

EUROPEAN COURT OF HUMAN RIGHTS

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DECISION ON THE ADMISSIBILITY in the case of

OULD DAH v. FRANCE (No. 13113/03)

The European Court of Human Rights has declared inadmissible the application lodged in the case of Ould Dah v. France concerning the conviction of a Mauritanian army officer by a French court for acts of torture committed in Mauritania<sup>1</sup>.

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Ely Ould Dah is a Mauritanian national who was born in 1962. He arrived in France in August 1998 to attend a training course at Montpellier Army College as an officer of the Mauritanian army.

On 8 June 1999 the International Federation for Human Rights (Fédération internationale des ligues des droits de l'homme) and the French Human Rights League (Ligue des droits de l'homme) lodged a criminal complaint against him, with an application to join the proceedings as civil parties. They accused him of having tortured prisoners during clashes between different ethnic groups in Mauritania in 1990 and 1991. The proceedings were based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 and ratified by France on 26 June 1987.

Mr Ould Dah was arrested by the French authorities on 1 July 1999 and charged with torture or acts of barbarity. He was remanded in custody until 28 September 1999. Subsequently he was released on bail, and took advantage of this to abscond. In April 2000 a warrant was issued for his arrest.

After the Court of Cassation had dismissed, at last instance, an appeal by the applicant against the indictment order issued by the investigating judge, the case was finally tried by the Gard Assize Court, which, on 25 July 2005, after hearing submissions by the applicants' lawyers in his absence, sentenced him to 10 years' imprisonment. The sentence was pronounced despite the fact that Mr Ould Dah had had the benefit, in his country, of an amnesty law passed in 1993. The Assize Court based its decision on, inter alia, Articles 303 and 309 of the old Criminal Code and 222-1 of the new Criminal Code and on the United Nations Convention against Torture of 1984.

The application was lodged with the European Court of Human Rights on 22 April 2003. Relying on Article 7 of the European Convention on Human Rights (no penalty without law), Mr Ould Dah complained that he had been prosecuted and convicted in France for an offence committed in Mauritania, whereas he could not have foreseen that French law would override Mauritanian law. He also complained that torture had not been classified under French law as an autonomous offence at the relevant time and that the provisions of the new Criminal Code had been applied to him retrospectively.

The Court reiterated, among other things, that Article 7 of the Convention embodied the principle that only the law could define a crime and prescribe a penalty. In accordance with that principle, the criminal law could not be applied retrospectively where it was to an accused's disadvantage. Furthermore, offences and the relevant penalties must be clearly defined by law. This requirement was satisfied where the

individual could clearly identify what acts and omissions would make him criminally liable. In other words, the criminal law had to be accessible and foreseeable. Firstly, the applicant did not contest the fact that the French courts had decided to try him, but the fact that they had applied French criminal law in convicting him. He submitted that only Mauritanian law should apply and, more particularly, the Amnesty Law of 1993 from which he claimed he should benefit. The Court reiterated that the prohibition of torture occupied a prominent place in international law and that the prohibition was binding. It also observed that at the material time the United Nations Convention against Torture of 1984 had already come into force and had been incorporated into French law. The “absolute necessity” of prohibiting and penalising torture thus justified, in the exercise of universal jurisdiction (i.e. the right of States to prosecute the perpetrators of acts of torture committed outside their own jurisdiction), not only that the French courts declared that they had jurisdiction to try the case, but also that they would apply French law. Otherwise, application of the Mauritanian amnesty law, which served merely to grant impunity to the perpetrators of torture, would deprive the universal jurisdiction provided for by the United Nations Convention of 1984 of its substance. Like the United Nations Committee of Human Rights and the International Criminal Tribunal for former Yugoslavia, the Court considered that an amnesty law was generally incompatible with the duty on States to investigate acts of torture or barbarity.

Secondly, Mr Ould Dah argued that French criminal law itself did not fulfil the dual condition of accessibility and foreseeability since at the relevant time acts of torture and barbarity constituted aggravating circumstances in relation to other crimes or offences, and were not an offence in themselves. The Court observed, however, that acts of torture and barbarity had been expressly provided for in the Criminal Code prior to the 1994 reform. The submission that at the time they had constituted not separate offences but aggravating circumstances was not decisive: the applicant could in any event be accused and convicted of such acts, particularly as the French courts had not imposed a heavier penalty than the maximum one prescribed by law at the time.

With regard to the complaint based on the alleged retrospective application of the provisions of Article 222-1 of the new Criminal Code, which had come into force on 1 March 1994, the Court found that they had not introduced a new offence, but simply different legislative provision for conduct that had already been classified as an offence under the old Criminal Code.

Having regard to all the foregoing factors, the applicant could thus have reasonably foreseen the risk of being prosecuted and convicted for the acts of torture committed by him between 1990 and 1991. The Court concluded that the application was manifestly ill-founded<sup>2</sup>.

1. OULD DAH c. FRANCENotice

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