



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

COURT (CHAMBER)

CASE OF PROCOLA v. LUXEMBOURG

(Application no. 14570/89)

JUDGMENT

STRASBOURG

28 September 1995

In the case of Procola v. Luxembourg ¹,

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 Rules of Court A ², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr R. PEKKANEN,

Mr J.M. MORENILLA,

Mr F. BIGI,

Mr G. Mifsud BONNICI,

Mr D. GOTCHEV,

Mr P. KURIS,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 28 April and 31 August 1995,

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 9 September 1994, 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. 14570/89) against the Grand Duchy of Luxembourg lodged with the Commission under Article 25 (art. 25) by an association under Luxembourg law - the Agricultural Association for the Promotion of Milk Marketing ("Procola") - and sixty-three of its members on 22 November 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Luxembourg 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

¹ The case is numbered 27/1994/474/555. 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 Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Article 6 (art. 6) of the Convention.

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

3. The Chamber to be constituted included ex officio Mr A. Spielmann, the elected judge of Luxembourg nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. De Meyer, Mr R. Pekkanen, Mr J.M. Morenilla, Mr F. Bigi, Mr G. Mifsud Bonnici, Mr D. Gotchev and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Luxembourg Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant association's and the Government's memorials on 5 January and 20 January 1995 respectively. On 28 March the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. In the meantime, on 17 March 1995, the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 April 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr F. HOFFSTETTER, Senior Adviser, Ministry of Agriculture,
Viticulture and Rural Development, *Agent,*

Mr J. WELTER, *avocat,*

Mrs A. CONZEMIUS-PACCAUD, Permanent Representative
of Luxembourg to the Council of Europe, *Counsel;*

(b) for the Commission

Mr A. WEITZEL, *Delegate;*

(c) for the applicant association

Mr F. ENTRINGER, *avocat,* *Counsel.*

The Court heard addresses by Mr Weitzel, Mr Entringer and Mr Welter.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Procola is a dairy constituted as an agricultural association under Luxembourg law. Its registered office is at Ingeldorf.

A. The origins of the case

8. Following the introduction of the "milk quota" system in the member States of the European Community by EEC Regulations Nos. 856/84 and 857/84 of 31 March 1984, Luxembourg adopted, in a grand-ducal regulation of 3 October 1984, the provisions incorporating the Community rules into domestic law. A number of ministerial orders were issued on 10 October 1984 allocating reference quantities for milk purchases (i.e. the quantities in excess of which an additional levy would be payable) to the four milk purchasers in the Grand Duchy, that is to say the dairies purchasing milk from producers - including the applicant association; the quantities were based on the figures for milk collected in 1981.

9. The applicant association and two other milk purchasers appealed to the Judicial Committee of the Conseil d'Etat against the decisions fixing the reference quantities. In accordance with Article 177 of the Treaty establishing the European Economic Community ("the EEC treaty"), that court referred a number of questions to the Court of Justice of the European Communities ("the Court of Justice") for a preliminary ruling, which was given in a judgment of 25 November 1986.

10. In the light of the answers given by the Court of Justice, the Conseil d'Etat held, in a judgment of 26 February 1987, that the choice of 1981 as the reference year had led to discrimination between purchasers, contrary to Article 40 para. 3 of the EEC treaty. The impugned decisions were accordingly set aside and the case was referred to the Minister of State for Agriculture for a fairer apportionment of the reference quantities among the four dairies in Luxembourg by means of a grand-ducal regulation.

11. On 27 May 1987 the Minister of State submitted a new draft grand-ducal regulation under which the reference quantities were to be allocated to the four milk purchasers on the basis of the milk deliveries made to them in 1983. In order to meet Luxembourg's obligations under Community law, it was proposed in the draft regulation to make the new reference quantity system applicable not only in the future but also retrospectively to previous milk-production years, with effect from April 1984. The draft regulation was submitted to the Conseil d'Etat for an opinion.

12. In a letter of 24 June 1987 the President of the Conseil d'Etat drew the Prime Minister's attention to the fact that such rules could be given

retrospective effect only through legislation and not by means of a regulation.

13. At the close of its deliberations of 2 July 1987 the Conseil d'Etat proposed certain amendments and a single-clause bill giving the future regulation retrospective effect from 2 April 1984, the date on which the milk-quota system had come into force in the European Community countries.

14. With certain amendments, the Minister of State's draft regulation of 27 May 1987 became the Grand-Ducal Regulation of 7 July 1987 and the bill drafted by the Conseil d'Etat on 2 July 1987 became the Act of 27 August 1987, which made this regulation applicable with retrospective effect to "the twelve-month periods of application of the additional levy on milk commencing respectively on 2 April 1984, 1 April 1985 and 1 April 1986". For these periods, paragraph 2 of the single section of the Act provided: "Purchasers' reference quantities shall be reallocated on the basis of the provisions of Article 3 of the Grand-Ducal Regulation of 7 July 1987 referred to above, and the basic and supplementary individual reference quantities shall be recalculated on the basis of the relevant provisions of the same regulation."

15. On 21 September 1987 the Minister of State issued four ministerial orders fixing the applicant association's milk quantities for each of the four milk-production years between 2 April 1984 and 31 March 1988.

B. The applications for judicial review lodged with the Conseil d'Etat

16. On 24 November 1987 Procola applied to the Judicial Committee of the Conseil d'Etat for judicial review of each of those four orders on the grounds that they adversely affected the association and its suppliers because its reference quantities for the milk-production years in question were too low. In its pleadings, in addition to raising a number of grounds of appeal alleging the unlawfulness of the Grand-Ducal Regulation of 7 July 1987 and breaches of several of its provisions, the applicant association criticised its retrospective application to milk-production years before the one which had begun on 1 April 1987. In the alternative, it asked the Judicial Committee to refer a number of questions to the Court of Justice for preliminary rulings, including one concerning the principle of non-retrospective application.

17. In a judgment of 6 July 1988 the Judicial Committee dismissed the applications in the following terms:

"While it is true that as a general rule a statute makes provision only for the future, it is open to the legislature to give retrospective effect to a statute, in so far as this is not prohibited under the Constitution. Luxembourg was required to fill the legal vacuum created by the Judicial Committee's judgment of 26 February 1987 quashing

the regulation, otherwise it would have been in breach of its binding obligations under the Treaty of Rome.

Under Article 189 of that treaty, Community regulations are directly applicable. Consequently, Luxembourg was obliged to legislate on the matter of milk levies for the periods from 2 April 1984 to 31 March 1987, and only Parliament, which had the approval of the Community authorities, had the power to do so.

At all events, the penalties attaching to any failure on the part of purchasers to comply with the quantities during the first, second and third periods are no higher than those which would have been payable under the previous legislation. The difference, amounting to approximately 35 million [francs], is to be borne by the State, with the agreement of the Community authorities, so that the retrospective effect of the milk quantities, far from causing the applicant association prejudice, is in fact beneficial to it.

A plea of unlawfulness cannot succeed against a statute and this ground must accordingly fail ..."

Four of the five members of the Judicial Committee had previously taken part in drawing up the Conseil d'Etat's opinion on the draft regulation and in framing the bill in issue.

II. RELEVANT LAW

A. The EEC rules and their implementation in Luxembourg

18. In order to regulate and stabilise the market in milk and milk products, which was characterised by overproduction, the Council of Ministers of the European Economic Community adopted Regulations (EEC) Nos. 856/84 and 857/84 of 31 March 1984. These established in the Community member States, for a five-year period commencing on 2 April 1984, a system of additional levies on all milk delivered in excess of a guaranteed quantity, also known as the "reference quantity".

Each member State was allocated a total reference quantity which it then had to apportion among milk producers, under Formula A, or milk purchasers (dairies) under Formula B. The reference quantities for purchasers and producers were determined on the basis of the deliveries they took or their production in 1981, 1982 or 1983, weighted by a certain percentage fixed in such a way as not to exceed the guaranteed quantity.

The additional levy, which was set at a certain percentage of the target price for milk, was payable by producers or purchasers, as appropriate, on all milk produced or collected in excess of the reference quantity. Where a member State chose Formula B, purchasers were to pass on the cost of the additional levy only to those producers who had delivered a quantity of milk exceeding their quota.

19. Luxembourg opted for Formula B, and the measures for implementing the Community rules were laid down in a grand-ducal regulation of 3 October 1984 and a number of ministerial orders of 10 October 1984 (see paragraph 8 above).

B. The Conseil d'Etat

20. At the time when the judgment complained of by the applicant association was given, the second and third paragraphs of Article 76 of the Luxembourg Constitution, which govern the subject, provided:

"In addition to the Government there shall be a Council, whose functions shall be to deliberate on draft legislation and any amendments proposed thereto, determine administrative disputes and give its opinion on any other question referred to it either by the Grand Duke or pursuant to a statutory provision. The organisation of this Council and the manner in which it is to perform its functions shall be laid down by statute."

1. Membership

21. The Act of 8 February 1961, as amended on 26 July 1972, laid down the organisation of the Conseil d'Etat. Section 1 provides:

"The Conseil d'Etat shall be composed of twenty-one councillors, eleven of whom shall form the Judicial Committee.

The latter figure shall not include those members of the Reigning Family who form part of the Conseil d'Etat."

The Act does not distinguish between the Judicial Committee and the Conseil d'Etat proper with regard to the appointment of the Conseil d'Etat's members (section 4). The members are all appointed by the Grand Duke, who chooses them either directly or from a list of candidates put forward by the Chamber of Deputies or the Conseil d'Etat itself.

The members of the Judicial Committee are chosen from among the members of the Conseil d'Etat (section 5).

22. Section 9 lays down the qualifying conditions for becoming a member of the Conseil d'Etat. The same qualifying conditions apply to the Judicial Committee, except that its members must also be doctors of law or enjoy the rights appertaining to that title.

The duties of a member of the Conseil d'Etat are not full-time and are incompatible only with serving as a member of the Government, a Government adviser or a member of Parliament. Section 22 (2) provides: "Members of the Judicial Committee may not take part in the deliberations on cases which they have already dealt with in some other capacity than as member of the Conseil d'Etat." It thus implies that a councillor who has already had to deal with a case as a member of the Conseil d'Etat is not

prevented from dealing with the same case if it comes before the Judicial Committee.

23. In principle, the term of office of a member of the Conseil d'Etat ends only when he reaches the age-limit, which is at present 72.

2. Functions

24. The Conseil d'Etat has mainly advisory and judicial functions (sections 7 and 8).

25. With regard to its advisory functions (section 27), the Conseil d'Etat gives its opinion on all Government and private members' bills, draft regulations on general administrative matters, and draft regulations or orders required for the implementation of treaties.

26. As a judicial body, the Conseil d'Etat, acting through its Judicial Committee, is the court of first and last instance in administrative proceedings. Its judicial powers are restricted in two respects. Firstly, it can only review the lawfulness of individual administrative decisions, not general regulatory decisions; secondly, except where there is an express statutory provision to the contrary (section 29), the only remedy available against these decisions is judicial review on the grounds of lack of competence, ultra vires, abuse of authority or breaches of the substantive or procedural rules protecting private interests (section 31).

3. Proposed reform

27. In 1989 Article 76 of the Constitution was amended. A bill at present before Parliament is intended to bring about a radical reform of this whole question, the aim being to separate the Conseil d'Etat's advisory and judicial functions.

PROCEEDINGS BEFORE THE COMMISSION

28. Procola and sixty-three of its members, all farmers, applied to the Commission on 22 November 1988. They complained of an infringement of their right to an independent and impartial tribunal, secured in Article 6 para. 1 (art. 6-1) of the Convention, on the ground that some of the members of the Judicial Committee who ruled on Procola's application for judicial review had previously given their opinion on the lawfulness of the impugned provisions. They also argued that retrospective application of the decisions fixing the milk quantities was in breach of Article 7 (art. 7) of the Convention. Lastly, they contended that the additional levies infringed their right to the peaceful enjoyment of their possessions contrary to Article 1 of Protocol No. 1 (P1-1).

29. On 1 July 1993 the Commission declared Procola's application (no. 14570/89) admissible as regards the first complaint and inadmissible as to the remainder. It declared the complaints submitted by Procola's members inadmissible, on the ground that they had not exhausted domestic remedies.

In its report of 6 July 1994 (Article 31) (art. 31), it expressed the opinion by nine votes to six that there had been no violation of Article 6 (art. 6) of the Convention. 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 ³.

FINAL SUBMISSIONS TO THE COURT

30. In their memorial the Government asked the Court

"to hold that Article 6 para. 1 (art. 6-1) of the Convention is not applicable to the case before the Court or, in the alternative, that this provision (art. 6-1) was not violated".

31. The applicant's lawyer asked the Court

"to hold, as regards the merits of the case, that there has been a violation of the European Convention for the Protection of Human Rights as regards Article 6 para. 1 (art. 6-1);

to hold that the applicant's loss amounts to 4,456,453 [Luxembourg francs (LUF)], together with interest of [LUF] 568,290, i.e. a total of [LUF] 5,024,743".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

32. The applicant association complained that the Judicial Committee of the Conseil d'Etat was not independent and impartial. It alleged a violation of Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal ..."

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 326 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

A. Applicability of Article 6 para. 1 (art. 6-1)

33. Procola argued that this provision (art. 6-1) was applicable in the case. The Government and the Commission took the opposite view.

1. Whether there was a dispute concerning a right

34. The Government maintained that the application for judicial review made to the Judicial Committee of the Conseil d'Etat was an "objective" one (*recours objectif*) - that is to say that it did not relate to a private right - directed against a decision applying Community rules; it did not, therefore, concern a "contestation" (dispute) between the parties to an action. If the Judicial Committee had upheld the application, it could only have set aside the impugned orders and remitted the case to the Minister of State, so that he could take a fresh decision. It could not have ordered repayment of sums paid without legal cause as, under Article 84 of the Constitution, only the ordinary courts were empowered to determine civil rights. Moreover, the Government continued, even if an application to the ordinary courts had been possible, no decision could have been given in Procola's favour, since the association as such had never had a legally enforceable claim. The application could not have led to either repayment of the additional levies to Procola or the award of any compensation as, under the system adopted by Luxembourg, the levy, although imposed on the purchaser, was passed on by the latter only to those producers who had exceeded their quota (see paragraph 18 above). In short, the proceedings could not have had any result affecting the applicant's financial position.

35. The applicant association argued that unless the ministerial orders were quashed it could not seek damages in the civil courts; and only the Conseil d'Etat could quash them. The proceedings in the Conseil d'Etat were thus decisive for a civil right, namely the right to repayment of the fine for overproduction. Procola asserted that under the Formula B system chosen by Luxembourg it was the party with which the State had to have legal relations and conduct financial dealings in the event of overproduction. This was evidenced by the fact that the State had brought proceedings against the association to secure payment of the fine each time the reference quantity had been exceeded.

36. The Commission took the view that the application to the Conseil d'Etat had been lodged in connection with a public-law dispute which did not concern a private right of the applicant association. Its real purpose was to secure a review in the abstract of the lawfulness of measures taken by the public authorities.

37. The Court notes that before the Judicial Committee the parties took opposite views on the question whether the ministerial orders fixing milk quantities could be given retrospective effect. Procola maintained that for the years from 1984 to 1987 no levy was payable, since the previous rules

had been set aside and it was impossible to make the orders retrospective, whereas the Delegate of the State maintained that the orders were lawful. The applicant association's case was sufficiently tenable, since the Conseil d'Etat conducted a detailed examination of the conflicting arguments (see the *Neves e Silva v. Portugal* judgment of 27 April 1989, Series A no. 153-A, p. 14, para. 37, and the *Editions Périscope v. France* judgment of 26 March 1992, Series A no. 234-B, p. 65, para. 38).

Within the meaning of Article 6 (art. 6) of the Convention there was without any doubt a dispute concerning the determination of a right.

2. As to the civil nature of the right in issue

38. The Court reiterates that Article 6 para. 1 (art. 6-1) is applicable where an action is "pecuniary" in nature and is founded on an alleged infringement of rights which are likewise pecuniary rights, notwithstanding the origin of the dispute and the fact that the administrative courts have jurisdiction (see, among other authorities, the *Editions Périscope* judgment, previously cited, p. 66, para. 40, and the *Beaumartin v. France* judgment of 24 November 1994, Series A no. 296-B, pp. 60-61, para. 28).

39. In order to satisfy itself that the proceedings were decisive for a civil right, the Court considers it necessary to look at the proceedings as a whole. Procola sought repayment of the fine for overproduction of 4.5 million Luxembourg francs (LUF); the association argued that it had paid this sum wrongly, on the ground that its members had produced the milk during a period when there was a legal vacuum and the Luxembourg Government were not entitled to hold them to account for overproduction.

Admittedly, the application to the Conseil d'Etat could only result in the annulment of the impugned orders, but that annulment would have enabled the applicant association to bring proceedings in the civil courts to recover the sum it considered to have been wrongly paid. By lodging the application, Procola were using the only means at their disposal - an indirect one - of attempting to obtain reimbursement of the additional levies.

Having regard to the close connection between the proceedings brought by Procola and the consequences that their outcome might have had for one of its pecuniary rights, and for its economic activities in general, the right in question was a civil one (see the *Editions Périscope* judgment, previously cited, p. 66, para. 40; the *Beaumartin* judgment, previously cited, pp. 60-61, para. 28; the *Ortenberg v. Austria* judgment of 25 November 1994, Series A no. 295-B, pp. 48-49, para. 28; and, by implication, the *Van de Hurk v. the Netherlands* judgment of 19 April 1994, Series A no. 288, p. 16, para. 43).

In any event, as the applicant pointed out, the Commission took the view in its decision on admissibility that the payment of an additional levy to the national authorities could be construed as a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1

(P1 1), and the right to peaceful enjoyment of one's possessions is undoubtedly a civil right.

40. It follows that Article 6 para. 1 (art. 6-1) is applicable in the case.

B. Compliance with Article 6 para. 1 (art. 6-1)

41. The applicant association pointed out that four of the five members sitting on the Judicial Committee when it ruled on Procola's application had previously sat on the advisory panel of the Conseil d'Etat which had given its opinion on the draft Grand-Ducal Regulation of 7 July 1987 and drafted a bill making that regulation retrospective. In view of the opinions they had previously expressed, particularly in the letter sent by the President of the Conseil d'Etat to the Prime Minister on 24 June 1987 (see paragraph 12 above), the members of the Judicial Committee could not have approached the question submitted to them, namely whether it was lawful to apply the ministerial orders of 21 September 1987 retrospectively, with a completely open mind. In the instant case there was neither objective nor subjective impartiality.

42. The Government observed that before the Commission Procola had cast doubt only on the Judicial Committee's objective impartiality. The complaint now raised about subjective impartiality, in support of which no fresh evidence had been adduced, should therefore be rejected as being new. In the instant case, they continued, it was quite true that some members of the Judicial Committee had performed first an advisory function - having given an opinion on the Grand-Ducal Regulation of 7 July 1987 and suggested that the Government have the Act of 27 August 1987 enacted - and then a judicial function. Nevertheless, it would be incorrect to infer that the Conseil d'Etat was not in a position to give an impartial ruling on the application. In the Luxembourg legal system the Judicial Committee was bound to dismiss an application directed against a statute, not because it had earlier given its opinion on the draft but because in such a situation it had no discretion to do otherwise.

43. The Court considers that in the instant case it is not necessary to determine whether the Judicial Committee was an independent tribunal. The applicant association did not put in doubt the method of appointing the Conseil d'Etat's members and the length of their terms of office or question that there were safeguards against extraneous pressure.

44. The only issue to be determined is whether the Judicial Committee satisfied the impartiality requirement of Article 6 (art. 6) of the Convention, regard being had to the fact that four of its five members had to rule on the lawfulness of a regulation which they had previously scrutinised in their advisory capacity.

45. The Court notes that four members of the Conseil d'Etat carried out both advisory and judicial functions in the same case. In the context of an

institution such as Luxembourg's Conseil d'Etat the mere fact that certain persons successively performed these two types of function in respect of the same decisions is capable of casting doubt on the institution's structural impartiality. In the instant case, Procola had legitimate grounds for fearing that the members of the Judicial Committee had felt bound by the opinion previously given. That doubt in itself, however slight its justification, is sufficient to vitiate the impartiality of the tribunal in question, and this makes it unnecessary for the Court to look into the other aspects of the complaint.

46. It follows that there has been a breach of Article 6 para. 1 (art. 6-1).

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

47. 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."

A. Pecuniary damage

48. Procola requested reimbursement of the LUF 4,456,453 fine for overproduction, increased by LUF 568,290 interest, that had been imposed on the association as a result of the retrospective application of the Regulation of 7 July 1987. They argued that, logically, the association should not have had to pay any fine in respect of the years preceding the regulation's entry into force.

49. The Government said that only Procola's individual members could claim to have sustained damage. They further submitted that the amount in issue should be LUF 4,456,453, since the sum representing interest had not been collected.

50. The Delegate of the Commission expressed the view that it was difficult to speculate as to what the outcome of the dispute would have been if the Judicial Committee had been constituted so as to afford all the safeguards of an independent and impartial tribunal.

51. The Court likewise does not perceive any causal link between the breach of Article 6 para. 1 (art. 6-1) and the dismissal of Procola's application by the Conseil d'Etat. It therefore disallows the claim.

B. Costs and expenses

52. The applicant association, the Government and the Delegate of the Commission left this matter to the Court's discretion. However, the applicant association suggested that, in view of the complexity of the case, the costs could be assessed at between 5 and 10% of the sum at stake in the proceedings, that is to say between LUF 250,000 and LUF 500,000.

53. Making an assessment on an equitable basis, as required by Article 50 (art. 50), and in the light of the relevant criteria, the Court awards Procola LUF 350,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 para. 1 (art. 6-1) of the Convention is applicable in this case;
2. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
3. Holds that the respondent State is to pay the applicant association, within three months, 350,000 (three hundred and fifty thousand) Luxembourg francs for costs and expenses;
4. Dismisses 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 28 September 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar