CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

COURT (CHAMBER)

CASE OF CREMIEUX v. FRANCE

(Application no. 11471/85)

JUDGMENT

STRASBOURG

25 February 1993

In the case of Crémieux v. France*,

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. BERNHARDT, *President*,
Mr Thór VILHJÁLMSSON,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr C. RUSSO,
Mr N. VALTICOS,
Mr J.M. MORENILLA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,

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

Having deliberated in private on 24 September 1992 and 27 January 1993,

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 13 December 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11471/85) against the French Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Paul Crémieux, on 11 March 1985.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8, 6 para. 3 and 10 (art. 8, art. 6-3, art. 10).

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* The case is numbered 83/1991/335/408. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. On 24 January 1992 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider the instant case and the cases of Funke and Miailhe v. France*.

* Cases nos. 82/1991/334/407 and 86/1991/338/411.

The Chamber to be constituted for this purpose included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On the same day, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr C. Russo, Mr N. Valticos, Mr J.M. Morenilla, Mr M.A. Lopes Rocha and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant’s lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant’s memorial on 16 June 1992 and the Government’s memorial on 19 June. On 17 July the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 24 July the Commission produced the file on the proceedings before it, as requested by the Registrar on the President’s instructions.

5. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 September 1992. The Court had held a preparatory meeting beforehand. Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal who was unable to take part in the further consideration of the case (Rule 21 para. 5, second sub-paragraph).

There appeared before the Court:

- for the Government

Mr B. GAIN, Head of the Human Rights Section,
Department of Legal Affairs, Ministry of Foreign Affairs, *Agent*,

Miss M. PICARD, magistrat,
on secondment to the Department of Legal Affairs, Ministry of Foreign Affairs,

Mr J. CARRÈRE, magistrat,
on secondment to the Department of Criminal Affairs and Pardons, Ministry of Justice,

Mrs C. SIGNERINICRE, Head of the Legal Affairs Office,
Department of Customs, Ministry of the Budget,

Mrs R. CODEVELLE, Inspector of Customs,
Department of Customs, Ministry of the Budget,
Mr G. ROTUREAU, Chief Inspector of Customs,
Strasbourg Regional Head Office of Customs, *Counsel*;
- for the Commission
Mr S. TRECHSEL, *Delegate*;
- for the applicant
Ms C. IMBACH, avocate, *Counsel*.

The Court heard addresses by Mr Gain for the Government, Mr Trechsel for the Commission and Ms Imbach for the applicant.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Paul Crémieux, a French citizen born in 1908, is retired and lives at his female companion’s home in Marseilles. At the material time he was chairman and managing director of SAPVIN, a wholesale wine firm, whose head office is in Marseilles.

A. The house searches and seizures of documents

7. In October 1976, in the course of an investigation into the SODEVIM company, customs officers seized documents relating to business transactions between SAPVIN and foreign firms.

8. Thereafter, from 27 January 1977 to 26 February 1980, the customs authorities carried out eighty-three investigative operations in the form of interviews and of raids on SAPVIN’s head office, on the applicant’s home and at other addresses of his and on the homes of other people, during which further items were seized.

Each of the house searches was made under Articles 64 and 454 of the Customs Code (see paragraphs 19-20 below). They were conducted by officials from the National Customs Investigations Department ("the DNED") in the presence of a senior police officer (officier de police judiciaire); a report was made on each of them and they all led to Mr Crémieux’s being subsequently interviewed.

9. Several such searches were made on 23 January 1979.

One of them began at 7 a.m. at the applicant’s Paris home, in his absence. The customs officers were received by Mr Crémieux’s son; they inspected the office and took away 518 documents, some of which, according to Mr Crémieux, had no connection with the customs investigation. The son initialled the inventory of documents. The applicant, who had arrived at 9.10 a.m., signed the report together with his son; he denied having been able, as the Government maintained, to go through the documents.

Another search began at 8 a.m. at the home of Mr Crémieux's female companion, whom, the applicant claimed, the DNED officials had followed into the bathroom when she said she wanted to put on a dressing-gown. Numerous personal papers were seized.

Searches were also made of the homes of other people, who had business relations with the applicant and his company.

10. On 24 January and 17 May 1979 Mr Crémieux was questioned by customs officers.

On 16 February 1979 they opened the private strongbox he had at SAPVIN's head office and took seventeen documents from it.

B. The court proceedings

1. The criminal proceedings against the applicant

11. On a complaint by the Mediterranean Interregional Head Office of Customs, the Marseilles public prosecutor's office began a judicial investigation in respect of Mr Crémieux and seven other people and passed the case to a local investigating judge on 16 June 1981.

12. On 29 November 1982 this judge charged the eight with offences against the legislation and regulations governing financial dealings with foreign countries.

The customs agreed to compound with those charged (see paragraph 23 below) - Mr Crémieux was to pay 1,400,000 French francs (FRF) and SAPVIN FRF 20,000,000 - and the judge accordingly issued a discharge order on 16 June 1987.

2. The applicant's proceedings to have the reports and seizures declared null and void

(a) Before the Marseilles investigating judge

13. On 8 August 1983 and 4 and 11 April 1984 Mr Crémieux applied to the Marseilles investigating judge for a declaration that the customs officers' reports on the facts and on the seizures were null and void.

On 24 April 1984 the judge made an order that the file on the investigation in respect of Mr Crémieux and those charged with him should be sent to the Marseilles public prosecutor for an opinion.

The customs authorities and the public prosecutor's office submitted that the relevant reports were valid and the house searches lawful.

(b) In the Indictment Division of the Aix-en-Provence Court of Appeal

14. On 22 June 1984 the investigating judge made an order whereby the case was referred directly to the Indictment Division of the Aix-en-Provence Court of Appeal for a decision on the lawfulness of the proceedings (Article 171 of the Code of Criminal Procedure).

15. On 30 July 1984 the Indictment Division held that all the impugned reports were valid.

In the terms set out below, it dismissed an application by Mr Crémieux for a declaration that Articles 454 and 64 of the Customs Code had ceased to have effect in the light of the principles laid down in the Constitutional Council's decision of 29 December 1983 (Official Gazette (Journal officiel), 30 December 1983, p. 3871):

> "Paul Crémieux relied on the fact that in this decision the Constitutional Council held that 'in order expressly to satisfy the requirements not only of the liberty of the individual and the inviolability of the home but also of the fight against customs evasion, the provisions of Article 89 of the Budget Act 1984 should have been accompanied by provisions and clarifications precluding any improper interpretation or practice and, accordingly, could not, as they stood, be held to be constitutional'.
>
> The Indictment Division, however, cannot rule on the constitutionality of Articles 454 and 64 of the Customs Code in whatever form or context such unconstitutionality is pleaded.
>
> This is because Article 27 of the Criminal Code provides that 'any judge ... who stays or suspends the application of a statute ...' shall be guilty of criminal malfeasance in public office."

The Indictment Division did not rule on the issue - raised by the applicant before the investigating judge - whether the disputed customs measures were compatible with Article 8 (art. 8) of the Convention.

(c) In the Court of Cassation

16. Mr Crémieux appealed on points of law. In the first of his three grounds he relied on, inter alia, the Convention:

> "Violation on account of the refusal to apply Articles 62 and 66 of the Constitution of 4 October 1958 and Article 8 (art. 8) of the Convention ..., violation through improper application of Articles 64 and 454 of the Customs Code and of Article 593 of the Code of Criminal Procedure;
>
> In that the Court of Appeal in the judgment appealed against upheld the validity of the house searches made by customs officers accompanied by a senior police officer (officier de police judiciaire) between 27 January 1977 and 26 February 1980 under Articles 64 and 454 of the Customs Code, and in particular the one made on 23 January 1979 at the applicant's home;
>
> On the grounds that the Indictment Division cannot rule on the constitutionality of Articles 454 and 64 of the Customs Code in whatever form or context such unconstitutionality is pleaded and that Article 127 of the Criminal Code indeed

provides that 'any judge ... who stays or suspends the application of a statute' shall be guilty of criminal malfeasance in public office;

Whereas, firstly, Article 66 of the Constitution of 4 October 1958 makes the right of State officials to search the home of an offender subject to prior judicial leave, and Articles 64 and 454 of the Customs Code, which did not provide for any such safeguard, before the promulgation of the Constitution of 4 October 1958, were thus implicitly but necessarily abrogated by the Constitution, which, by Article 62, is directly binding on the courts without that entailing any review of the constitutionality of legislation; and the Indictment Division therefore contravened the aforementioned provisions;

Whereas, secondly, the provisions of Articles 64 and 454 of the Customs Code are incompatible with those of Article 8 (art. 8) of the Convention ..., which are directly binding on national courts, Article 8 (art. 8) providing for the inviolability of the home; and the Indictment Division thus also contravened the provisions of that treaty;

Whereas, in the alternative, Articles 64 and 454 of the Customs Code, assuming that they remained in force after the promulgation of the Constitution of 4 October 1958, require, in accordance with the provisions of the Constitution, that when administrative officials search a person's home they must have sought and obtained prior judicial leave; and that the report on the house search is null and void unless it mentions that this formality was complied with; on this account likewise the Indictment Division infringed the aforementioned provisions."

17. The Criminal Division of the Court of Cassation dismissed the appeal on 21 January 1985. In relation to the foregoing ground it held:

"Articles 454 and 64 of the Customs Code, as enacted by the Act of 28 December 1966, are legislative in nature and have never been repealed. It is accordingly not within the jurisdiction of the ordinary courts to review their constitutionality. Furthermore, the provisions they contain satisfy the requirements of Article 8 (art. 8) of the Convention ..., paragraph 2 (art. 8-2) of which allows interference by a public authority with an individual's home where such interference is, inter alia, 'in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, [and] for the prevention of disorder or crime'."

II. RELEVANT CUSTOMS LAW

18. The criminal provisions of customs law in France are treated as a special body of criminal law.

A. Establishment of offences

1. Officials authorised to establish offences

19. Two provisions of the Customs Code are relevant as regards these officials:

Article 453

"The officials designated below shall be empowered to establish offences against the legislation and regulations governing financial dealings with foreign countries:

1. customs officers;

2. other officials of the Ministry of Finance with the rank of at least inspector;

3. senior police officers (officiers de police judiciaire).

The reports made by senior police officers shall be forwarded to the Minister for Economic Affairs and Finance, who shall refer cases to the prosecuting authorities if he thinks fit."

Article 454

"The officials referred to in the preceding Article shall be empowered to carry out house searches in any place as provided in Article 64 of this code."

2. House searches

(a) The rules applicable at the material time

20. When the house search was made (23 January 1979), Article 64 of the Customs Code was worded as follows:

"1. When searching for goods held unlawfully within the customs territory, except for built-up areas with a population of at least 2,000, and when searching in any place for goods subject to the provisions of Article 215 hereinafter, customs officers may make house searches if accompanied by a local municipal officer or a senior police officer (officier de police judiciaire).

2. In no case may such searches be made during the night.

3. Customs officers may act without the assistance of a local municipal officer or a senior police officer

(a) in order to make searches, livestock counts, and inspections at the homes of holders of livestock accounts or owners of rights of pasture; and

(b) in order to look for goods which, having been followed and kept under uninterrupted surveillance as provided in Article 332 hereinafter, have been taken into a house or other building, even if situated outside the customs zone.

4. If entry is refused, customs officials may force an entry in the presence of a local municipal officer or a senior police officer."

(b) The rules applicable later

21. The Budget Acts of 30 December 1986 (section 80-I and II) and 29 December 1989 (section 108-III, 1 to 3) amended Article 64, which now provides:

"1. In order to investigate and establish the customs offences referred to in Articles 414-429 and 459 of this code, customs officers authorised for the purpose by the Director- General of Customs and Excise may make searches of all premises, even private ones, where goods and documents relating to such offences are likely to be held and may seize them. They shall be accompanied by a senior police officer (officier de police judiciaire).

2. (a) Other than in the case of a flagrant offence (flagrant délit), every search must be authorised by an order of the President of the tribunal de grande instance of the locality in which the customs headquarters responsible for the department in charge of the proceedings is situated, or a judge delegated by him.

Against such an order there shall lie only an appeal on points of law as provided in the Code of Criminal Procedure; such an appeal shall not have a suspensive effect. The time within which an appeal on points of law must be brought shall run from the date of notification or service of the order.

The order shall contain:

(i) where applicable, a mention of the delegation by the President of the tribunal de grande instance;

(ii) the address of the premises to be searched;

(iii) the name and position of the authorised official who has sought and obtained leave to make the searches.

The judge shall give reasons for his decision by setting out the matters of fact and law that he has accepted and which create a presumption in the case that there have been unlawful activities of which proof is sought.

If, during the search, the authorised officials discover the existence of a bank strongbox which belongs to the person occupying the premises searched and in which documents, goods or other items relating to the activities referred to in paragraph 1 above are likely to be found, they may, with leave given by any means by the judge who made the original order, immediately search the strongbox. Such leave shall be mentioned in the report provided for in paragraph 2(b) below.

The judge shall take practical steps to check that each application for leave made to him is well-founded; each application shall contain all information in the possession of the customs authorities that may justify the search.

He shall designate the senior police officer responsible for being present at the operations and keeping him informed of their progress.

The search shall be carried out under the supervision of the judge who has authorised it. Where it takes place outside the territorial jurisdiction of his tribunal de grande instance, he shall issue a rogatory letter, for the purposes of such supervision, to the President of the tribunal de grande instance in the jurisdiction of which the search is being made.

The judge may go to the scene during the operation.

He may decide at any time to suspend or halt the search.

The judicial order shall be notified orally to the occupier of the premises or his representative on the spot at the time of the search, who shall receive a complete copy against acknowledgement of receipt or signature in the report provided for in paragraph 2(b) below. If the occupier of the premises or his representative is absent, the judicial order shall be notified after the search by means of a registered letter with recorded delivery. Notification shall be deemed to have been made on the date of receipt entered in the record of delivery.

Failing receipt, the order shall be served as provided in Articles 550 et seq. of the Code of Criminal Procedure.

The time-limits and procedures for appeal shall be indicated on notification and service documents.

(b) Searches may not be commenced before 6 a.m. or after 9 p.m. They shall be made in the presence of the occupier of the premises or his representative; if this is impossible, the senior police officer shall requisition two witnesses chosen from persons not under his authority or that of the customs.

Only the customs officers mentioned in paragraph 1 above, the occupier of the premises or his representative and the senior police officer may inspect documents before they are seized.

The senior police officer shall ensure that professional confidentiality and the rights of the defence are respected in accordance with the provisions of the third paragraph of Article 56 of the Code of Criminal Procedure; Article 58 of that code shall apply.

The report, to which shall be appended an inventory of the goods and documents seized, shall be signed by the customs officers, the senior police officer and the persons mentioned in the first sub-paragraph of this section (b); in the event of a refusal to sign, mention of that fact shall be made in the report.

Where an on-the-spot inventory presents difficulties, the documents seized shall be placed under seal. The occupier of the premises or his representative shall be informed that he may be present at the removal of the seals, which shall take place in the presence of the senior police officer; the inventory shall then be made.

A copy of the report and of the inventory shall be given to the occupier of the premises or his representative.

A copy of the report and the inventory shall be sent to the judge who made the order within three days of its being drawn up.

3. Customs officers may act without the assistance of a senior police officer

(a) in order to make searches, livestock counts and inspections at the homes of holders of livestock accounts or owners of rights of pasture; and

(b) in order to look for goods which, having been followed and kept under uninterrupted surveillance as provided in Article 332 hereinafter, have been taken into a house or other building, even if situated outside the customs zone.

4. If entry is refused, customs officers may force an entry in the presence of a senior police officer."

B. Prosecution of offences

22. Article 458 of the Customs Code provides:

"Offences against the legislation and regulations governing financial dealings with foreign countries may be prosecuted only on a complaint by the Minister for Economic Affairs and Finance or one of his representatives authorised for the purpose."

C. Compounding

23. The customs authorities may, in certain circumstances, compound with persons being prosecuted for customs offences or for offences against the legislation and regulations governing financial dealings with foreign countries (Article 350 of the Customs Code).

PROCEEDINGS BEFORE THE COMMISSION

24. Mr Crémieux applied to the Commission on 11 March 1985, complaining of the searches and seizures made by customs officers at his home and at other addresses of his. He relied on three provisions of the Convention: Article 8 (art. 8) (infringement of his right to respect for his private life, his home and his correspondence); Article 6 para. 3 (art. 6-3) (non-compliance with mandatory formalities); and Article 10 (art. 10) (failure to respect his freedom of expression).

25. The Commission declared the application (no. 11471/85) admissible on 19 January 1989. In its report of 8 October 1991 (made under Article 31) (art. 31), the Commission expressed the opinion that there had been no breach of Article 8 (art. 8) (by eleven votes to seven), Article 6 para. 3 (art. 6-3) (unanimously) or Article 10 (art. 10) (unanimously). The full text of

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

FINAL SUBMISSIONS TO THE COURT

26. In its memorial the Government asked the Court to dismiss all the complaints made by Mr Crémieux.

27. Counsel for the applicant asked the Court to

> "hold that there ha[d] been in the instant case a breach of Articles 8, 10 and 6 para. 3 (art. 8, art. 10, art. 6-3) of the ... Convention ...;
>
> award just satisfaction under Article 50 (art. 50), having regard to the substantial non-pecuniary damage sustained, in the sum of FRF 500,000;
>
> award costs and expenses, to be paid by the French Republic, in the amount of FRF 100,000;
>
> ..."

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

28. In the applicant's submission, the house searches and seizures made in the instant case were in breach of Article 8 (art. 8), which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 256-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

A. The Government's preliminary objection

29. As they had done before the Commission, the Government raised an objection of inadmissibility on the ground that domestic remedies had not been exhausted in that Mr Crémieux had not complained in the ordinary courts of a flagrantly unlawful act (voie de fait) on the part of the customs officers and had not sought compensation for it.

30. Like the applicant and the Commission, the Court notes that Mr Crémieux brought proceedings to have customs reports on the facts and on the seizures declared null and void (see paragraphs 13-17 above) and pursued them to a conclusion, without omitting to plead Article 8 (art. 8). He cannot be criticised for not having made use of a legal remedy which would have been directed to essentially the same end, is hardly ever used and would in any case probably have been doomed to failure. The objection must therefore be dismissed.

B. Merits of the complaint

31. The Government conceded that there had been an interference with Mr Crémieux's right to respect for his private life, and the Commission additionally found that there had been an interference with his right to respect for his home.

Like Mr Crémieux, the Court considers that all the rights secured in Article 8 para. 1 (art. 8-1) are in issue, except for the right to respect for family life. It must accordingly be determined whether the interferences in question satisfied the conditions in paragraph 2 (art. 8-2).

1. "In accordance with the law"

32. The applicant contended that the interferences had no legal basis. As worded at the time, Article 64 of the Customs Code was, he claimed, contrary to the 1958 Constitution because it did not make house searches and seizures subject to judicial authorisation. Admittedly, its constitutionality could not be reviewed, since it had come into force before the Constitution had. Nevertheless, in the related field of taxation the Constitutional Council had rejected section 89 of the Budget Act for 1984, concerning the investigation of income-tax and turnover-tax offences, holding, inter alia:

> "While the needs of the Revenue's work may dictate that tax officials should be authorised to make investigations in private places, such investigations can only be conducted in accordance with Article 66 of the Constitution, which makes the judiciary responsible for protecting the liberty of the individual in all its aspects, in particular the inviolability of the home. Provision must be made for judicial participation in order that the judiciary's responsibility and supervisory power may be maintained in their entirety." (Decision no. 83-164 DC of 29 December 1983, Official Gazette (Journal officiel), 30 December 1983, p. 3874)

33. The Government, whose arguments the Commission accepted in substance, maintained that in Article 64 of the Customs Code, as supplemented by a fairly substantial body of case-law, the power to search houses was defined very closely and represented a transposition to customs legislation and the regulations governing financial dealings with foreign countries of the power of search provided for in ordinary criminal procedure. Provision was first made for it in an Act of 6 August 1791 and subsequently in a legislative decree of 12 July 1934, and it had been widened in 1945 to cover investigations into exchange- control offences and confirmed on several occasions. In the Government's submission, its constitutionality could not be put in doubt, any more than that of Article 454 of the same code, since review of the constitutionality of statutes took place between their enactment by Parliament and promulgation and was within the sole competence of the Constitutional Council, to the exclusion of all other courts.

As to the "quality" of the national legal rules vis-à-vis the Convention, it was ensured by the precision with which the legislation and case-law laid down the scope and manner of exercise of the relevant power, and this eliminated any risk of arbitrariness. Thus even before the reform of 1986-89 (see paragraph 21 above), the courts had supervised customs investigations ex post facto but very efficiently. And in any case, Article 8 (art. 8) of the Convention contained no requirement that house searches and seizures should be judicially authorised in advance.

34. The Court does not consider it necessary to determine the issue in this instance, as at all events the interferences complained of are incompatible with Article 8 (art. 8) in other respects (see paragraphs 40-41 below).

2. Legitimate aim

35. The Government and the Commission considered that the interferences in question were in the interests of "the economic well- being of the country" and "the prevention of crime".

Notwithstanding the applicant's arguments to the contrary, the Court is of the view that the interferences were in pursuit of at any rate the first of these legitimate aims.

3. "Necessary in a democratic society"

36. In Mr Crémieux's submission, the interferences could not be regarded as "necessary in a democratic society". Their scope was unlimited and they had also been carried out in an unacceptable manner. In the first place, their sheer scale was, he said, striking: eighty- three investigative operations spread over three years, although the case was neither serious nor complex and ended with a composition; furthermore, none of the documents

removed had proved that any exchange-control offence had been committed. The interferences further reflected a lack of discrimination on the part of the customs officers, who took possession of purely private papers and correspondence and lawyer’s letters and subsequently returned a very large number of the documents seized, which they deemed unnecessary for the investigation. Lastly, the interferences illustrated the authorities’ hounding of the applicant, with the customs searches (visites domiciliaires) being turned into thoroughgoing general searches (perquisitions).

37. The Government, whose contentions the Commission accepted in substance, argued that house searches and seizures were the only means available to the authorities for investigating offences against the legislation governing financial dealings with foreign countries and thus preventing the flight of capital and tax evasion. In such fields there was a corpus delicti only very rarely if at all; the "physical manifestation" of the offence therefore lay mainly in documents which a guilty party could easily conceal or destroy. Such persons, however, had the benefit of substantial safeguards, strengthened by very rigorous judicial supervision: decision-making by the head of the customs district concerned, the rank of the officers authorised to establish offences, the presence of a senior police officer (officier de police judiciaire), the timing of searches, the preservation of lawyers’ and doctors’ professional secrecy, the possibility of invoking the liability of the public authorities, etc. In short, even before the reform of 1986-89, the French system had ensured that there was a proper balance between the requirements of law enforcement and the protection of the rights of the individual.

As regards the circumstances of the case, the Government made two observations. Firstly, the composition agreed to by the authorities was tantamount to acknowledgement by Mr Crémieux of the offence committed; far from demonstrating that the case was of little importance, it was an efficient procedure commonly used by the customs to obviate more cumbersome proceedings with identical consequences. Secondly, the many house searches had been made necessary by the number of different places where Mr Crémieux might keep documents.

38. The Court has consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but it goes hand in hand with European supervision. The exceptions provided for in paragraph 2 of Article 8 (art. 8-2) are to be interpreted narrowly (see the Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 21, para. 42), and the need for them in a given case must be convincingly established.

39. Undoubtedly, in the field under consideration - the prevention of capital outflows and tax evasion - States encounter serious difficulties owing to the scale and complexity of banking systems and financial channels and to the immense scope for international investment, made all

the easier by the relative porousness of national borders. The Court therefore recognises that they may consider it necessary to have recourse to measures such as house searches and seizures in order to obtain physical evidence of exchange-control offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse (see, among other authorities and mutatis mutandis, the Klass and Others judgment previously cited, Series A no. 28, p. 23, para. 50).

40. This was not so in the instant case. At the material time - and the Court does not have to express an opinion on the legislative reforms of 1986 and 1989, which were designed to afford better protection for individuals (see paragraph 21 above) - the customs authorities had very wide powers; in particular, they had exclusive competence to assess the expediency, number, length and scale of inspections. Above all, in the absence of any requirement of a judicial warrant the restrictions and conditions provided for in law, which were emphasised by the Government (see paragraph 37 above), appear too lax and full of loopholes for the interferences with the applicant's rights to have been strictly proportionate to the legitimate aim pursued.

41. In sum, there has been a breach of Article 8 (art. 8).

II. ALLEGED VIOLATIONS OF ARTICLE 6 PARA. 3 AND ARTICLE 10 (art. 6-3, art. 10)

42. The applicant also relied on Article 6 para. 3 and Article 10 (art. 6-3, art. 10).

The alleged infringements of the rights of the defence and of freedom of expression relate to the same facts as those which the Court has held to have contravened Article 8 (art. 8); in the circumstances of the case, it is unnecessary to consider them separately.

III. APPLICATION OF ARTICLE 50 (art. 50)

43. Under Article 50 (art. 50),

> "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."

A. Damage

44. Mr Crémieux claimed, firstly, that he had sustained non- pecuniary damage; he put this at 500,000 French francs (FRF) but left it to the Court to determine in its discretion and in the light of its case-law.

The Government and the Delegate of the Commission expressed no opinion.

45. The Court considers that the applicant must have suffered non-pecuniary damage but that this judgment affords him sufficient compensation for it.

B. Costs and expenses

46. Mr Crémieux also sought reimbursement of the costs and expenses he had incurred in the French courts and in the proceedings before the Convention institutions. He assessed these on a lump-sum basis at FRF 100,000; given that the case went back a long way in time and that his first counsel had died, he acknowledged that he was unable to provide a detailed statement of costs.

The Government and the Delegate of the Commission did not put forward any view on the issue.

47. Applying its usual criteria, the Court awards the applicant FRF 50,000.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's preliminary objection;

2. Holds by eight votes to one that there has been a breach of Article 8 (art. 8);

3. Holds by eight votes to one that it is unnecessary to consider the case also under Article 6 para. 3 and Article 10 (art. 6-3, art. 10);

4. Holds unanimously, as regards the non-pecuniary damage sustained by the applicant, that the present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50);

5. Holds unanimously that the respondent State is to pay the applicant, within three months, 50,000 (fifty thousand) French francs in respect of costs and expenses;

6. Dismisses unanimously the remainder of the applicant's claims.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 February 1993.

Rudolf BERNHARDT
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Thór Vilhjálmsson is annexed to this judgment.

R.B.
M.-A.E.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON

I have voted against the finding of a violation of Article 8 (art. 8) of the Convention in this case. My reasons are much the same as those set out by the majority of the Commission in its report.