APPLICATION/REQUÊTE N° 14461/88

Yvonne CHAVE née JULLIEN v/FRANCE

Yvonne CHAVE née JULLIEN c/FRANCE

DECISION of 9 July 1991 on the admissibility of the application

DÉCISION du 9 juillet 1991 sur la recevabilité de la requête

Article 8, paragraph 1 of the Convention *Storing in hospital records, after release of the applicant from psychiatric confinement, of information about the confinement, considered an infringement of respect for private life*

Article 8, paragraph 2 of the Convention *Storing in hospital records, after release of the applicant from psychiatric confinement, of information about the confinement, in this case constitutes an interference in accordance with the law and regarded as necessary in a democratic society for the protection of health*

The notion of necessity implies that the interference corresponds to a pressing social need and is proportionate to the aim pursued Margin of appreciation of the national authorities Balance to be struck between protection of the individual's right to respect for his private life and the protection of health or the rights and freedoms of others

Article 26 of the Convention

a) *The burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the rule*

b) *Complaint under Article 8 of the Convention based on the storing in a hospital register, after release of the applicant from psychiatric confinement, of information about the confinement (France) neither an application to the CADA (Commission on Access to Administrative Documents) under the Law of 17 July 1978 and the*

Decree of 28 April 1988 nor an application to the CNIL (National Commission on Data Processing and Freedoms) under the Law of 6 January 1978 constitutes an effective remedy

Article 8, paragraphe 1, de la Convention *Mémorisation dans le dossier de l'hôpital de donnees sur l'internement psychiatrique du requerant apres sa liberation, consideree comme une atteinte au respect de la vie privee*

Article 8, paragraphe 2, de la Convention *La memorisation dans le dossier de l hôpital de donnees sur l'internement psychiatrique du requérant après sa libération constitue, en l'espèce, une ingérence prévue par la loi et jugée necessaire, dans une societe democratique, à la protection de la santé*

La notion de necessite implique une ingerence fondee sur un besoin social imperieux et proportionnee au but visé Marge d'appréciation des autorites nationales Equilibre à ménager entre la protection du droit de l'individu au respect de sa vie privée et la protection de la santé ou des droits et libertes d'autrui

Article 26 de la Convention

a) C est a l'Etat qui excipe du non épuisement des voies de recours internes qu'il appartient d'etablir l'existence de recours efficaces et suffisants

b) S'agissant d un grief tire de l'article 8 de la Convention en raison de la memorisation dans le dossier de l hôpital de donnees sur l internement psychiatrique du requerant apres sa liberation (France), ne constituent des recours efficaces ni le recours a la CADA (Commission d'acces aux documents administratifs) en vertu de la Loi du 17 juillet 1978 et du Décret du 28 avril 1988 ni le recours à la CNIL (Commission nationale de l'informatique et des libertes) en vertu de la Loi du 6 janvier 1978

(TRANSLATION)

THE FACTS

The applicant a French national born in 1924, is a farmer resident in Vaison-la-Romaine

In the proceedings before the Commission she is represented by Mr P Hoepffner, a lawyer practising in Strasbourg

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

On 17 December 1970, in execution of a compulsory placement order issued by the Prefect of Vaucluse, the applicant was confined in a psychiatric hospital, where she remained until May 1971

In a judgment dated 6 November 1978 the Paris Court of Appeal held that the compulsory placement order issued by the Prefect against the applicant had been unlawful and ordered the Treasury to pay the applicant compensation of 5,000 francs It was held by the court that

> " it appears on the other hand, that the decision to confine this patient taken on 17 December 1970 by the Prefect of Vaucluse was unlawful The grounds for the decision were not set out therein, as required by Article L 343 of the Public Health Code It was not based on conclusive evidence that Yvonne Jullien's state of mental disturbance was such as to represent a threat to public order or public safety The medical content of the certificate issued by the houseman, Dr Bourjac, was imprecise and vague, while the certificate issued on 15 December by the senior medical officer of the Montfavet Psychotherapy Centre, cited in the impugned judgment, describes only minor mental disorders As for the police inspector's report to the Prefect of 14 December 1970, it

related events which had prompted his staff to intervene and referred, in connection with Yvonne Julhen's mental state, to the assessment made by Dr Bourjac, the unsatisfactory nature of which has been pointed out above

Whereas, because of what it necessarily entails, compulsory placement in a psychiatric hospital is a measure involving serious prejudice to the person concerned , whereas in this case, in the circumstances in which placement was ordered, it unjustly caused Yvonne Julhen distress which was all the more keenly felt because she was well known in Carpentras, where she had worked as a primary school teacher , whereas, however, the court finds, having studied the file, that payment of compensation in the sum of 5,000 francs would constitute adequate redress therefor "

Taking the view that the compensation awarded did not constitute full redress for the prejudice she had suffered, the applicant asked for her name and personal particulars to be removed from the central record (fichier) of patients suffering from mental illness in the department of Vaucluse and any other record

She submitted a request to that effect to the Prefecture of Vaucluse, but to no avail She therefore made an application to the Marseille Administrative Court on 31 May 1980 In the subsequent proceedings the French State (Ministry of the Interior) simply asserted 'as no list of handicapped persons has been drawn up at the Prefecture of Vaucluse, the Prefect could not have placed the petitioner's name on such a list, and consequently could not have refused to remove it'

In a judgment dated 10 February 1983 the Administrative Court rejected the application, holding, *inter alia*

although it is incumbent upon the Prefect to organise the collection and, where appropriate, compilation in the form of a central record of all useful information about persons whose mental state may constitute a threat to public order, he also has a duty to ensure that access to the information collected is strictly reserved for those officials placed under his authority who are entrusted with the public service duty thus defined

The application was rejected on the ground that, even though the existence of such a list did not seem implausible, the applicant had not proved any disclosure of the information it contained, only such disclosure being capable of causing her prejudice

The applicant appealed to the Conseil d'Etat, which upheld the Administrative Court's rejection of her application in a judgment dated 29 June 1988 It was held that

the existence at the Prefecture of Vaucluse of a central record containing information about persons suffering from mental disorders was not established by any document in the file "

The Conseil d'Etat also refused to order any investigative measure designed to show whether or not such a list existed.

It appears from the observations of the respondent Government that, pursuant to Article L. 343 of the Public Health Code (1), the applicant's confinement in a psychiatric institution was recorded in her individual patient's file and in the register kept in the hospital where she was placed.

COMPLAINTS (Extract)

The applicant [.] considers that the continued presence in a central record of information about [her] confinement in a psychiatric institution [also] constitutes an interference with her private life (Article 8). She wants such information to be removed from central records (fichiers) of this type.

She submits that just satisfaction for the prejudice suffered must amount to at least 100,000 francs.

....

THE LAW (Extract)

.. ..

With regard to the applicant's complaint relating to an alleged interference with her private life within the meaning of Article 8 of the Convention, the respondent Government plead in the first place the non-exhaustion of domestic remedies, asserting that not one of the complaints raised before the Commission was submitted to the domestic courts.

They further observe that the applicant had two specific remedies in domestic law. She could have applied to the Commission on Access to Administrative Documents (Commission d'accès aux documents administratifs - CADA) invoking the freedom of access to administrative documents in accordance with the procedure laid down by the Law of 17 July 1978, which introduced various measures to improve relations between the administrative authorities and the public, and the Decree of 28 April 1988 concerning the procedure for gaining access to administrative documents Secondly, she could have applied to the National Commission on Data Processing and

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(1) Article L. 343 of the Public Health Code ·
The Prefect of Police, in Paris, and prefects, in other departments, shall order the compulsory placement in a psychiatric institution of any person, whether or not officially deprived of legal capacity, whose mental illness might constitute a threat to public order or public safety.
The grounds for a prefect's order and the circumstances which have made it necessary shall be set out therein These orders, and those made under Articles L. 344, 345, 346 and 348, shall be recorded in a register similar to that prescribed by Article L. 337 above, all the provisions of which shall be applicable to confined persons

Freedoms (Commission nationale de l'informatique et des libertés - CNIL) under the Law of 6 January 1978 on data processing, central records and freedoms

The applicant, for her part, considers that the requirement laid down by Article 26 of the Convention that domestic remedies be exhausted has been met, since the complaints raised before the Commission were submitted in substance to the administrative courts and that the remedies advocated by the Government are insufficient and ineffective with regard to the object pursued, namely the expunging of information kept in a putative register

The Commission notes, firstly, that an application to the CADA would not have enabled the applicant to obtain the deletion of information kept in a putative central record, the purpose of that organisation being merely to facilitate access by members of the public to administrative documents

Secondly, with regard to applications to the CNIL, the Commission notes that the latter is an administrative authority responsible for ensuring respect for the provisions of the Law of 6 January 1978, particularly by informing all persons concerned of their rights and obligations, by lending them advice and assistance and by supervising the use of computers to process information about named individuals

The Commission recalls in this connection that the burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the non-exhaustion rule However, the Government merely assert that the applicant could have used such a remedy without establishing its effectiveness and accessibility in the present case as regards the complaint she raised (cf No 9013/80, Dec 11 12 82, D R 30 p 96)

Moreover, the Commission notes that in substance the applicant submitted to the administrative courts the complaints she has raised before it Consequently, neither part of the objection raised by the Government can be upheld

With regard to the merits of the application, the respondent Government assert that no departmental record of mental patients is kept at the Prefecture of Vaucluse or at the Departmental Directorate of Health and Social Affairs, and that, as the Conseil d'Etat pointed out in the grounds for its judgment of 29 June 1988, the applicant has not adduced even *prima facie* evidence of the existence of such a record

The Government maintain that the total lack of *prima facie* evidence is in any case confirmed by the refusal, first of the Administrative Court and then of the Conseil d'Etat, to make use of one of the investigative measures at their disposal, e g by conducting investigations on the spot, by taking statements or by summoning the parties to appear in person, the area of central records, registers and administrative documents being precisely one of the fields in which such measures are most frequently adopted

Nor is the existence of a departmental record of mental patients at the Vaucluse Prefecture or the Departmental Directorate of Health and Social Affairs proved by the fact that the medical team at the hospital maintained contact with the applicant after the period of her compulsory placement This was merely the result of the normal medical follow-up of a patient who had been treated at the hospital

However, the Government admit the existence of a file (dossier) and a register (registre) kept by the hospital where the applicant was placed They submit that these documents should not be equated with central records (fichiers)

They maintain that the keeping of the file and register in question cannot in any way constitute a violation of Article 8 of the Convention, since these documents have no other purpose than to protect patients' health and rights Moreover, their use is strictly regulated by the relevant legislation, which prohibits public access thereto, making them available only to the public authorities having cause to consult them in the exercise of their powers and within the limits of those powers

In the first place, it would appear that the keeping of the file and register in question does not constitute interference as such with the exercise by the persons concerned of their right to respect for their private life, since this is a measure taken not against them but for their benefit

Unlike the Leander case previously submitted to the Convention institutions, which concerned a police register, the present case did not involve the accumulation of information or subjective appreciations coupled with denial of an opportunity to refute them (Eur Court H R , judgment of 26 March 1987, Series A no 116, p 22, para 48) On the contrary, the files and registers kept in psychiatric institutions contain objective, verifiable information accessible to the persons concerned, who may obtain copies They are adjuncts of a public service whose patients are its users

Secondly, even supposing that keeping the files and registers in question can be regarded as an interference with exercise of the right to respect for private life, it must be regarded as justified under paragraph 2 of Article 8, given that it pursues a legitimate aim and is provided for by law, necessary in a democratic society and strictly proportionate to the aims pursued

The applicant takes the opposite view

She considers that, even if the respondent Government's argument were well founded, the Commission could consider the single issue of the extent to which the continued presence of information about her in a central record of the mental patients of Vaucluse breaches the Convention For her this is a question of principle which cannot admit of different answers depending on the place where the record is kept or the local government body which keeps it Lastly, the applicant asserts that the Government seek to make a specious distinction between the terms fichier" (central record card index), 'registre ' (register) and dossier ' (file) She submits that the term

"fichier" should be understood in its broadest sense, which undeniably includes not only registers but also files when the latter contain a set of related pieces of information

The Commission notes from the outset that the applicant ignores the information given by the Government that there was no central record of mental patients either at the Prefecture of Vaucluse or at the Departmental Directorate of Health and Social Affairs The Government point out that the only mention of the applicant's compulsory placement appears in her individual patient's file and in the register kept at the hospital where she was placed

The applicant, who criticises the Government for the "specious" distinction they seek to make between the terms "fichier", "registre" and "dossier", merely asserts that the term "fichier" should be understood in its broadest sense The Commission accordingly considers that the applicant seems to admit that there is no central record at the Prefecture of Vaucluse ; her complaint is against the continued presence in any kind of record, particularly the file and register kept at the hospital where she was placed, of personal information about her, namely references to her confinement in a psychiatric institution

The Commission notes that the Government are very precise about this point The keeping of registers of persons confined in psychiatric institutions is provided for in Article L 343 of the Public Health Code, while that of the medical files of patients admitted to public hospitals is provided for in Article 38 of Decree No 43 891 of 17 April 1943, which stipulates, in particular : "patients' medical files shall be kept at the hospital under the responsibility of the chief medical officer"

The Commission considers that the file and register, as provided for by national legislation, undoubtedly contained information relating to the applicant's private life, and the storing of this information could accordingly be held to amount to an interference with respect for her private life as guaranteed by Article 8 para 1 of the Convention (see previously cited Leander judgment, para 48)

However, the question arises whether this interference with exercise of the right to respect for private life was justified under paragraph 2 of Article 8 of the Convention.

It has not been disputed that the keeping of the file and register in question had a legal basis in French law There still remains the problem of the "foreseeability" of the law as regards the content and nature of the applicable measures As the European Court of Human Rights noted in its Malone judgment, and more recently in its Kruslin judgment (Eur. Court H.R., judgment of 2 August 1984, Series A no 82, and judgment of 24 April 1990, Series A no. 176, p. 22, paras 30 *et seq*), Article 8 para 2 of the Convention "does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law" In the Commission's opinion that situation obtains in the present case, all the more so as this point is not in dispute between the parties.

Secondly, with regard to justification of the interference, the Commission considers that the system, as conceived in the present case, clearly pursues a legitimate aim for the purposes of Article 8, namely protection of health

The recording of information concerning mental patients serves not just the legitimate interest of ensuring the efficient running of the public hospital service, but also that of protecting the rights of the patients themselves, especially in cases of compulsory placement

In particular, the obligation of recording in the register provided for in Article L 343 of the Public Health Code placement orders issued by prefects, the particulars of the persons concerned and the medical certificates and reports drawn up during the placement and subsequently, in accordance with Articles L 337, L 343 to L 346 and L 348 of the same code, provides a means of verifying the advisability of confinement and a means of investigation at the disposal of the administrative or judicial authorities responsible for the oversight of psychiatric institutions, in accordance with Articles L 332 and L 337 of the Public Health Code The obligation in question thus helps to reduce the risk of arbitrary confinement

The main point at issue is whether the interference was "necessary in a democratic society"

The Commission recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued However, the national authorities enjoy a margin of appreciation, the scope of which depends not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved (see previously cited Leander judgment, paras 58 and 59) In the present case it is necessary to weigh the respondent State's interest in protecting health or the rights and freedoms of others against the seriousness of the infringement of the applicant's right to respect for her private life

The interference complained of was all the more serious because it concerned information relating to the applicant's compulsory placement in a psychiatric hospital the illegality of which was recognised in a judgment of the Paris Court of Appeal dated 6 November 1978 It caused the applicant distress which was all the more keenly felt because she was well-known in Carpentras, where she had worked as a teacher

It therefore appears that where the State, for the purpose of protecting health and the rights and freedoms of others, authorises the keeping of personal files and registers in the hospital where the persons concerned are treated, it must provide adequate and effective guarantees against abuse (see previously cited Leander judgment, para 60)

In the first place, as the Government have pointed out, the information at issue is protected by appropriate confidentiality rules In practice this means that those persons who have access to the medical files kept in public hospitals, that is the

members of the medical team and the doctor in charge of the case, are bound on pain of criminal penalty to preserve the confidentiality of medical information.

Secondly, these documents cannot be equated with central records (fichiers) and are by no means accessible to the public, but only to exhaustively listed categories of persons from outside the institution, namely, according to the provisions of Articles L 332 and L. 337 of the Public Health Code, "the prefect and persons specially delegated for that purpose by the prefect or by the Minister of Health, the president of the (tribunal) State counsel, the judge of the (tribunal d'instance) and the mayor of the municipality", on the occasion of the visits they are called upon to make to such institutions.

Lastly, Law No. 70-643 of 17 July 1970, which was intended to strengthen the protection of the public's individual rights, added to the French Criminal Code new provisions (Articles 368 to 372) designed to protect individuals against intrusions into their private lives.

In conclusion, the Commission considers that the guarantees built into the French supervision system satisfy the requirements of paragraph 2 of Article 8 of the Convention Accordingly, the interference suffered by the applicant cannot be held to have been disproportionate to the legitimate aim pursued. It follows that the application must be declared manifestly ill-founded and rejected pursuant to Article 27 para 2 of the Convention

For these reasons, by a majority, the Commission

DECLARES THE APPLICATION INADMISSIBLE