

[TRANSLATION]

...

## THE FACTS

The applicants [Mr Bruno Pichon and Mrs Marie-Line Sajous] are French nationals, who were born in 1955 and 1949 respectively and live in Salleboeuf (Gironde). They were represented before the Court by Mr Tremolet de Villers, of the Paris Bar.

### A. The circumstances of the case

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

The applicants are the joint owners of a pharmacy in Salleboeuf.

On 9 June 1995 three women arrived at the same time at the applicants' pharmacy to be told in turn that they could not be supplied with the contraceptives prescribed to each of them by their doctors in prescriptions whose validity has never been called into question.

On the same day the three women in question filed a complaint against the applicants for refusing to sell contraceptives on a doctor's prescription, an offence provided for and punished by Article 33, paragraph 1 of Decree no. 86-1309 of 29 December 1986 and Article L 122-1 of the Consumer Code. They lodged a civil-party claim in which they were joined by an association.

The applicants argued before the Bordeaux Police Court that the refusal to sell of which they were accused was justified on the legitimate ground that no statutory provision required pharmacists to supply contraceptives or abortifacients. They relied on Article L 645 of the Public Health Code, under which pharmacists were not required to supply single or compound preparations based on oestrogens.

In a judgment of 16 November 1995 the Bordeaux Police Court found the applicants guilty of the offences of which they had been accused. The Police Court noted the following: "Article L 645, on which the defendants rely, does not in any way concern contraceptive medicines but only abortifacients"; the products that the applicants had refused to supply were contraceptive medicines "which [could] not be regarded as the equivalents of abortifacients". The Police Court added: "Ethical or religious principles are not legitimate grounds to refuse to sell a contraceptive. There is no legislation which authorises pharmacists to refuse to supply contraceptives, unlike the provisions relating to doctors, midwives and nurses as regards the termination of pregnancy (Article L 602-8 of the Public Health Code)". In conclusion the Police Court held as follows: "Consequently, as long as the

pharmacist is not expected to play an active part in manufacturing the product, moral grounds cannot absolve anyone from the obligation to sell imposed on all traders by the law (Article L 122-1 of the Consumer Code)". The applicants were sentenced to a fine of 5,000 French francs (FRF) each and ordered to pay, jointly and severally, FRF 1,000 in damages to the three complainants.

The applicants appealed against that judgment. In a decision of 14 January 1997, the Bordeaux Court of Appeal upheld the Police Court's judgment. It noted that the applicants had never disputed that they had committed the acts of which they were accused and that they had stated that their conduct was dictated by religious reasons. It further observed: "The offences of refusing to sell for which the defendants stood trial did not stem in any way from a practical impossibility to satisfy their customers but were committed in the name of religious convictions which cannot be interpreted as a legitimate reason within the meaning of Article L 122-1 of the Consumer Code. Thus the failure to stock this type of product in their dispensary was not the cause but indeed the consequence of this refusal on principle". The Court of Appeal also noted that the defendants' pharmacy was the only one in Salleboeuf. It upheld the Police Court's finding that the products which the applicants had refused to sell were not covered by Article L 645 of the Public Health Code.

The applicants lodged an appeal on points of law against that judgment. They relied in particular on Article 9 of the Convention, asserting that the freedom to manifest one's religion implied that a pharmacist was entitled not to stock contraceptives whose use amounted to an interference with their religious beliefs. In a judgment of 21 October 1998 the Court of Cassation dismissed that appeal. It agreed with the Court of Appeal's finding that "personal convictions ... [could] not constitute for pharmacists, who have the exclusive right to sell medicines, a legitimate reason within the meaning of Article L 122-1". The Court of Cassation's decision was served on the applicants by a letter from the prosecuting authorities of the Bordeaux Court of Appeal dated 4 December 1998 and posted on 7 December 1998.

## **B. Relevant domestic law**

### **Article L 122-1 of the Consumer Code**

"It is prohibited to refuse to sell a product or provide a service to a customer for no legitimate reason, to make the sale of a product conditional on the purchase of a compulsory quantity or the concomitant purchase of another product or payment for another service or to make the provision of a service conditional on the provision of another service or the purchase of a product.

This provision shall apply to all the activities contemplated in the last paragraph of Article L 113-2."

**Article L 113-2 of the Consumer Code**

“The rules relating to the scope of Ordinance no. 86-1243 of 1 December 1986 cited above are laid down by Article 53 of that Ordinance, which provides as follows:

“Article 53: The rules laid down in the present ordinance apply to all production, distribution, and service activities, including those that are carried out by public bodies, particularly under agreements on the delegation of public service activities.”

NB: Article 53 of Ordinance no. 86-1243 of 1 December 1986 as set out above was repealed by Ordinance no. 2000-912 of 18 September 2000.”

**Article 33 of Decree no. 86-1309 of 29 December 1986**

**Amended by Decree no. 97-298 of 27 March 1999, Article 5, Official Gazette of the French Republic (JORF), 3 April 1997**

“The offer for sale of products or provision of services in breach of the provisions of Article 37 of Ordinance no. 86-1243 of 1 December 1986 shall be punishable by the fines applicable to minor offences (*contraventions*) of the fifth class.

If the offence is repeated, the fines imposed for repeated minor offences of the fifth class shall be applicable.”

(Transferred into R113-1 and R121-13 of the Consumer Code).

**Article L 645 of the Public Health Code**

“It is prohibited for any person in any way whatsoever to display, offer, cause to be offered, sell, put on sale, distribute or cause to be distributed the medicines or substances, intra-uterine probes or other similar objects capable of causing or facilitating abortion listed in a decree issued after consultation of the *Conseil d'Etat*.

Pharmacists may, however, sell the medicines, substances and objects specified above but only on a medical prescription which must be transcribed into a numbered register initialled by the mayor or the police superintendent.

...”

**COMPLAINT**

The applicants complained under Article 9 of the Convention that their right to freedom of religion had been disregarded by the domestic courts.

**THE LAW**

The applicants complained that they had been convicted for refusing to sell contraceptive pills whereas they considered that that amounted to a manifestation of their freedom of religion. They relied on Article 9 of the Convention which provides:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The Court would point out that the main sphere protected by Article 9 is that of personal convictions and religious beliefs, in other words what are sometimes referred to as matters of individual conscience. It also protects acts that are closely linked to these matters such as acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form.

The Court also reiterates that Article 9 lists a number of forms which manifestation of one’s religion or belief may take, namely worship, teaching, practice and observance (see the *Kalaç v. Turkey* judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1209, § 27, and *Cha’are Shalom Ve Tsedek v. France* [GC] no. 27417/95, 27 June 2000, ECHR 2000-VII, § 73).

However, in safeguarding this personal domain, Article 9 of the Convention does not always guarantee the right to behave in public in a manner governed by that belief. The word “practice” used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief.

The Court notes that in the instant case the applicants, who are the joint owners of a pharmacy, submitted that their religious beliefs justified their refusal to sell contraceptive pills in their dispensary.

It considers that, as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere.

It follows that the applicants’ conviction for refusal to sell did not interfere with the exercise of the rights guaranteed by Article 9 of the Convention and that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, by a majority,

*Declares* the application inadmissible.