



French courts displayed excessive procedural formalism in depriving a disabled woman of her right to appeal

In today's Chamber judgment in the case of [Poirot v. France](#) (application no. 29938/07), which is not final,¹ the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 of the European Convention on Human Rights.

The case concerned a woman with disabilities who lodged a criminal complaint alleging sexual assault at a residential care home.

Principal facts

The applicant, Serena Poirot, is a French national who was born in 1971 and lives in La Bresse (France).

Ms Poirot is severely disabled and was placed in a residential care home in Epinal (France), where she required daily assistance. In March 2001 she informed a counsellor that one of the carers at the home, J.R., had committed repeated acts of indecent assault against her.

Her mother, in her capacity as guardian, lodged a criminal complaint alleging sexual assault with the Epinal public prosecutor, who decided in August 2001 to take no further action.

In October 2001 Ms Poirot's mother lodged a criminal complaint against J.R. together with an application to join the proceedings as a civil party.² A judicial investigation was opened in March 2002 into alleged rape and sexual assault of a person in an especially vulnerable position.

In December 2006 the investigating judge amended the charges to sexual assault, and accordingly committed the accused for trial in the Epinal Criminal Court. However, Ms Poirot disputed the reclassification of the alleged acts and maintained that they amounted to a serious criminal offence and should consequently have led to a trial in the Assize Court.

She therefore appealed against the committal order but her appeal was dismissed by the President of the Investigation Division of the Nancy Court of Appeal in an order of January 2007 declaring it inadmissible. The decision stated that Ms Poirot's notice of appeal had not explicitly mentioned the grounds for the appeal, namely that she was

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² In French law the victim of an offence may lodge a criminal complaint and civil-party application with the investigating judge, thereby setting the criminal proceedings in motion without awaiting the public prosecutor's decision, and even despite the latter where the public prosecutor has decided to take no further action.

challenging the classification of the alleged acts because she considered that they amounted to a serious criminal offence and should be tried by the Assize Court.

Ms Poirot appealed on points of law against the Investigation Division's decision, and in February 2007 the President of the Criminal Division of the Court of Cassation dismissed her appeal, on the ground that no appeal lay against the impugned order.

In July 2007 the Criminal Court acquitted J.R. and dismissed Ms Poirot's claim for damages.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1, Ms Poirot complained that the authorities had dismissed her appeal against the order by the investigating judge to send her case for trial in the Criminal Court, thus depriving her of access to a court and of her right to a fair hearing.

The application was lodged with the European Court of Human Rights on 28 June 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Karel **Jungwiert** (Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 6 § 1 \(right to a fair hearing/right of access to a court\)](#)

The Court observed that, in accordance with a provision of domestic law, a civil party could appeal against an order by the investigating judge to send a case for trial before a criminal court if that party considered that the acts complained of amounted to a serious criminal offence and should have been tried by an assize court. The Court noted that Ms Poirot had exercised that right as a civil party.

The Court observed that Ms Poirot had not been formally required by Article 186-3 of the Code of Criminal Procedure to make explicit reference to the grounds of her appeal, namely that she was challenging the legal classification of the alleged acts. It further noted that the provision in question was the only one that allowed Ms Poirot to challenge the committal order made by the investigating judge.

The Court accepted that the national authorities were in the best position to interpret domestic legislation and that the formalities governing appeals were designed to ensure the proper administration of justice and, in particular, to ease the courts' caseload. It considered, however, that in today's case the judicial authorities had applied the relevant procedural rules in an excessively formalistic manner, thereby infringing Ms Poirot's right of access to a court.

Furthermore, by dismissing her appeal, the authorities had deprived Ms Poirot not only of an examination of the merits of her appeal by the Investigation Division but also of a

review by the Court of Cassation, since no appeal lay against the order declaring her appeal inadmissible.

The Court concluded that there had been a violation of Article 6 § 1.

Article 41 (just satisfaction)

The Court held that France was to pay Ms Poirot 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

Separate opinion

Judges Spielmann, Power-Forde and Yudkivska expressed a joint concurring opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.