predicament.

10. On 22 August 1996 the Paris Commissioner of Police signed an order for the total evacuation of the premises. It was made on the grounds that the occupation of the premises was unrelated to religious worship, there had been a marked deterioration in the already unsatisfactory sanitary conditions, padlocks had been placed on the church exits and there were serious sanitary, health, peace, security and public-order risks.

11. More specifically, the order read as follows:

"The director of the Paris Mobile Emergency Medical Service (*SAMU*) was given responsibility on 17 July 1996 for ensuring day to day care of the hunger strikers and the parish priest has been reminded of the health hazards to which the occupants were exposed by the precarious living conditions as also of the need to allow unrestricted access to the emergency services.

The World Doctors (*Médecins du Monde*) organisation, which offers continuous medical assistance in the church, has made public alarming information on the very serious consequences of this hunger strike for the health of those concerned at the expiration of the medically critical period of forty days.

On the basis of the provisions of Article 223-6 of the Code of Criminal Procedure, the ten hunger strikers were evacuated on 12 August 1996, solely in order for the men to be given appropriate medical check-ups in hospitals in Paris.

The men returned to the aforementioned church of their own accord and immediately declared their intention to pursue their action. Since 28 June 1996 there has been a marked deterioration in the already unsatisfactory sanitary conditions, the available

1. Immigrants without valid immigration papers.

sanitary equipment being totally inadequate for the long-term use of the premises as a collective shelter.

The number of people present on the premises has grown considerably during the last few days, and this has led to incidents in the immediate vicinity and notably on the public highway.

Such incidents create a risk of behaviour that may result in public order disturbances.

The various movements concerned have erected barriers on the public highway, across rue Saint-Bruno at the junctions with rue Saint-Luc and rue Jérôme l'Ermite. The barriers obstruct the highway, hindering the passage of ordinary traffic and of emergency vehicles.

The church doors and various exits are kept closed, and in some cases padlocked, to enable a filter system to be operated at the only remaining entrance that is permanently accessible, and a barricade formed of barriers chained together has even been placed between the enclosure railings and the north entrance to the church chancel. These installations constitute a major hazard should an emergency evacuation of the persons present inside the building become necessary.

These activities and movements are totally unrelated to religious worship, which is the exclusive use to which this public building may be put under the law of 9 December 1995.

It follows from the matters noted above that the current situation represents a serious sanitary, health, peace, public-security and public-order risk..."

12. The following morning the police carried out the evacuation. The police officers arrived at the scene at 6.30 a.m. and set up a checkpoint at the church exit to verify, on the basis of Article 78-2, subparagraphs 1 and 3, of the Code of Criminal Procedure and Article 8, subparagraphs 2 and 3, of the Ordinance of 2 November 1945, whether the aliens evacuated from the church had documentation authorising them to stay and circulate in the territory. The police entered the church at 7.56 a.m.

13. All the occupants of the church were stopped and questioned. Whites were immediately released while the police assembled all the dark-skinned occupants, apart from those on hunger strike, and sent them by coach to an aliens' detention centre at Vincennes. Orders were made for the detention and deportation of almost all of those concerned. More than a hundred were subsequently released by the courts on account of certain irregularities on the part of the police, which even extended to making false reports regarding the stopping and questioning procedure.

14. At 8.20 a.m. a police officer asked the applicant as she was leaving the church for documentary evidence that she had leave to stay in France, but she was unable to produce any. The applicant had attended the Paris Police Commissioner's Office on 5 June 1996 but on 17 July 1996 had been refused leave to remain in France on the ground that she did not satisfy any of the conditions laid down by the Ordinance of 2 November 1945 for the issue of a residence permit and that there were no personal or family reasons justifying her being granted leave to remain on humanitarian grounds. She

had been invited to leave French territory within one month after receipt of notification of the Commissioner of Police's decision.

15. At 9.55 a.m. the applicant was taken into custody and informed of her rights pursuant to Articles 63-2 and 63-4 of the Code of Criminal Procedure. The measure was deemed to have taken effect at 7.56 a.m., when she was stopped. The applicant refused to speak throughout her period in custody. At 8.15 p.m. on 23 August the Senior Deputy Public Prosecutor at the Eighth Division of the Paris Public Prosecutor's Office instructed the police officers to bring the applicant before him, with the case file as it stood.

16. At 1.30 p.m. on 24 August 1996 the applicant appeared before the Paris Criminal Court under the "immediate summary trial" procedure. She was accused of having "entered and stayed in France without being in possession of the documents or visas required by the rules" and was sentenced to two-months' imprisonment, suspended. The Criminal Court held:

"The occupation of a place of worship ... over a period of several weeks, ... in order to contest their immigration status and create a movement in their favour, in itself constitutes an emergency justifying the administrative authority's decision to expel them.

The presence in St Bernard's Church of several hundred people for a period of several weeks claiming, through public statements made by individuals or through spokespersons representing them, status as, in their own words, aliens without residence permits or papers, constituted grounds for suspecting that those concerned had committed offences under the immigration rules such that the verification of their identity pursuant to Article 78-2 was justified.

However, since a large number of people were stopped at the same time and refused to disclose their identities, the police were not able to carry out an immediate identity check. The fact that the identity check was not carried out when they were first stopped, but within what, given the practical contingencies inherent in an operation of that size, was a reasonable period thereafter, does not render the proceedings defective.

Regard being had to the large number of persons stopped and the circumstances in which the operation was conducted, the defendant was notified of her rights within a reasonable time..."

17. On 23 January 1997 the Paris Court of Appeal, on appeal by the applicant, upheld the sentence and added an order excluding her from French territory for three years. In addition, it held in its judgment:

"The occupation of a place of worship by approximately three hundred individuals over several weeks, in order to create a movement in their favour and to contest their immigration status, constitutes an emergency that justified the administrative authority making an expulsion order without making a prior application to the courts.

The occupiers of the premises continued their hunger strike for almost forty days and the living conditions of those concerned continued to deteriorate.

The scale of the demonstrations over several weeks, with barriers being used to obstruct the highway and hinder the passage of vehicles, constituted a risk for security, sanitation, the health of the hunger strikers and public order that justified urgent measures being taken to put an end to the disturbances.”

18. On 4 June 1998 the Court of Cassation dismissed the applicant's appeal on points of law on the following grounds:

“In the proceedings before the courts below, in which Madjiguène Ndourit, a Senegalese national, was accused of illegally entering and staying in France, the accused duly challenged the lawfulness of the order issued by the commissioner of police, without a prior court order, for the evacuation of the church occupied by the accused and several other persons, which evacuation was followed by police identity checks that revealed that the demonstrators were illegal immigrants.

In these circumstances, the reasons which the courts below relied on – unnecessarily – in dismissing her objection cannot serve as a basis for complaint by the appellant, since, even if she had proved that the administrative act referred to above was unlawful, it would have had no bearing on the outcome of the criminal proceedings.”

B. Relevant domestic law

19. Article 111-5 of the Criminal Code provides:

“The criminal courts shall have jurisdiction to interpret general or individual administrative decisions or regulations and to determine their lawfulness if the outcome of criminal proceedings pending before them depends on their so doing.”

20. Article 78-2, subparagraph 1, of the Code of Criminal Procedure reads as follows:

“Senior police officers and ordinary police officers acting on the orders of senior police officers who are accountable for their actions,... may invite any person to prove his or her identity by any means if there are grounds for suspecting that he or she:

(i) has committed or attempted to commit an offence;

(ii) is preparing to commit a serious crime (*crime*) or other major offence (*délit*), may be able to provide information that will assist in the investigation of a serious crime or other major offence, or is wanted by a judicial authority.”

21. Article L. 2512-13 of the General Code of the Territorial Authorities reads as follows:

“In the City of Paris the Commissioner of Police shall have the powers and prerogatives conferred on him by the Ordinance of the Consuls of 12 Messidor, Year VIII, determining the functions of the Paris Commissioner of Police, by the amendments that have been made thereto, and by Articles L. 2512-7, L. 2512-14 and L. 2512-17.

However, in the circumstances set out in this Code and the Public Health Code, the Mayor of Paris shall be responsible for ensuring that public highways in the city are kept clean and tidy, for maintaining order at fairs and markets and, subject to the opinion of the Commissioner of Police, for all grants of parking permits to small traders and of permits or licences for erecting stalls on the public highway.

Further, in the circumstances set out in Article L. 2215-1, sub-paragraph 3°, and Articles L. 3221-4 and L. 3221-5 of this Code, the Mayor shall be responsible for ensuring the preservation of State property incorporated into the public property of the City of Paris. For the purposes of the application of these provisions, the power of substitution conferred on the State in the *département* shall be exercised, in Paris, by the Commissioner of Police.”

22. The relevant provisions of the Ordinance of the Consuls of 12 Messidor, Year VIII, which determines the functions of the Commissioner of Police of Paris, read as follows:

Section I – General provisions

“1. The Commissioner of Police shall perform the functions set out hereafter, under the immediate authority of the ministers. He shall communicate directly with them about the matters for which their departments have responsibility.

2. The Commissioner of Police may republish the administrative rules and regulations and issue orders to ensure that they are complied with.”

Section III – Maintaining law and order in the city

21. The Commissioner of Police shall have responsibility for all matters concerning minor highways, save that an appeal will lie against his or her decisions to the Minister of the Interior.

22. The Commissioner of Police shall secure liberty and security on the public highway and to that end shall have responsibility for preventing criminal damage to the public highway, for lighting, for ensuring that residents comply with their obligation to keep the area in front of their houses swept, and for arranging for squares and the perimeters of public gardens and buildings to be swept at the city's expense...”

23. The relevant provisions of the Law of 30 June 1881 on Public Meetings provides:

“1. Anyone may attend public meetings.

Public meetings may be held without prior permission subject to compliance with the conditions laid down in the following Articles...

6. Meetings may not be held on the public highway; ...

8. Every meeting shall have a board of at least three people. The board shall be responsible for maintaining order, preventing any breach of the law, ensuring that the meeting retains the character ascribed to it in the declaration, prohibiting any speech that is contrary to public order or morals or containing any incitement to commit an act constituting a serious crime (*crime*) or other major offence (*délit*)...

9. ... the right to terminate a meeting shall not be exercised by the authority's representative unless he or she is called upon to do so by the board or unless clashes or patently illegal acts occur.

10. Any breach of the provisions of this Law shall be punishable by the penalties laid down for summary offences, without prejudice to any proceedings that may be instituted in respect of any serious crime or other major offence that may have been committed at the meetings.”

24. Sections 25, 26, 32 and 35 of the Law of 9 December 1905 on the Separation of Church and State read as follows:

Section 25

“Assemblies for the purposes of worship in premises belonging to or placed at the disposal of a religious association shall be open to the public. They shall be exempted from the requirements of section 8 of the Law of 30 June 1881, but shall remain under the supervision of the authorities in the interests of public order. Such assemblies may not take place until a declaration has been made, in the form required by section 2 of that Law, identifying the premises where they will be held...”

Section 26

“It is prohibited to hold a public meeting in premises habitually used as a place of worship.”

Section 32

“Anyone who prevents, delays or interrupts religious ceremonies by causing disturbances or disorder in the premises used for such ceremonies shall be liable to the same penalties.

Section 35

“A minister of religion guilty of making a speech or posting or distributing notices publicly in a place of worship that contain direct incitement to resist compliance with the law or the lawful acts of public authorities or are aimed at stirring up or rousing one group of citizens against the others shall be liable to two years' imprisonment, without prejudice to the penalties for complicity if the incitement is followed by sedition, revolt or civil war.”

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

34. The applicant alleged a breach of her right to freedom of peaceful assembly with other aliens for the purposes of denouncing their treatment. The interference with that right was not prescribed by law (as the evacuation order was illegal), and was neither justified by a legitimate aim, nor proportionate. She alleged a violation of Article 11 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...”

A. Whether there has been an interference

35. The Government maintained that the evacuation order made by the Commissioner of Police had not infringed the applicant's right of peaceful assembly. Relying on decisions of the European Commission of Human Rights, the Government said that the right of peaceful assembly did not extend to events intended by the organisers and participants to disturb public order or which, irrespective of the purpose for which they had been organised, unreasonably curtailed the right of others to assemble freely. The aim of the assembly in which the applicant had taken part conflicted with public order considerations, as St Bernard's Church had been occupied with a view to defending and legitimising a deliberate breach of the French immigration rules that rendered those responsible liable to prosecution. The unlawfulness of the assembly was therefore particularly flagrant and the very purpose of that assembly in itself entailed a breach of public order. It could not therefore be regarded as “peaceful” as that term was construed by the Court in its case-law. Nor, in view of its duration – several months – could the occupation constitute an “assembly”.

36. Furthermore, the fact that the church had been occupied for a period of several months had indisputably hindered the local congregation in the performance of acts of worship, which under French law were a form of freedom of assembly that enjoyed the protection of the law. The fact that the

occupied building was a place of worship, whose use was regulated by the Law of 9 December 1905 on the Separation of Church and State, meant that the assembly could not be classed as peaceful. Contending that the parish priest's refusal to intervene sufficed to establish that the assembly was peaceful in nature would be tantamount to saying that he was the sole person qualified to determine the extent of the harm done to public order and freedom of religion. Responsibility for implementing the Law of 9 December 1905 lay with the ordinary law-enforcement authorities, who were under a duty to maintain public order and to ensure that the premises were reserved for worship, in the interest of the congregation. The Court of Cassation had already ruled that the ecclesiastical authorities had no obligations of a material nature, such as ensuring safety. It was for the administrative authorities to protect the safety of people inside the building, even in cases where the disturbance had originated outside.

37. The applicant submitted that it was not possible to contend that an assembly such as that in the instant case which had gathered to call for the immigration status of the "*sans papiers*" to be put in order was not peaceful, simply because its purpose did not meet with the approval of the government of the day. The Commission decisions cited by the Government did not have the scope attributed to them by the Government. In practice, the only type of events that did not qualify as "peaceful assemblies" were those in which the organisers and participants intended to use violence. In the instant case, neither the occupants of the church nor the applicant had at any stage been accused of violent conduct. In any event, the legality or otherwise of the assembly under domestic law was under no circumstances to be used as a criterion for determining whether it was peaceful.

38. As to the Government's argument that the assembly had interfered with the freedom of assembly of others, the applicant stressed that she and her fellow occupants had been supported throughout by the priest and his parish council and that all the ceremonies had taken place at the appointed time without the slightest incident. She maintained that, contrary to what had been asserted by the Government, there was no legal rule or authority in the case-law that allowed a public authority to decide what was in the church's best interests in place of the religious authority. Rather than showing how the assembly was supposed to have interfered with freedom of worship, the Government had relied instead on a so-called disturbance of public order that had allegedly occurred outside the church.

39. The Court notes that the applicant was a member of a group of aliens without valid residence permits who decided to take collective action to draw attention to the difficulties they were having in obtaining a review of their immigration status in France. Their campaign culminated on 28 June 1996 with a decision to occupy St Bernard's Church, in which the group took up residence for approximately two months. Neither the priest nor the

parish council of the church objected to their presence and the religious services and various ceremonies proceeded as planned and without incident.

40. Consequently, the Court finds that the evacuation of the church amounted to an interference in the exercise of the applicant's right to freedom of peaceful assembly.

B. Whether the interference was justified

1. "Prescribed by law"

41. The Government submitted that the evacuation order that had brought the assembly to an end was prescribed by law. The Ordinance of 12 Messidor, Year VIII, and Article L. 2512-13 of the Code of the Territorial Authorities conferred on the Paris Commissioner of Police full powers to maintain public order. The Commissioner of Police had therefore possessed the necessary power to make the order of 22 August 1996 for the eviction of the occupants of St Bernard's Church.

42. The applicant maintained that there was nothing in the aforementioned provisions to show that the Commission of Police's powers included the protection of religious worship or that he was entitled to deploy the armed forces to defeat the right of asylum through forcible eviction of people who had, as a last resort, taken refuge in a place of worship.

43. The Court finds that the interference in issue was prescribed by law: in particular, under the Law of 9 December 1905 it is the local authorities, not the parish priest, who are responsible for supervising religious ceremonies and they are empowered to act either at the priest's request or on their own initiative.

2. Legitimate aim

44. The Government said that the evacuation order was made as a result of a number of public-order considerations. Its primary purpose had been to protect the health and safety of, first and foremost, those present in the church, all of whom were at serious risk, both because of the living conditions and in some cases because they were on hunger strike. A bailiff who had been instructed to inspect the premises by the Commissioner of Police had noted in his formal report a deterioration in the hunger-strikers' health and a serious lack of adequate sanitary facilities. The order had also been necessary to maintain public order and to prevent the commission of offences: the occupants of the church had admitted contravening the immigration rules; the installations that had been set up outside the church obstructed the free flow of traffic and the occupation of the church attracted a number of onlookers giving rise to fears that the situation would get out of hand. Lastly, the measure had been taken to ensure compliance with the religious vocation of the building.

45. The applicant argued that all the stated reasons were just a pretext. The truth, as was widely reported in the press without being contested, was that the Commissioner of Police had merely implemented a decision taken by the President of the Republic and the Prime Minister in an attempt to avoid giving the public the impression that they had been weakened by the challenge to the Government posed by the “*sans papiers*” in their pursuit of a review of their immigration status.

46. The Court notes that the evacuation was ordered to put an end to the continuing occupation of a place of worship by persons, including the applicant, who had broken French law. The interference therefore pursued a legitimate aim, namely the prevention of disorder.

3. “*Necessary in a democratic society*”

47. The Government maintained that the applicant and several hundred people had remained for approximately two months in a public building that was exclusively used as a place of worship and was manifestly unsuited for such an occupation. During the two months that had preceded the evacuation, the applicant had had an opportunity to set out her demands. Accordingly, the need for the measure complained of had been all the more acute in the instant case. The Government repeated that the applicant was in breach of the immigration rules and had publicly admitted the offence, even though she had earlier received an invitation to leave the territory, and had contravened by her conduct the provisions of the Law of 1881 governing freedom of assembly and the provisions of the Law of 1905 governing the user of places of worship.

48. The applicants said that there had been ten hunger-strikers out of the approximately three hundred people occupying the church and they had received constant medical attention there, including assistance from the authorities as, a few days before the evacuation, the police had taken the hunger-strikers to various hospitals so that their condition could be examined. The hunger-strikers had returned to the church immediately afterwards by their own devices. The occupation of the church had been peaceful and had taken place with the consent of the religious authorities and the parishioners. Illegal immigrants were not prohibited from assembling. Moreover, the Government had undertaken to review all the files of all the church occupants, such that the latter were thus entitled to remain in France at least until that review and any subsequent proceedings instituted to secure their departure had ended.

49. The applicant added that no incidents had in fact been witnessed in the vicinity of the church or on the public highway and had there been any the police could have intervened to restore order without having to evacuate the church. That was why the only concrete example that had been given concerned metal barriers that had allegedly been set up on the road, blocking traffic. Apart from the fact that there were eye witnesses to refute

that allegation, a situation like that could have been remedied without any need to evacuate the church. Lastly, the allegation that the church entrances had been blocked was quite untrue and both the church leaders and the occupants had at all times been very careful to comply with the safety regulations.

50. The Court does not share the Government's view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as that freedom had already been exercised for two months without intervention on the part of the authorities and peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11 § 2.

51. However, the Court notes that even though it was peaceful and did not in itself entail any disturbance of public order or prevent churchgoers from attending services, after two months the continued occupation of the church by illegal immigrants, including the applicant, had developed into a situation – described in a report drawn up by a bailiff on the instructions of the Commissioner of Police – in which the hunger-strikers' health had deteriorated and sanitary conditions become wholly inadequate.

52. In these circumstances, the Court accepts that restrictions on the exercise of the applicant's right to assembly may have become necessary. Admittedly, the parish priest did not request the police to intervene and the methods used by the police in an intervention that came without warning and was indiscriminate, went beyond what it was reasonable to expect the authorities to do when curtailing the freedom of assembly. The Court regrets that such methods were employed. However, it notes that the police could quite lawfully intervene under domestic law without a request from the parish priest and that the authorities' fear that the situation might deteriorate rapidly and could not be allowed to continue much longer was not unreasonable. In any event, the symbolic and testimonial value of the applicant's and other immigrants' presence had been tolerated sufficiently long enough in the instant case for the interference not to appear, after such a lengthy period, unreasonable.

53. In these conditions and having regard to the wide margin of appreciation left to the States in this sphere (*Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, Series A no. 139, p. 12, § 34), the Court holds that the interference with the applicant's right to freedom of assembly was not, in the light of all the circumstances of the case, disproportionate for the purposes of Article 11 § 2.

54. Consequently, there has been no violation of Article 11 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been no violation of Article 11 of the Convention;

Done in French, and notified in writing on 9 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A. BAKA.
President