



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF BRICMONT v. BELGIUM

(Application no. 10857/84)

JUDGMENT

STRASBOURG

07 July 1989

In the Bricmont case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr J. CREMONA,

Mr F. MATSCHER,

Mr J. PINHEIRO FARINHA,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr J. DE MEYER,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 January, 29 and 30 March and 20 June 1989,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 December 1987, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10857/84) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by Mr Georges Bricmont and Mrs Louise Bricmont-Barré, his wife, on 13 February 1984. The applicants were Belgian nationals; they have since acquired Canadian citizenship by naturalisation.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 (art. 6).

* Note by the registry. The case is numbered 19/1987/142/196. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings pending before the Court. The President of the Court gave them leave to present their own case (Rule 30 § 1, second sentence).

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 29 January 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr J. Pinheiro Farinha, Mr R. Macdonald, Mr C. Russo and Mr J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mr F. Matscher, substitute judge, replaced Mr Gersing, who had died (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the Delegate of the Commission and the applicants on the need for a written procedure (Rule 37 § 1). In accordance with his orders and instructions, the registry received:

(a) the applicants' memorial and supplementary observations, on 18 February, 1 June and 2 August 1988; and

(b) the Government's memorial, on 20 June 1988.

In a letter of 6 July 1988, the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 8 November that the oral proceedings should open on 24 January 1989 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr C. DEBRULLE, Deputy Secretary,

Ministry of Justice,

Agent,

Mr L. MATRAY, former Chairman

of the Liège Bar,

Counsel;

- for the Commission

Mr H. VANDENBERGHE,

Delegate;

- the applicants.

The Court heard addresses by Mr MATRAY for the Government, by Mr VANDENBERGHE for the Commission, and by Mr BRICMONT for the applicants, as well as their replies to questions put by the Court.

AS TO THE FACTS

7. Mr Georges Bricmont, a retired lawyer (*avocat*), was born in Paris in 1917, and his wife Mrs Louise Bricmont-Barré, a housewife, was born at Nismes in Belgium in 1921. They both had Belgian nationality when they lodged their application but Mr Bricmont acquired Canadian citizenship in 1984, and Mrs Bricmont acquired it in 1986. They have been domiciled in Quebec city (Canada) since 19 November 1980.

8. Following an extradition request made by Belgium on 14 January 1986, Mr Bricmont was taken into custody a week later at Quebec Detention Centre pending extradition. He was extradited on 13 July 1988 and held in custody at Nivelles Prison before being conditionally released on 28 September 1988 under a ministerial decree of the previous day which did not impose any restrictions on his movements; he was thus able to rejoin his wife in Quebec. In the normal course of events he will be eligible for permanent release on 20 January 1991.

I. BACKGROUND TO THE CASE

9. From 1969 to 1977 Mr Bricmont was the friend, lawyer and agent of Prince Charles of Belgium, Count of Flanders and former Regent of the Kingdom (who died on 1 June 1983); he was responsible for managing some of the Prince's assets, and on various occasions was assisted in this task by Mrs Bricmont.

10. Among other cases he dealt with was one concerning a former manager of the Prince's assets, Baron Allard, who was prosecuted on various charges of forgery, uttering forged documents, breach of confidence and deception. It ended with a judgment by the Brussels tribunal de première instance (regional court of first instance) on 13 September 1972, in which the court ruled that several of the charges were statute-barred and acquitted the defendant on the remaining charges.

Evidence had been taken from the Prince during the judicial investigation, but he had not received the necessary authorisation to appear at the trial.

11. Mr Bricmont also sold various items of the Prince's movable property and real estate. On 21 July 1971, the Prince concluded with Baron Allard a settlement under which the Prince recovered large amounts of land. The properties were: (i) the Sansovino estate, comprising land - owned by Caldana, a non-commercial partnership governed by French law, 99% of whose shares were owned by Florazur, a company incorporated under Swiss law - and buildings in Cannes; and (ii) land at Biot on the Riviera, owned by Bois Fleuri, a non-commercial partnership under French law, half of whose shares belonged to the Volpone Anstalt, an institution incorporated under

Liechtenstein law. In 1973, Baron Allard also reassigned a debt which he was owed by the Florazur company.

12. On 8 February 1973, Mr Bricmont, acting on the Prince's behalf, negotiated the sale of the Cannes estate through the Filminster and Lissignol Anstalten, a sale which was subsequently not completed. Both earlier and subsequently, he allegedly effected sales through various Anstalten which resulted in the Cannes estate becoming the property of the Chimark and Socosef Anstalten. The Volpone Anstalt, which was transferred to the Egamecon Anstalt, was allegedly finally absorbed by Socosef.

13. On 18 January 1977, all relations between Mr Bricmont and the Prince ceased, and at Mr Bricmont's request the Prince signed a general discharge covering all the managerial acts performed.

14. The Prince's new general agent, Mr Gilson de Rouvieux, who had been asked by the Prince to clarify the situation regarding the latter's property, requested Mr Bricmont to provide information about the movement of funds and shares belonging to the Prince; in particular, he tried to trace what had become of the assets returned by Baron Allard. When Mr Bricmont refused in a letter of 5 May 1977, Mr Gilson de Rouvieux became convinced that the Prince's assets had come under the control of the Socosef Anstalt, which belonged to third parties who could only be the applicants.

II. THE PROCEEDINGS

A. The judicial investigation

1. Opening of the investigation

15. On 9 August 1977, acting on behalf of the Prince, Mr Gilson de Rouvieux lodged a criminal complaint with the Brussels Crown Prosecutor's Office alleging forgery of documents, uttering of forged documents, breach of confidence and misappropriation of assets. On 9 September 1977, the Prince joined the criminal proceedings as a civil party seeking damages; he accused Mr Bricmont of having divested him of his fortune by making him sign a series of documents effecting transfers of assets. Mr Bricmont, it was claimed, had at the time explained to the Prince that the transfers were designed solely to protect his assets from creditors, the tax authorities and his statutory heirs by depersonalising them behind the veil of Anstalten - which supposedly belonged to him but in reality were under the control of the applicants.

16. After questioning Mr and Mrs Bricmont, the investigating judge charged them on 27 January 1978. Mr Bricmont was questioned on several other occasions during the year.

17. Under Articles 510 and 511 of the Code of Criminal Procedure, princes of the blood can "never be summoned as witnesses", unless a special royal decree has authorised them to appear in court; with that exception, their evidence is given in writing and taken by the President of the Court of Appeal or the presiding judge of the tribunal de première instance, as the case may be. In accordance with these provisions, evidence was taken from the Prince by the President of the Brussels Court of Appeal on 9 November 1977 and 28 April 1978 (see paragraphs 38-39 below).

18. Mr and Mrs Bricmont requested the investigating judge to arrange a confrontation with the Prince and to hear various witnesses including Mr Gruner and Mr Casse.

Mr Gruner (who subsequently died) was the manager of the relevant Anstalten, which were formed and had their registered address at the office of his employer, Mr Merkt, the Prince's lawyer in Geneva. Mr Casse was very actively involved with the Sansovino estate in Cannes as a chartered surveyor.

On 18 July 1979, the investigating judge questioned the Prince, and on 23 October 1979 he held a confrontation - authorised by a royal decree of 2 July (see paragraph 40 below) - between the Prince and Mr Bricmont.

19. At the request of a large number of journalists, the Senior Assistant Crown Prosecutor in Brussels held a press conference in October 1977. He confirmed that the Prince had lodged a complaint alleging misappropriation of funds; and, in reply to questions, he added that the investigating judge had ordered a number of measures including searches, one of which had been made at Mr Bricmont's home. He also disclosed that Mr Bricmont's name was cited in the complaint. Several Belgian daily newspapers mentioned the prosecutor's statement.

2. The order of 3 June 1980 made by the chambre du conseil of the Brussels tribunal de première instance

20. Once the investigation was completed, the file was put before the chambre du conseil (Committals Chamber) of the Brussels tribunal de première instance, which held eleven hearings between 18 March and 24 April 1980.

21. On 31 March and 2 April 1980 respectively, Mrs and Mr Bricmont filed pleadings in which they applied for a declaration that the investigation was null and void. They submitted that the October 1977 press conference (see paragraph 19 above) had infringed the rights of the defence, as had the inclusion in the criminal file of confidential correspondence between lawyers (see paragraph 56 below), the investigative measures based on that correspondence and the procedure for taking evidence from the Prince. In

the alternative, they asked the chambre du conseil to stay the proceedings until various investigative measures had been taken.

22. In an order of 3 June 1980 the chambre du conseil held that it had not been shown that the Crown Prosecutor's conduct had been designed to predispose the witnesses and judges against the accused or that it had had that effect. It also ruled that there had been no breach of professional confidentiality and that evidence had been lawfully taken from the Prince, as a party seeking damages, without his taking an oath. As to the application for a stay, it considered that the requested investigative measures were not necessary at that stage.

The chambre du conseil accepted that there were extenuating circumstances in respect of the offences to which criminal penalties attached and committed the accused for trial by the tribunal de première instance. It endorsed the following charges against Mr Bricmont: nine counts of forgery and uttering forged documents, twelve of deception, five of misappropriation of assets, one of handling and one of breach of professional confidentiality; and the following against Mrs Bricmont: three counts of forgery and uttering, four of deception, one of misappropriation of assets, one of theft and one of handling.

These counts included:

(a) count A1, against Mr Bricmont, of forgery and uttering, in respect of the sale to the Filminter Anstalt of the shares of Florazur, a company incorporated under Swiss law;

(b) count A3, against Mr Bricmont, of forgery and uttering, in respect of the sale on 13 December 1973 of the Volpone Anstalt to the Agamecon Anstalt;

(c) count A8, against both accused, of forgery and uttering, in respect of a deed of gift dated 19 May 1976 (see paragraph 64 below);

(d) count A9, against Mrs Bricmont, of forgery and uttering, in respect of a contract creating a trust (contrat de fiducie) of 1 October 1976;

(e) count A10, against Mr Bricmont, of forgery and uttering, in respect of the discharge from agency dated 18 January 1977 (see paragraph 13 above); and

(f) count C4, alleging that Mr and Mrs Bricmont misappropriated 50 Florazur shares to the detriment of the Prince.

3. The Brussels Court of Appeal's judgment of 6 November 1980

23. On 6 November 1980, the Indictments Chamber of the Brussels Court of Appeal declared the applicants' appeal against the order of the chambre du conseil inadmissible. It held that in challenging the lawfulness of the investigating judge's appointment to deal with the case and the validity of the investigation, Mr and Mrs Bricmont had not raised a plea of no jurisdiction within the meaning of Article 539 of the Code of Criminal Procedure, which was the only ground of appeal available to them.

4. The Court of Cassation's judgment of 7 January 1981

24. The applicants appealed on points of law against the order of 3 June 1980 and the judgment of 6 November 1980.

On 14 November 1980, they each filed pleadings which contained the following passage:

"The appellants realise that the Belgian judiciary in general will continue to refuse them a fair trial because the original complainant was formerly Regent of the Kingdom and because, secondarily, his associate Mr Mossoux, who joined the complaint in the proceedings before the chambre du conseil, has power over certain socialist personalities who in turn control a number of partisan appointments and promotions in the judiciary."

25. On 7 January 1981, the Second Chamber of the Court of Cassation declared the appeal inadmissible because it had been made against an preliminary decision taken at the investigation stage, before the final decision within the meaning of Article 416 of the Code of Criminal Procedure.

26. At the beginning of the hearing the presiding judge of the Second Chamber had asked Mr and Mrs Bricmont whether they wished to maintain their allegations. Mr Bricmont agreed to delete the passage reproduced above, but Mrs Bricmont refused to do so. Following this incident, which was entered in the record, the Crown Prosecutor summoned Mr and Mrs Bricmont to appear before the Brussels tribunal de première instance on a charge of contempt of court in relation to the Belgian judiciary. The court held that the charge was not made out and acquitted Mr and Mrs Bricmont in a judgment of 15 December 1981.

B. The trial

1. The judgment of 15 February 1982 of the Brussels tribunal de première instance

27. At the end of proceedings during which, in particular, the defendants had each filed their pleadings on 23 September 1981, the Brussels tribunal de première instance gave judgment on 15 February 1982.

28. By way of preliminary observation, it stated that all the documents in the file disclosed "a clear and inexplicable want of diligence in seeking the truth". It noted among other things the following "obstacles":

(a) the deficiencies in the investigation, the main examples being: the failure to have the accounts audited; the failure to take evidence from Mr Gruner, who had died in the meantime (see paragraph 18 above); the failure to make any inquiries about Mr and Mrs Bricmont's characters; the failure to take evidence from Mrs Bricmont and to arrange a confrontation with the Prince in respect of various charges; the investigating judge's refusal,

without giving reasons, to grant the Bricmonts' application for production of the painting "Storm over Cannes" ("Orage sur Cannes") (see paragraph 68 below); the fact that the persons best placed to provide information had been neither summoned nor examined as witnesses, despite Mr and Mrs Bricmont's formal request; the failure to arrange a confrontation in respect of all the charges between the applicants and the civil parties, which the court had not been able to remedy - despite its wish and the applicants' requests - because the civil parties (who produced, to justify their failure to attend, medical certificates, which in the Prince's case had twice been confirmed by a court-appointed medical expert) had not appeared in person at any of the hearings;

(b) the irregularity of the Prince's examination on 9 November 1977 and 28 April 1978 (see paragraph 17 above) owing to the fact that, as a civil party giving evidence, he was not covered by Articles 510 and 511 of the Code of Criminal Procedure, and the investigating judge accordingly had jurisdiction to question him. The court stated that although it was not empowered to quash those steps taken in the investigation which might be null and void, it had to have regard to the irregularities complained of by Mr Bricmont and refrain from basing its decision on any irregular proceeding;

(c) the fact that Mr and Mrs Bricmont had no access to the files until committed for trial as they were not in custody, and the investigating judge's absence from the hearings, which was difficult to justify;

(d) the failure of the Prince and Mr Mossoux to appear before the court; and

(e) the lack of credibility of each of the parties to the case.

29. The court considered each of the charges on the basis of only those documents which had been lawfully seized or produced. It found that the prosecution was time-barred in respect of some of the charges and that others were not admissible. For the rest, it acquitted the defendants and in consequence declared that it had no jurisdiction to try the claims of the civil parties.

2. The judgment of 9 March 1983 of the Brussels Court of Appeal

30. Prince Charles and the prosecution appealed.

At the hearing on 17 November 1982 the applicants filed pleadings in which, relying on the impugned judgment, they submitted that the investigation had been null and void.

31. In its judgment of 9 March 1983 the Seventh Criminal Chamber of the Brussels Court of Appeal gave a ruling first on the Prince's proceedings against Mr and Mrs Bricmont and then on other criminal proceedings which Mr Bricmont had instituted against the Prince on 29 June 1981 for false accusation.

32. As regards the former proceedings, the Court of Appeal first dealt with the applicants' submissions.

It held in the first place that neither Mr Gilson de Rouvreur's placing of various lawyers' letters in the file nor the fact that the file contained a letter of 3 May 1977 from Mr Bricmont to Mr Merkt was a ground for declaring the proceedings null and void. No breach of professional confidentiality had been established against these two lawyers, and the investigating judge had seized the aforementioned letter lawfully. The Court of Appeal did not explicitly rule on an application in the alternative by the Bricmonts to have Mr Merkt heard as a witness on oath.

The court considered it regrettable that evidence had been taken from the Prince in an unusual manner, "probably out of consideration for the civil party, consideration which [was] not legally justified and which, moreover, appear[ed] to have given rise to other abnormal but not unlawful circumstances". It held, however, that the examinations were not such as to render the proceedings null and void and that the disputed statements had only the weight of mere information. It did not expressly rule on the applicants' submissions that the refusal of the investigating judge and the chambre du conseil to arrange a confrontation with the Prince or to examine him at all had breached Article 6 (art. 6) of the Convention.

Nor, in the Court of Appeal's view, were the proceedings vitiated by the breaches of professional confidentiality alleged against the prosecution at first instance on account of the October 1977 press conference, among other things (see paragraph 19 above). Admittedly, the investigating judge alone had authority to hold a press conference during a judicial investigation, but a breach of professional confidentiality could only entail nullity of proceedings in whole or in part if it had given rise to the judicial investigation or was the only thing which had made it possible to discover the guilty person or prove his guilt. On the other hand, a breach of professional confidentiality by a member of the judiciary or any other person bound by the confidentiality of the investigation in a broad sense could not flaw proceedings in which the evidence had been obtained lawfully; to decide otherwise would compound the effects of a personal failing on the part of the representative of the State by wholly unjustifiable and possibly substantial damage either to law and order or to the victim or victims.

Mr and Mrs Bricmont had relied on two other grounds of nullity to impugn the committal order of 3 June 1980: the failure to deal with their pleadings and the conduct of the investigating judge, who, they said, had merely made a "mini-report" at the first hearing by the chambre du conseil. The Court of Appeal ruled that on the facts the first complaint was unfounded. It also dismissed the second complaint, as it did not find that there had been any infringement of the rights of the defence or of the principle that judicial proceedings must be adversarial, in view of the fact that the presiding judge of the chambre du conseil had not felt it necessary

to recall the investigating judge as he was leaving the room after making his report.

The applicants had further claimed that the Court of Appeal could not in law judge their case fairly owing to an incident which had occurred on 7 January 1981, following which they had been summoned to appear before the Brussels tribunal de première instance for contempt of court (see paragraphs 24 and 26 above). The Court of Appeal held on this point that if this claim were well-founded in law, "it would be sufficient for any person desirous of evading any judicial proceedings", whether civil or criminal, "to ensure impunity by committing a contempt of court directed at the Belgian judiciary in general".

The Court of Appeal did not explicitly reply to the Bricmonts' application for discovery of the gouache "Storm over Cannes" (see paragraph 69 below).

33. After considering the merits of the case, the Court of Appeal set aside the judgment of 15 February 1982 of the Brussels tribunal de première instance. It found that some of the charges were statute-barred and held that others had not been made out, but it convicted on the following counts:

- (a) A1, A3, A8 and A10, against Mr Bricmont;
- (b) A9, against Mrs Bricmont; and
- (c) C4, against both defendants.

As a consequence, the Court of Appeal sentenced Mr Bricmont to five years' imprisonment, Mrs Bricmont to fifteen months suspended for three years and both of them to a fine of 2,000 Belgian francs. In its ruling on the civil claim, it ordered Mr and Mrs Bricmont to pay to the Prince provisional compensation of 3 million francs and to return certain company shares to him.

As to Mr Bricmont's proceedings against the Prince, the Court of Appeal acquitted the latter, holding that he was not guilty of false accusation; and it accordingly declared that it had no jurisdiction to entertain Mr Bricmont's civil claim for damages.

3. The Court of Cassation's judgment of 18 January 1984

34. On 17 March 1983 Mr and Mrs Bricmont appealed on points of law against the Brussels chambre du conseil's order of 3 June 1980 and against the Court of Appeal's judgment of 9 March 1983. In pleadings dated 3 June 1983 they relied on a large number of grounds.

They criticised the Court of Appeal for, inter alia, not having dealt either with the complaint that the investigation was null and void owing to the fundamental deficiencies in it - which the tribunal de première instance had in their view summed up perfectly (see paragraph 28 above), even if it had not drawn all the legal inferences from them - or with their submissions concerning the presence in the criminal file of various confidential letters, including the one of 3 May 1977 (see paragraph 32 above).

They also claimed that the Court of Appeal had not given reasons for its decision as required by law, as it had failed to find that the publicity given to the case by the Crown Prosecutor at the October 1977 press conference (see paragraph 19 above) and when making submissions in relation to another case infringed their defence rights and their right to a fair trial.

Mr Bricmont added that the Court of Appeal had likewise not given reasons as required by law for its ruling that counts A1 and A3 were not time-barred or for its decision that count C4 had been substantiated (see paragraph 22 above).

Mrs Bricmont complained that she had not been asked to submit a defence to the charge of uttering which the Court of Appeal had found to be made out against her.

35. On 9 August 1983, Mr and Mrs Bricmont filed supplementary pleadings. Notwithstanding the terms of the second paragraph of Article 420 bis of the Code of Criminal Procedure, they considered that these pleadings were admissible having regard to the requirements of a fair trial and the rights of the defence. They complained of a violation of the principle of equality of arms due to the special procedure adopted for questioning the Prince and they developed their plea based on the nullity of the proceedings (failure to arrange a confrontation, the press conference, proceedings for contempt, etc.).

36. The Court of Cassation dismissed the appeal on 18 January 1984 without taking into account the supplementary pleadings, which had been filed outside the time-limit provided for in the second paragraph of Article 420 bis of the Code of Criminal Procedure.

It declared the appeal inadmissible in so far as it again (see paragraph 24 above) related to the order made on 3 June 1980 by the chambre du conseil of the Brussels tribunal de première instance, on the ground that in criminal cases a party could not appeal to the Court of Cassation twice against the same decision.

In so far as the appeal was directed against the Court of Appeal's judgment of 9 March 1983, the Court of Cassation ruled, firstly, on the plea that the investigation was null and void. When listing, on appeal, the irregularities noted in the judgment at first instance, the applicants had confined themselves to illustrating their complaint that the court below, having failed to draw all the inferences from the situation they had described, had infringed Article 6 (art. 6) of the Convention because it was impossible for the Court of Appeal to "separate the investigative measures which could be accepted from those which [had to] be ruled inadmissible, as they [were] intertwined with one another to the point of forming an incoherent whole". In the Court of Cassation's view, the Court of Appeal had, when closely scrutinising each of the charges, implicitly but definitely decided that the investigation was not incoherent as alleged.

The Court of Cassation went on to hold that in the impugned judgment - and it cited the reasons given - the Court of Appeal had dealt with the argument relating to the confidentiality of the letter of 3 May 1977.

As regards the argument concerning the publicity given to the case by the Crown Prosecutor, the Court of Cassation held that it could not infer any violation of the rights of the defence or of Article 6 § 1 (art. 6-1) of the Convention from the mere fact that the prosecution had allegedly breached professional confidentiality.

Moreover, in order to assess whether a case had been heard fairly, the trial had to be looked at as a whole; in view of the fact that Mr and Mrs Bricmont had had the opportunity during the proceedings before the trial courts to challenge freely the evidence adduced against them by the prosecution, they could not claim to be victims of an infringement of the rights of the defence or of their right to a fair trial within the meaning of the Convention.

As to the pleas based on the failure to give reasons for the convictions on counts A1, A3 and C4 (see paragraph 22 above), the Court of Cassation rejected them as lacking any legitimate interest: the sentence passed on Mr Bricmont was justified by the other charges which had been proved against him. Nor did the court find any infringement of Mrs Bricmont's defence rights in regard to count A9.

Lastly, the Court of Cassation held that the appeal on points of law which Mr Bricmont had also lodged as a civil party (see paragraph 33 in fine above) was inadmissible, as Mr Bricmont had apparently not had notice of it served on the Prince as the party being directly cited.

III. THE DISPUTED ASPECTS OF THE PROCEEDINGS

A. The examinations of the Prince and the confrontation with him

37. On 26 October 1977, the Prince wrote to the investigating judge that he wished to give evidence to the President of the Brussels Court of Appeal. In a letter the next day the investigating judge asked the President to take evidence from the Prince, in accordance with Article 511 of the Code of Criminal Procedure (see paragraph 17 above), and he attached a list of some fifty questions.

38. On 9 November 1977, the President took unsworn statements from the Prince. A record was made solely of the replies to the aforementioned questions.

39. On 21 April 1978, the investigating judge informed the President of the Brussels Court of Appeal that he thought it necessary for the Prince to be examined a second time, and he drew up a new list of some forty

questions. The Prince gave evidence - again unsworn - on 28 April, and a record was made on this occasion likewise.

40. By a royal decree of 2 July 1979, which referred to Article 510 of the Code of Criminal Procedure (see paragraph 17 above), the Prince was authorised to appear as complainant and civil party before the investigating judge of the tribunal de première instance. The examination took place on 18 July 1979 and related to counts A8 and A10 (see paragraph 22 above). The Prince also intimated that he wished to clarify a point in his statement of 9 November 1977 concerning a will in Mr Bricmont's favour. He said:

"There has been a misunderstanding; it is not true that it was Mr Bricmont who added a nought to the figure intended for him. I was the one who altered the amount at his request. I wrote fifty million instead of five million.

You have put before me annexe no. 3 to document 195 in the 'Investigation' bundle; that is the document in question.

It was Mr Bricmont, then, who was appointed executor of the will at his own request."

41. The investigating judge also arranged a confrontation between the Prince and Mr Bricmont, on 23 October 1979. He put before them, among other things, the deed of gift of 19 May 1976 (see paragraph 64 below) and reminded them of their statements on the subject, which they confirmed. The matter of the will was again discussed.

42. In the proceedings before the chambre du conseil Mr and Mrs Bricmont claimed that the investigation was null and void, in particular for having infringed the rights of the defence on account of the procedure adopted for taking evidence from the Prince. They asked the court to stay the proceedings pending implementation of various investigative measures including the examination of the Prince, and further confrontations between them and him, on the other charges (see paragraph 21 above).

43. In its order of 3 June 1980 the chambre du conseil considered that the impugned examinations had been held in accordance with Article 511 of the Code of Criminal Procedure and that the measures sought by Mr and Mrs Bricmont were not necessary for it to be able, in full knowledge of the facts, to give its decision on the application for a committal for trial (see paragraph 22 above).

44. A royal decree of 21 August 1981, issued under the aforementioned Article 510, authorised the Prince to appear as a witness before the Brussels tribunal de première instance, where the trial was due to open on 21 September 1981. On 8 September 1981, Dr Devos, the Prince's doctor, and Dr Verhelst, a hospital physician who was consulted, stated that the Prince's general physical and psychological condition did not permit of his appearing at the court hearings. They considered that the severe psychological and emotional stress to which he would be subjected would overtax him and that he was no longer in a fit state to withstand it.

At the request of the Brussels Crown Prosecutor, the Bruges Crown Prosecutor appointed a medical expert on 12 September 1981 to verify that the Prince's health was as described. Dr Floré, the expert appointed, stated in his report of 18 September (passage translated from the Dutch):

"He is an old man, fairly tall and rather undernourished. He gives an impression of frailty and vulnerability.

When questioned, he stated that he suffered from asthma, chronic bronchitis, osteoarthritis and a hiatus hernia which compelled him to sleep in a sitting position. He also said that he easily became impatient in any situation that was at all stressful and that he then tended to react like someone who was panicking. The news of the medical expert's visit had in itself sufficed to cause a reaction of this kind. Similarly, in such a situation, he had attacks of tachycardia, lost his ability to react appropriately and was completely at a loss.

When he had to travel he had himself driven by car, as he himself had given up driving some six years earlier.

He walks slowly and hesitantly, limping slightly and leaning on a stick in his right hand.

He speaks in a confidential, emotional, friendly manner which is occasionally slightly naïve and childlike, with a weak, hoarse voice, and coughs from time to time.

He is lucid but has difficulty concentrating for any length of time, occasionally repeats himself and often has to search for words. If in this way he loses the thread of the conversation, he becomes nervous, goes red, loses his self-assurance and seeks support from his listener.

In short, he is an old man growing weak, who is living for the time being in a protective environment, in a fragile, delicate state of balance. It is clear that the slightest stress overtaxes him. At the end of a conversation he is visibly tired.

For these reasons I conclude that his physical and psychological resistance has become insufficient for him to be heard as a witness at the hearing and accordingly precludes him from being so heard."

45. Shortly before the end of the trial, the Crown Prosecutor requested a further opinion from the forensic medical expert. In a report of 4 December 1981 Dr Floré recorded that the state of the Prince's health had not improved since the previous medical examination.

46. In their pleadings of 23 September 1981 (see paragraph 27 above) Mr and Mrs Bricmont asked the Brussels tribunal de première instance to stay the proceedings until the Prince's health was restored, so that a confrontation with him could be arranged and he could be examined as a witness. The court refused this application in a judgment given on the same day, holding that, having regard to the Prince's poor state of health, continuing the trial in his absence could not be deemed an unfair trial

contrary to Article 6 (art. 6) of the Convention. Mr and Mrs Bricmont appealed, but subsequently withdrew their appeals.

47. In its judgment of 15 February 1982 (see paragraphs 27-29 above) the Brussels tribunal de première instance included among other deficiencies in the investigation the failure to arrange a confrontation between the applicants and the Prince on all the charges; despite its earnest wish, it had not been able to remedy this situation as, on the strength of medical certificates, the Prince had not appeared in person at any of the hearings. The court also held that the examinations of the Prince by the President of the Court of Appeal on 9 November 1977 and 28 April 1978 were irregular, as the Prince had been heard as a civil party, not as a witness, so that Articles 510 and 511 of the Code of Criminal Procedure did not apply and the evidence should have been taken by the investigating judge. Admittedly, the court had no jurisdiction to set aside any investigative measures that might be null and void, but it had to have regard to the irregularities complained of by Mr Bricmont and to grant his request that it should not base its decision on any irregular proceeding.

48. In their appeal pleadings of 17 November 1982 (see paragraph 30 above) Mr and Mrs Bricmont complained in particular of the manner in which evidence was taken from the Prince on 9 November 1977. Mr Bricmont also criticised the investigating judge and the chambre du conseil for having refused to arrange a confrontation between him and the Prince and to question the Prince on all the charges; they had, in his view, thus infringed Article 6 § 3 (d) (art. 6-3-d) of the Convention. He also relied on Article 6 (art. 6) on the ground that the prosecution had not requested, in accordance with the aforementioned Article 510, a royal decree authorising the Prince to appear before the Court of Appeal as a witness.

49. On 23 November 1982, Mr and Mrs Bricmont had the following entered in the record of the hearing: "The prosecution stated that it was willing to accept as true that the Baron Richard was recently walking with the Count of Flanders in the Avenue Louise".

50. In its judgment of 9 March 1983 (see paragraphs 31-33 above) the Court of Appeal deemed it regrettable that evidence had been taken, on 9 November 1977 and 28 April 1978 (see paragraphs 38-39 above), from the Prince in an unusual manner, "probably out of consideration for the civil party, consideration which [was] not legally justified and which moreover appear[ed] to have given rise to other abnormal but not unlawful circumstances". It held, however, that this did not amount to a ground for declaring the proceedings null and void; in particular, it noted that:

"... as the Count of Flanders was not questioned as a witness, since he was a complainant, or moreover by the judge who would have had jurisdiction if he had been examined as a witness, the disputed statements have only the weight of mere information, just as if the Count of Flanders had provided the same explanations in a formal letter to the investigating judge or orally to a police officer, or again exactly as

if the investigating judge had taken evidence from him without administering an oath, which he is entitled to do and which is to be recommended in respect of a civil party."

B. The examination of the witnesses

51. In a letter of 25 August 1977 Mr Gilson de Rouvreux gave the Senior Assistant Crown Prosecutor the name of certain people who might be able to provide particulars of the case. Three of them were summoned, including Mr Casse (see paragraph 18 above).

52. In their pleadings filed with the chambre du conseil (see paragraph 21 above) Mr and Mrs Bricmont applied for Mr Casse and Mr Gruner to be examined (see paragraph 18 above). The chambre du conseil did not, however, consider it necessary to hear evidence from those persons in order to decide whether the applicants should be committed for trial.

53. In a formal notice sent to the Brussels Crown Prosecutor following Mr Gruner's death and served by bailiff on 19 March 1981, Mr and Mrs Bricmont requested that letters rogatory should be issued with a view to having Mr Casse examined on a statement he had signed on 16 February 1981 concerning count A1 (see paragraph 22 above). This statement, which was filed with the chambre du conseil, clarified the content of two others, which were dated 21 December 1979 and had been included in the criminal file. In it Mr Casse described a conversation he claimed to have had with the Prince in November 1976, in which the Prince allegedly stated that he had received a sum of two million French francs as the sale price for his rights in the Caldana partnership, which owned the Sansovino estate (see paragraph 11 above). The formal notice served by the bailiff read as follows:

"During the judicial investigation into [Mr Bricmont] ... no evidence was taken from the two persons who, together with [Mr and Mrs Bricmont] and the complainant, were the vital witnesses of the main facts which were to be set out in the prosecution's application of 2 November 1979 for committal for trial, namely Mr Pierre Gruner, a non-lawyer colleague of Mr René Merkt of the Geneva Bar, and Mr Casse, a chartered surveyor and consultant to the courts in Cannes;

All applications to the chambre du conseil by [Mr and Mrs Bricmont] for additional investigative measures were rejected, as the prosecution was opposed to any examination of the witnesses Gruner and Casse;

Mr Gruner has died, and his death makes it much more difficult to establish the truth and, consequently, for [Mr and Mrs Bricmont] to defend themselves;

[Mr and Mrs Bricmont] today run a considerable risk of being deprived of the vital evidence of Mr Gabriel Casse if he is not very soon examined under letters rogatory, as he is elderly and has just overcome serious health problems;

...

Mr Gabriel Casse must be asked to confirm the terms of his statement of 16 February 1981 before a judicial authority who will also put to him any questions necessary for establishing the truth and who will at the same time be able to report to the office of the Brussels Crown Prosecutor on Mr Casse's professional and personal reputation;

The said statement of 16 February 1981 has a direct bearing on the merits of the charge of forgery ("faux intellectuel") allegedly founded on the receipt signed by the Prince of Belgium on 2 December 1972, a charge on which the subsequent charges depend;

...

It is necessary as a matter of urgency to remedy this shortcoming in the investigation consisting in refusing Mr and Mrs Bricmont's request for an examination of the two witnesses who, because of the extent of their exclusive personal knowledge of vital facts, could have shown the complainant's accusations to be baseless ...;

The application is based on Article 6 § 3 (d) (art. 6-3-d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

... ."

In the applicants' submission, an examination of Mr Casse would have enabled them to clear themselves of the three main charges against them found to be established, namely counts A1, A9 and C4 (see paragraph 22 above).

54. On 27 March 1981, the public prosecutor in Grasse gave effect to letters rogatory issued by the office of the Brussels Crown Prosecutor, who had requested that Mr Casse should be examined concerning: "(1) the relations he [had] had and [might] still have with Mr and Mrs Bricmont; and (2) the content of the appended 'statements'".

When examined by the Cannes police on 20 June 1981, Mr Casse answered the first question and confirmed his statement of 16 February 1981.

55. In its judgment of 15 February 1982 (see paragraphs 27-29 above) the Brussels tribunal de première instance noted among other deficiencies in the investigation the failure to take evidence from Mr Gruner - who had died since the investigation had been completed - and the fact that the persons best placed to provide information had been neither summoned nor examined as witnesses, despite Mr and Mrs Bricmont's formal request.

56. In their appeal pleadings of 17 November 1982 (see paragraph 30 above) Mr and Mrs Bricmont applied for Mr Merkt to be examined under oath (see paragraph 18 above), "in order to discover the date on which and the circumstances in which the photocopy of the confidential letter which his colleague and client Georges Bricmont had sent him on 3 May 1977 [had come] to leave his chambers" (see paragraph 32 above). Relying on Article 6 (art. 6) of the Convention, they maintained that in so doing they

were not abusing their defence rights, as Mr Merkt was the only person from whom they were asking the court to take evidence.

57. In December 1982, the applicants produced a fresh statement by Mr Casse, dated 17 December 1982, in which he said that he was at the judicial authorities' disposal to confirm on oath the content of his earlier statements (see paragraph 53 above).

58. In its judgment of 9 March 1983 (see paragraphs 31-33 above) the Court of Appeal did not expressly rule on the application for Mr Merkt to be examined but when considering the ground of nullity allegedly arising from the presence of the letter of 3 May 1977 (see paragraph 56 above) in the file, held that no breach of professional confidentiality had been made out against Mr Merkt; it expressed no view on the weight to be attached to Mr Casse's statements.

C. The financial investigation and inspection of the accounts

59. On 27 September 1977, the investigating judge in Brussels sent a telegram to his colleague at the tribunal de grande instance at Mont-de-Marsan (France), requesting him to issue a warrant to search an estate at Vielle-Soubiran occupied by Mr and Mrs Bricmont and seize on those premises any documents relating to eleven companies and Anstalten. On the same day, he telegraphed the investigating judge in Geneva asking him, firstly, to have the home of Mr Natalizzi, an accountant who had succeeded Mr Gruner, searched and all the shares of a particular company and the documents relating to four Anstalten seized, and, secondly, to obtain from Mr Merkt the books, files and correspondence relating to various Anstalten.

On 28 September 1977, the investigating judge in Geneva duly made an order to this effect. Mr Bricmont's letter of 3 May 1977 to Mr Merkt (see paragraph 32 above) was seized on this occasion.

On 30 September 1977, the investigating judge in Brussels sent a similar telegram to his colleague at the tribunal de grande instance in Grasse. In another telegram on 19 October 1977, he asked his colleague in Paris to request the Banque de Paris et des Pays-Bas and the Banque Nationale de Paris to provide a statement of all the transactions on accounts opened in the names of the applicants or of a particular company. On 9 January 1978, he issued further letters rogatory for dispatch to the investigating judge in Geneva, asking the latter to have documents seized and inquiries made at the Banque de Paris et des Pays-Bas in Geneva in connection with an allegedly forged document dated 18 February 1974 which certified the payment to the Prince of the purchase price of some furniture.

These various searches did not reveal the whereabouts of the books of the Anstalten.

60. In the proceedings before the chambre du conseil Mr and Mrs Bricmont applied for evidence to be taken from senior officials of the Geneva branch of the Banque de Paris et des Pays-Bas, but without success.

61. In its judgment of 15 February 1982 (see paragraphs 27-29 above) the Brussels tribunal de première instance noted among other deficiencies in the investigation the failure to have any audit carried out in respect of the transactions made on the instructions of or in the name of the Prince and the applicants (the numbers of various Belgian or foreign bank accounts of theirs were in the file). As to the relevant Anstalten, it appeared that an inspection could well have been made of their accounts - the documents seized included many statements, so that it would have been possible to approach the banks in order to find out what transactions had been made on these accounts, at least in so far as the case related to them. At all events, there was nothing to show the contrary. At the same time, the court found that Mr Bricmont had made "the great mistake" of failing to keep any systematic, chronological accounts of the sums he received or paid on the Prince's behalf and of sometimes not answering precise questions put by the court.

62. In their appeal pleadings Mr and Mrs Bricmont mentioned the failure, noted by the trial court, to carry out an audit and relied on it in order to argue that the investigation was null and void on account of the deficiencies in it. In response to the criticisms the court had made of him, Mr Bricmont said he considered it unacceptable that the Prince, not content with refusing to assist in establishing the truth, should blame his opponent for the way in which he had noted transfers of funds effected without any bank records being made at the Prince's own request.

63. In its judgment of 9 March 1983 (see paragraphs 31-33 above) the Court of Appeal did not rule expressly on the submissions which the applicants based on the nullity of the investigation. In declaring charges A3 and A10 to have been made out, it had regard, inter alia, to the fact that Mr Bricmont had not produced any book-keeping documents. In order to determine the sentence, it noted lastly that the written pleadings revealed that the Prince wished as far as possible to conceal the assets of his estate from the tax authorities, his creditors and his statutory heirs, and that Mr Bricmont had taken advantage of this to attempt to divest him of his fortune.

D. The application for production of the gouache "Storm over Cannes"

64. On 30 August 1978, Mr Bricmont forwarded to the investigating judge a copy of a document dated 19 May 1976, which read as follows:

"I, the undersigned Count of Flanders, Prince Charles of Belgium, hereby give Mr Georges Bricmont of the Brussels Bar, failing whom Mrs Bricmont, power to dispose of the companies and Anstalten that I own or control."

He claimed that the Count of Flanders thereby recognised the existence of "gifts from hand to hand", and that by the operation of Article 938 of the Civil Code the charges of misappropriation of shares or documents of title to companies or Anstalten were therefore deprived of a vital element. In a letter of 8 September 1978 Mr Bricmont told the investigating judge that the gift had in reality been made principally to his wife.

65. On 22 November 1978, Mrs Bricmont obtained an order from the presiding judge of the court in Grasse appointing a bailiff, Mr Bernard, to draw up an inventory of the contents of a château in which, until February 1976, she had had the use of an office as chairman and managing director of Sansovino, a limited company, and as general manager of Caldana, a non-commercial property partnership. Mr Bernard's intervention was unconnected with the criminal proceedings pending in Brussels; it was prompted by Mrs Bricmont's desire to have an inventory of her furniture and other articles in the custody of the court-appointed administrator of the Caldana company, Mr Denape. The bailiff's task therefore consisted in recording that there were a number of pictures among other things, but did not include noting the text of any dedications on them.

On 3 January 1979, Mr Bernard recorded that in a locked cabinet in the administrative office there were four pictures signed by the Count of Flanders and dedicated to Mr and Mrs Bricmont, including a gouache "Storm over Cannes" dated 21 January 1976.

66. After her husband had been questioned on 2 October 1979 about the deed of gift of 19 May 1976, Mrs Bricmont wrote to the investigating judge on 22 October 1979. She thought it absolutely essential that he should be aware of the text of the dedication of 21 January 1976 on the gouache "Storm over Cannes", which showed that the Prince was well-disposed towards her. Mrs Bricmont added:

"... it would be advisable for you to submit it to the Prince, who will be able to tell you if he indeed wrote it. If so, he will also be able to tell you whether he is giving up, in the present case, his false insinuations about imaginary uses of documents signed in blank.

Attached is a report of 3 January 1979 by a bailiff, Mr Bernard of Cannes, who established after discussion with Mr Denape that the four pictures in question are deposited in my office at Château Sansovino. They are in a metal cabinet which, like the office, is locked. I have the keys of the cupboard and of the office, but do not have any access to them. Access has been forbidden me only by Mr Denape without any court decision but with threats of physical restraint by the caretakers and Mr Busuttil if I attempt to enter and regain possession of the articles belonging to me. Mr Denape's behaviour is all the more unwarranted as nobody disputes my ownership of the articles in question.

I accordingly urge you to send letters rogatory to the Alpes Maritimes département in order to secure the return to me or, failing that, the seizure of the aforementioned personal articles which I consider vital to my defence and which are in the house at Sansovino. In particular: letters, notes, photos and pictures.

It is not necessary to have the locks of the furniture and premises of the house forced since Mr Denape and I each have some of the keys.

It will be sufficient for the French police responsible for executing the letters rogatory to ask Mr Denape and myself to accompany them to the premises in order to open the building and the furniture for them and indicate to them the items whose return I am seeking both for your information and for the needs of my defence."

67. In the proceedings before the chambre du conseil Mr and Mrs Bricmont again applied for production of the text of the dedication, but to no avail.

68. In its judgment of 15 February 1982 (see paragraphs 27-29 above) the Brussels tribunal de première instance mentioned among other deficiencies in the investigation "the refusal by the investigating judge, without giving any reasons, to grant the defendants' application to have the text recorded and an identification made of the author of the dedication on the gouache 'Storm over Cannes', which was at Cannes in the possession of the interim administrator Mr Denape and whose dedication they claimed gave credence to their version of events". When considering count A8, relating to the deed of gift of 19 May 1976 (see paragraphs 22 and 64 above), the court thought it regrettable that the "investigative measure (consisting in issuing letters rogatory) [had] not [been] carried out as the rights of the defence dictated it should have been"; the court found it "equally regrettable that the defendants [had] not given, albeit from memory, the content of this dedication".

69. In their appeal pleadings of 17 November 1982 (see paragraph 30 above) Mr and Mrs Bricmont applied, in respect of count A8, for an order that the civil party should produce the gouache "Storm over Cannes" as "the dedication, dated 21 January 1976, would establish that this gift [had] indeed [been] intended as such by the donor".

In its judgment of 9 March 1983 (see paragraphs 31-33 above) the Brussels Court of Appeal did not give an express ruling on this point. It did, however, refer to the pleadings of the civil party, the Count of Flanders, which stated that the application was a "diversionary attack".

PROCEEDINGS BEFORE THE COMMISSION

70. In their application of 13 February 1984 to the Commission (no. 10857/84) Mr and Mrs Bricmont claimed that they had not had a fair trial because of the Prince's position. They made a very large number of complaints. In particular, they alleged that the proceedings had been unfair because of the deficiencies in the judicial investigation; they considered the proceedings viewed as a whole to have been incompatible with paragraph 1 of Article 6 (art. 6-1) of the Convention and, moreover, in respect of certain

points, with sub-paragraphs (b) (art. 6-3-b) (failure to have an audit carried out, failure to produce the gouache "Storm over Cannes") and (d) (art. 6-3-d) (refusal to arrange a confrontation with the Prince and to take evidence from him, failure to examine - or adequately examine - certain witnesses) of paragraph 3.

71. On 15 July 1986, the Commission declared the applicants' complaints concerning the investigation of their case admissible and the remainder of the application inadmissible. In its report of 15 October 1987 (made under Article 31) (art. 31) it concluded that:

(a) there had been a breach of Article 6 § 1 (art. 6-1) in that the applicants were, in the proceedings, in a less favourable position than the Prince (by ten votes to one) and of Article 6 § 3 (d) (art. 6-3-d) owing to the failure to hear Mr Merkt (by six votes to five);

(b) the failure to produce the gouache and the lack of a special examination of the accounts had not violated Article 6 § 3 (b) (art. 6-3-b), and the failure to hear Mr Gruner and Mr Casse had not contravened Article 6 § 3 (d) (art. 6-3-d) (unanimously);

(c) no separate issue arose under Article 6 § 1 (art. 6-1) in respect of the failure to hear Mr Gruner, Mr Casse and Mr Merkt or in respect of the failure to produce the gouache and the lack of a special examination of the accounts (unanimously).

The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. PRELIMINARY OBJECTION OF NON-EXHAUSTION OF DOMESTIC REMEDIES

72. The Government maintained that the applicants had not exhausted domestic remedies as they had not applied to the Belgian courts - and more particularly the Brussels Court of Appeal - for an examination of Mr Casse, Mr Gruner and Prince Charles, or for a confrontation between themselves and the Prince, or for an audit of accounts.

73. The Court takes cognisance of preliminary objections of this kind if and in so far as the respondent State has already raised them sufficiently clearly before the Commission to the extent that their nature and the circumstances permitted; this should normally be done at the stage of the

* Note by the registry. For practical reasons this annex will appear only with the printed version of the judgment (volume 158 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

initial examination of admissibility (see, as the most recent authority, the Ciulla judgment of 22 February 1989, Series A no. 148, p. 8, § 28).

As the Delegate of the Commission noted, however, it is clear from the record that those conditions are not satisfied in the instant case. There is therefore estoppel.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (b) AND (d) (art. 6-1, art. 6-3-b, art. 6-3-d) OF THE CONVENTION

74. The applicants claimed to be the victims of violations of Article 6 §§ 1 and 3 (b) and (d) (art. 6-1, art. 6-3-b, art. 6-3-d) of the Convention, which provide:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

2. ...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) ...

(b) to have adequate time and facilities for the preparation of his defence;

(c) ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e)"

They complained of deficiencies in the judicial investigation: the Prince's position in the proceedings, the failure to take evidence from Mr Gruner, Mr Casse and Mr Merkt, the failure to have the accounts audited and the fact that the gouache "Storm over Cannes" was not produced, had, they alleged, created an imbalance between themselves and the Prince to the latter's advantage and had infringed their right to a fair hearing of their case.

The Government submitted that there was no violation, while the Commission partly accepted the applicants' contentions.

75. It seems appropriate in the instant case to look at the applicants' complaints from the points of view of paragraphs 1 and 3 of Article 6 (art. 6-1, art. 6-3) taken together, especially as the guarantees in paragraph 3 (art. 6-3) represent aspects of the concept of a fair trial contained in paragraph 1 (art. 6-1) (see, *inter alia*, the Unterpertinger judgment of 24 November 1986, Series A no. 110, p. 14, § 29).

1. The manner in which evidence was taken from the party seeking damages and the failure to arrange a confrontation between him and the applicants on all the charges

(a) The manner in which evidence was taken from the party seeking damages

76. The applicants alleged, firstly, that the unsworn evidence of the Prince, which was taken by the President of the Brussels Court of Appeal on 9 November 1977 and 28 April 1978 (see paragraphs 17, 38 and 39 above), was given in accordance with a "prearranged" understanding between the Crown Prosecutor's Office and the investigating judge, and that this made the procedure unfair.

The Government disputed that, claiming that the procedure for taking evidence from the Prince, although unusual, was in no way unlawful, and was in any case subsequently abandoned.

77. The Court notes that the procedure in question gave rise to certain misgivings but was not repeated (see paragraph 40 above). In its judgment of 15 February 1982 the Brussels tribunal de première instance held that the procedure was irregular (see paragraph 28 above); the Brussels Court of Appeal, in its judgment of 9 March 1983, acknowledged that the procedure was unusual, while holding that the proceedings were not thereby rendered null and void (see paragraph 50 above).

Special regulations governing the taking of evidence from, and the questioning of, high-ranking persons of State are to be found in the domestic legal systems of several Council of Europe member States. There are objective reasons for having them and they do not as such conflict with Article 6 (art. 6) of the Convention.

(b) The failure to arrange a confrontation between the party seeking damages and the applicants on all the charges

78. In the applicants' submission, there should have been a confrontation between them and the Prince on all the charges if the trial was to be fair. The refusal to take evidence from the Prince was, they claimed, unjustified.

The Government, on the other hand, said that no comprehensive confrontation had been arranged because the Prince knew nothing about the management of his property, his health was poor and Mr Bricmont had had an opportunity to put questions to him on 23 October 1979. Moreover, the Court of Appeal had not used the Prince's statements to support its judgment convicting the applicants, since it found the facts established on the strength of numerous documents in the file.

79. The Court notes at the outset that at each stage of the proceedings the applicants asked for a confrontation with the Prince (see paragraphs 42, 46 and 48 above).

No confrontation was ever arranged between the Prince and Mrs Bricmont. The one between her husband and the Prince on 23 October 1979 dealt only with count A8 relating to the deed of gift of 19 May 1976, and with the matter of the forged will, a charge which was ultimately not proceeded with (see paragraph 41 above).

Given the secrecy of the judicial investigation, Mr Bricmont did not at that time have access to the criminal file, and this in practice prevented him from questioning the Prince on all the charges.

80. In its judgment of 15 February 1982 the Brussels tribunal de première instance noted, among other deficiencies in the investigation, the failure to arrange a comprehensive confrontation. It regretted that it had not been able to remedy that deficiency, as the party seeking damages had not appeared in person, having produced medical certificates - twice checked by an officially appointed medical expert - to justify his absence (see paragraph 47 above). The Court of Appeal, for its part, did not explain in its judgment of 9 March 1983 why it had not decided to take evidence from the Prince, even though the applicants had relied on the findings of the court below (see paragraphs 48 and 50 above).

81. The criminal proceedings brought against the applicants were based on the Prince's accusations. In the circumstances of the case, the exercise of the rights of the defence - an essential part of the right to a fair trial - required in principle that the applicants should have an opportunity to challenge any aspect of the complainant's account during a confrontation or an examination, either in public or, if necessary, at his home. That would have made it possible to clarify certain facts and to lead the Prince to give further particulars of - or even withdraw - one or more of his charges. The Court notes in this connection that when examined by the investigating judge on 18 July 1979 and again, in Mr Bricmont's presence, on 23 October, the Prince acknowledged that the statement he had made to the President of the Court of Appeal on 9 November 1977 had caused a misunderstanding concerning a will he had drawn up in the accused's favour (see paragraphs 40 and 41 above). The chambre du conseil had issued an order finding that there was no case to answer on this point (see paragraph 22 above).

82. It must nonetheless be determined to what extent the Brussels Court of Appeal relied on the Prince's accusations in order to convict the applicants.

83. In respect of four of the six counts found to be made out (A1, A3, A8 and A10) the Court of Appeal mentioned in the reasons for its decision the submissions of the party seeking damages. It thus rejected Mr Bricmont's defence pleas in the light of the "evidence relied on", "specified" and "cited" in the submissions of the party seeking damages (A1 and A10); it considered that this evidence gave rise to "serious, precise and concordant presumptions" disclosing criminal behaviour on Mr Bricmont's part (A10).

As regards count A10 more particularly, the Court of Appeal also referred to a statement the Prince had made to the investigating judge when he was examined on 18 July 1979.

Admittedly, the appeal judges also had before them other "evidence gathered during the judicial investigation", which the Prince had "accurately cited" or "noted" in his submissions. Furthermore, the applicants were able to submit their observations freely during the investigation and the trial. The judgment of 9 March 1983 frequently referred to these, emphasising that the applicants had not given any convincing explanation or produced any written accounts.

84. The Commission rightly pointed out the difficulty of accurately assessing the weight thus given to the Prince's statements.

It appears from the judgment of 9 March 1983 that in holding counts A1, A3 and A10 to have been proved, the Court of Appeal relied on the accusations of the party seeking damages, without Mr Bricmont ever having had an opportunity, afforded by an examination or a confrontation, to have evidence taken from the complainant, in his presence, on all the charges; there was a confrontation only in respect of count A8 (see paragraph 79 above).

85. Accordingly, on three of the five charges on which the Court of Appeal found him guilty, Mr Bricmont was convicted after proceedings which infringed his defence rights as secured by Article 6 (art. 6).

86. As to the charges against Mrs Bricmont, the failure to arrange a confrontation between her and the Prince does not raise any problem from the point of view of a fair trial within the meaning of Article 6 (art. 6), since the Court of Appeal did not refer to the submissions of the party seeking damages but to other evidence.

2. The applicants' other complaints

(a) The failure to examine witnesses

87. The applicants complained that the persons who, in their view, were in the best position to provide information had not been heard as witnesses, in particular Mr Gruner, Mr Casse and Mr Merkt.

The Government replied that no such examinations had been sought by the applicants, or that they would have been of no relevance, as the case might be.

88. Like the Commission, the Court considers that it does not have to ascertain whether the failure to take evidence from Mr Gruner and Mr Casse contravened paragraphs 1 and 3 (d) of Article 6 (art. 6-1, art. 6-3-d) taken together. Mr Gruner died between the hearings before the chambre du conseil and the trial at the tribunal de première instance and the applicants did not apply to the Court of Appeal for evidence to be heard from Mr Casse.

89. As regards Mr Merkt, the Commission took the view that the failure to hear him did infringe the right secured in paragraph 3 (d) of Article 6 (art. 6-3-d), because no reasons had been given therefor.

It is normally for the national courts to decide whether it is necessary or advisable to call a witness. There are exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (art. 6) but in the instant case it does not have sufficient grounds to form the view that such circumstances exist (see paragraphs 56 and 58 above). Accordingly, the Court cannot find that there was a breach of paragraphs 1 and 3 (d) of Article 6 (art. 6-1, art. 6-3-d) taken together.

(b) The failure to have the accounts audited

90. Mr and Mrs Bricmont complained of the failure to have the accounts audited.

The Government replied that the investigating judge showed particular diligence in obtaining book-keeping records; that the applicants had attempted by every means to avoid giving explanations concerning the movement of funds; and that, by the applicants' own admission, the relevant transactions were completed without any bank records being made.

91. The Court recognises that, because of the nature of the case, an audit would have been desirable. It notes, however, like the Commission, that the applicants themselves had alleged that most of the transactions had been carried out without any accessible banking records being made, through companies which observed a rule of secrecy. The Belgian courts could thus reasonably have believed that such an audit would not have served any useful purpose. The applicants cannot therefore complain of the failure to order an audit which, moreover, they never clearly requested. That being so, there was no breach of paragraphs 1 and 3 (b) of Article 6 (art. 6-1, art. 6-3-b) taken together in this respect.

(c) The fact that the gouache was not produced

92. In the applicants' submission, the failure to order the production at the trial of the gouache "Storm over Cannes", painted by the Prince, prevented them from adequately preparing their defence, in that they were unable to rely on the dedication on the painting to support their arguments.

The Government maintained that the applicants had shown by their behaviour that it was pointless for the gouache to be produced.

93. The Court notes that prior to their appearance before it, the applicants had never given any details of the text of the dedication. They accordingly cannot claim to be the victims of a breach of paragraphs 1 and 3 (b) of Article 6 (art. 6-1, art. 6-3-b) taken together with regard to this point.

III. THE APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

94. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicants' claims under this provision were for compensation and for reimbursement of costs and expenses.

The Government took the view that it was impossible to express any view on these claims "before knowing the Court's finding". As a result the Delegate of the Commission also reserved his position.

95. The Court considers nonetheless that it has enough material to take a decision on Mr Bricmont's claims. It does not have to examine Mrs Bricmont's claims because it has found no violation in her regard.

1. Damage

(a) Pecuniary damage

96. Mr Bricmont claimed, in the first place, to have suffered pecuniary damage as a result of being deprived of his professional income from 12 October 1977 to 12 October 1989, a "loss of opportunity" which he assessed at 10,965,552 BF. His calculation took into account the relevant legislation, the point in time at which compensation would be ordered, the effects of inflation, interest and non-deduction of tax.

97. In its judgment the Court has found a violation of Article 6 (art. 6) in respect of three out of five of the charges against the applicant found by the Belgian courts to be made out, but it does not follow that the resulting conviction was unfounded. The Court cannot speculate as to what the outcome of the proceedings would have been if there had been no breach of the Convention. Since no causal connection between the violation and the alleged damage has been established, the claim must be dismissed.

(b) Non-pecuniary damage

98. Mr Bricmont also claimed 10 million BF in respect of non-pecuniary damage. He alleged that he had suffered on account of his 981 days' detention and the Belgian Government's attitude.

99. The Court considers that the finding that there has been a violation of Article 6 (art. 6) constitutes sufficient just satisfaction in this respect.

2. Costs and expenses

100. Mr Bricmont sought, in addition, reimbursement of costs and expenses incurred in the proceedings in the Belgian and Canadian courts and before the Convention institutions.

101. The Court has consistently held that reimbursement may be ordered in respect of costs and expenses that (a) were actually and necessarily incurred by the injured party in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Commission and later by the Court and to obtain redress therefor; and (b) are reasonable as to quantum.

(a) Costs referable to the domestic proceedings

102. As regards the proceedings in Canada, Mr Bricmont sought 994,774.80 BF for: lawyer's fees (907,482.57 BF) and costs of typing (84,698.60 BF) and photocopying (2,593.63 BF).

As regards the proceedings in Belgium, he claimed the sum of 1,354,473.50 BF, itemised as follows: lawyer's fees (1,224,949 BF), court costs (70,367.50 BF), fine (2,000 BF) and costs of typing, including for the proceedings before the Commission, (50,000 BF), and photocopying (7,157 BF).

103. No award may be made for the proceedings in Canada. As regards the proceedings in Belgium, only a proportion of the costs claimed by Mr Bricmont may be considered to have been incurred in connection with the violation of the Convention found. The Court considers it equitable that Belgium should pay 200,000 BF to Mr Bricmont.

(b) Costs referable to the Strasbourg proceedings

104. On the basis of the documents submitted, the Court considers it equitable that Belgium should pay the applicant the 19,825.90 BF claimed by him in respect of his expenses in the Strasbourg proceedings (travelling expenses, hotel bills, meals) and, in addition, a proportion of the costs incurred by Mrs Bricmont who, assisted by a lawyer, represented her husband before the Commission while presenting her own case, namely 25,000 BF in lawyer's fees and 29,510.05 BF in travelling and subsistence expenses.

FOR THESE REASONS, THE COURT

1. Declares unanimously that the Government are estopped from relying on the rule that domestic remedies must be exhausted;

2. Holds by five votes to two that there has been a breach of Article 6 (art. 6) as regards the failure to arrange a confrontation between the party seeking civil damages and Mr Bricmont on three of the five charges on which he was convicted;
3. Holds unanimously that there has been no breach of Article 6 (art. 6) as regards the failure to arrange a confrontation between the party seeking damages and Mrs Bricmont;
4. Holds by five votes to two that there has been no breach of Article 6 (art. 6) as regards the failure to have the accounts audited;
5. Holds unanimously that there has been no violation of Article 6 (art. 6) in respect of any of the other points raised by the applicants;
6. Holds unanimously that Belgium is to pay Mr Bricmont the sum of 274,335.95 BF (two hundred and seventy-four thousand three hundred and thirty-five Belgian francs and ninety-five centimes);
7. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 July 1989.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Matscher and Mr De Meyer;
- (b) partly dissenting opinion of Mr Pinheiro Farinha and Mr Russo.

R.R.
H.P.

PARTLY DISSENTING OPINION OF JUDGES MATSCHER
AND DE MEYER

(Translation)

In our view there was no infringement of the rights of the defence in this case. In particular the fact that no confrontation was arranged between the Prince and Mr Bricmont on three of the five charges which the appeal court found to have been established did not constitute such an infringement.

The national courts did not proceed solely on the basis of the Prince's statements, in whatever form and in whatever capacity they were made and whatever their probatory force. It was essentially in the light of other evidence in the extensive file of the case that the first-instance court and the appeal court examined, in detail, the individual charges, having regard to the numerous explanations provided, both in writing and orally, in the course of the different proceedings, each of which involved several hearings. Careful study of the grounds of the judgments of 15 February 1982 and 9 March 1983, which were set out at length, makes this quite clear. These two courts arrived at different conclusions. The first-instance court dismissed the charges, while the appeal court found some of them established.

If "the proceedings in question, taken as a whole,"¹ are considered, it may be thought that what the Prince had said or what he might still have said could hardly, in the light in particular of his physical and mental state², have contributed usefully, having regard to all the circumstances of the case, to the discovery of the truth, which process was obstructed both by the accused and the complainants.

The judicial authorities which were called upon to investigate or judge the case could reasonably, without exceeding the limits of their power of assessment, take the view that, after the confrontation of 23 October 1979, further confrontations between the Prince and Mr Bricmont were not necessary³.

¹ Barberà, Messegue and Jabardo judgment, 6 December 1988, Series A no. 146, p. 38, § 89.

² Certificate of Dr Devos and Dr Verhelst, 8 September 1981; reports of Dr Floré of 18 September 1981 and 4 December 1981. Mr Bricmont was himself of the opinion that the Prince should have been received into guardianship.

³ See, *mutatis mutandis*, paragraphs 89 and 91 of the judgment.

PARTLY DISSENTING OPINION OF JUDGES PINHEIRO
FARINHA AND RUSSO

(Translation)

1. We agree with the majority in finding a violation of Article 6 (art. 6) on the ground that there was no confrontation between the party seeking damages and Mr Bricmont in respect of three of the five counts on which he was convicted (point 2 of the operative provisions). However, unlike the majority, we also voted in favour of finding that the failure to carry out an audit of the relevant accounts - in relation to both the applicants - constituted a violation.

2. Even the majority of the Court recognized that "because of the nature of the case an audit would have been desirable" (see paragraph 91 of the Court's judgment). In its judgment of 18 February 1982, the Brussels first-instance court noted "a clear and inexplicable want of diligence in seeking the truth" (quoted at paragraph 28 of the Court's judgment). It noted "among other deficiencies in the investigation the failure to have any audit carried out in respect of the transactions made on the instructions of or in the name of the Prince and the applicants (the numbers of various Belgian or foreign bank accounts of theirs were in the file). As to the relevant Anstalten, it appeared that an inspection could well have been made of their accounts - the documents seized included many statements, so that it would have been possible to approach the banks in order to find out what transactions had been made on these accounts, at least in so far as the case related to them. At all events, there was nothing to show the contrary. At the same time, ... Mr Bricmont had made 'the great mistake' of failing to keep any systematic, chronological accounts of the sums he received or paid on the Prince's behalf and of sometimes not answering the precise questions put by the court" (see summary at paragraph 61 of the Court's judgment).

3. In fact, the nature of the case, the lack of material evidence, the version of events put forward by the accuser (the Prince), which was in clear contradiction with the accused's (the applicant), and the fact that there was no confrontation, although the situation called for one, meant that it was necessary to carry out an audit of the accounts, even if the court had to order one of its own motion, and in particular because Mr and Mrs Bricmont had requested one, albeit somewhat less than clearly.

4. The experts could have examined all the possibilities to the full and the Belgian judicial authorities could have asked the banks to disclose their records by way of derogation from the principle of the secrecy of banking records.